UNIVERSITAT DE BARCELONA

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Court Procedure, Conflict Resolution and Narratives in Medieval Catalonia (950-1130)

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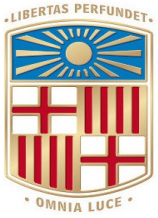

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The Wheel of Justice:
Court Procedure, Conflict Resolution and Narratives in Medieval Catalonia (950-1130)

Thesis submitted for the degree of Doctor of History

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behind and dedicate my time to learn Catalan, as well as Gerhard Schmitz who was the first one who showed me that medieval charters can be delightful.

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This work is dedicated to my parents, who took care to ensure my education and gave me chances they never had. Especially my mother, she would have been very proud.

List of Abbreviations

Series, Lexica & Publishers

CCSL:	Corpus Christianorum, Series Latina
Corominas	Corominas, J., Gulsoy, J., and Cahner, M. (1980), *Diccionari etimològic i complementari de la llengua catalana* (2.ed., Barcelona: Curial Edicions Catalanes).
CR:	*Catalunya Romànica*, Barcelona (Enciclopèdia Catalana), 1986-1997, 26 vol.
CSEL:	Corpus Scriptorum Ecclesiasticorum Latinorum
CSIC	Consejo Superior de Investigaciones Científicas
DHC	SimonTarrés, Antoni (Hg.) (2003): Diccionari d'Historiografia Catalana. Barcelona.
GMLC:	Glossarium Mediae Latinitatis Cataloniae Bassols de Climent, M. - Bastardas, J. (ed.): Glossarium Mediae Latinitatis Cataloniae, vol. I (A-D), Barcelona, Universidad de Barcelona - CSIC, 1960-1985. Bastardas, J. (ed.): Glossarium Mediae Latinitatis Cataloniae, fasc. 11 (F), Barcelona, CSIC, 2001. Bastardas, J. (ed.): Glossarium Mediae Latinitatis Cataloniae, fasc. 12 (G), Barcelona, CSIC, 2006.
HRG	Handwörterbuch zur deutschen Rechtsgeschichte Founded by Stammler, W.; Erler, A.; Kaufmann, E., 2nd ed. Cordes, A.; Lück, H.; Werkmüller, D.; Schmidt-Wiegand R., since 2012 Cordes, A.; Haferkamp, H-P. Berlin 2004-2016, vol. 1-3.
LexMa:	Lexikon des Mittelalters 10 vol. Artemis: München/Zürich (vol. 8 and 9, 1997–1998, München, vol. 10 Lachen am Zürichsee) 1980–1999.
LV	Lex Visigothorum
MGH:	Monumenta Germaniae Historica
MPL:	J. P. Migne, *Patrologiae cursus completus*. Series Latina

Niermeyer: Niermeyer, J. F., and van Kieft, C. de (1976), *Mediae Latinitatis lexicon minus* (Leiden: Brill).

DuCange: Ch. DuCange et al. *Glossarium mediae et infimae latinitatis.* Paris 1678, Reprint, 1883-1887.

VLCM: Vocabulari de la llengua catalana medieval de Lluís Faraudo de Saint-Germain, online at: www.iec.cat/faraudo/, accessed 10 Nov 2020.

Archival Sources

ACA: Arxiu de la Corona d'Aragó

ACB: Arxiu Capitular de Barcelona

ACL: Arxiu Capitular de Lleida

ADB: Arxiu Diocesà de Barcelona

BC: Biblioteca de Catalunya (Barcelona)

BnF: Bibliothèque Nationale de France (París)

BPT: Biblioteca Pública de Tarragona

BSB: Biblioteca del Seminari de Barcelona

BUB: Biblioteca de la Universitat de Barcelona

C: Cancelleria

CC: Col·lecció Catalunya Carolíngia

CCSL: Corpus Christianorum Series Latina

IEC: Institut d'Estudis Catalans

LA: Libri Antiquitatum

LDEU: Liber Dotaliorum Ecclesie Urgellensis

VatLat: Biblioteca Apostolica Vaticana

Preliminary notes

Names

For the sake of comprehension names are given in modern Catalan. That includes place names in the linguistic areas where Catalan is spoken today (e.g. Valencia or the Balearic Islands) and includes castles, towns, geographical landmarks etc. If a modern Catalan equivalent does not exist or cannot be located they are cited in *italics* in the way they appear in the sources. Some small exceptions are made, however, in order to not obstruct the reading flow too much: *Catalonia* instead of *Catalunya* being one. As a general rule the regional spelling is always retained, again with some particular exceptions (e.g. *Rome* instead of *Roma*).

Names of rulers, bishops or counts are also given in modern Catalan if possible (e.g. *Ramon* instead of *Raymond*). The latter also includes historical personalities, which the Anglo-Saxon world tends to write in Spanish (e.g. *Penyafort* instead of *Peñafort*). This is not meant to be a hierarchisation of any kind but simply a contribution to homogeneity. The same guidelines are applied to all other individuals that appear in the Catalan sources. If a modern Catalan equivalent does not exist, however, these names are cited in the way they appear in the sources. As it is the case for place names the modern regional spelling is used for rulers and individuals outside of Catalonia (e.g. *Sancho Ramírez* instead of *Sanç Ramires*). The English spelling is used for the papacy though (e.g. *Pope Alexander II*).

Dating

Catalan charters from the 9th to the 12th Century are usually dated by the regnal years of the French kings and, as in France, should usually start with the death date of their father. There is a slight but significant difference as Catalan charters usually change the regnal year on the 24th June for the 11th and 12th Century.[1] Alterations to this are mentioned and can usually explained by context. The incarnation dating (*de*

1 Mundó Marcet, A. (1967), 'La datació de documents pel rei Robert (996-1031) a Catalunya', *Anuario de Estudios Medievales*, 1967: 13–34. For regnal calendar tables dealing with the 9th and 10th Century, comp.: UDINA, *El Archivo*, pp. 51-80. See also:Feliu Montfort, Gaspar (1969), 'La cronología según los reyes francos en el condado de Barcelona', *Anuario de Estudios Medievales*, 6: 441–464.

annis dominiae incarnationi) only became more popular in the 12th Century and would finally take over in 1180.[2]

In many cases determining the exact day of the week and the corresponding day of the saint was key to understand the circumstances of the creation of a document. For this endeavour different tools were extremely helpful and were used throughout the work.[3]

Bible Quotations

In the following I will use the New Revised Standard Version (NRSV) of the Bible for Bible quotations in English if not otherwise stated. E.g. John 1:1-3: *"In the beginning was the Word, and the Word was with God, and the Word was God. He was in the beginning with God. All things came into being through him, and without him not one thing came into being. What has come into being."* Occasionally other Bible translations closer to the Vulgate *B*ible were opted for and are marked accordingly e. g.: NASB: New American Standard Bible.

Quotations from the *Lex Visigothorum*

The Law of the Visigoths is the main legal code used in Catalonia during the time period studied here. Given several names like *Forum Iudicum* or more often referred to as the *Liber Iudiciorum* – The Book of Judges – and is frequently cited in the charters.

If not otherwise indicated, citations are given directly from the edition of the manuscript known as the *Liber iudicum popularis,* of the judge named Bonsom.[4] If the

2 Up to the council of Tarragona in 1180 some documents had already started to date by incarnation (25th of March). After the council it became the established method of dating up to 1351 when the nativity dating style (25th of December) was introduced, only to finally be replaced by the circumcision style towards 1500. Mundó Marcet, A. (1994), 'El concili de Tarragona de 1180 dels anys dels reis francs als de l'ecarnació', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 67/1: 23–43.

3 Grotefend, H. (2007), *Taschenbuch der Zeitrechnung des deutschen Mittelalters und der Neuzeit* (14th edn., Hannover: Hahn). Besides the traditional Grotefend handbook the *Institut de recherche et d'histoire des textes* offers a very helpful online tool called Millesimo (http://millesimo.irht.cnrs.fr/) that was used with caution keeping in mind the provenance of the charters. The two oldest sacramentaries from Catalonia were edited by Olivar Daydí and follow the Franco-Roman liturgy deriving from Narbonne with certain particularities, comp.: OLIVAR, *Sacramentario de Vich* especially for the Calendar of Saints see p. LIX-LXIII*;* OLIVAR, *Sacramentarium Rivipullense*. For the formation of the later Narbonnese sacramentaries compare The Sacramentary Gellona II: Gros Pujol, Miquel dels Sants (2002), 'El Sacramentari II de Gellona (Montpellier, Bib. Mun., ms. 18)', *Miscel·lània Litúrgica Catalana*, 20: 53–231.

4 The original manuscript is in the Real Biblioteca del Monasterio de San Lorenzo de El Escorial, signature Z-II-2. For the edition, see.: ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*.

numerations differ from the chapter in the edition of Zeumer[5] the difference is indicated in brackets. Therefore, citing the first phrase of the second book, first title and 22nd chapter would look like this:

LV II.1.22. (LV II.1.21.): *Si iudex dolo vel caliditate aut una aut ambas causantium partes dispendia faciat sustinere.*

In case the law is only attested to in Zeumers edition: LV, Zeumer, IX.1.21.

Quotations from the *Usatges de Barcelona*

The law code of the customs of Barcelona, usually known as the *Usatges de Barcelona,* for practicality will be addressed as *Usatges* throughout the work. As there are several editions available they are cited through the editors: BASTARDAS, *Usatges*, Us. 23 (27): […]; ABADAL, VALLS, *Usatges*, Us. 27: […].

Notes on Spelling

When quoting I have retained the original spelling of the texts used and in case of several editions opted for the one closer to the original orthography. For the most part that meant the preferred use of the most recent edition. I tried to avoid as many emendations as possible. Hence, if not otherwise indicated, emendations found in the citations are from the editions used. Brackets are used to shorten sentences in the cited sources […], and when used in italic *[...]* they indicate an unreadable or missing part in the source.

The range of variations in Latin spelling in the documents is considerable. Therefore it would impede rather than help the reader to give all these variants when discussing the meaning and usage of different terms. For instance, when discussing trial by combat I will use the most common writing – *batalla* – and only in the case of quoting from a source maintain possible variations like *bataia*.

Already in the 10th Century many sources exhibit elements of the vernacular. Oaths and complaints in particular can have whole sentences in preliterary Catalan.[6] These parts are only highlighted if used to clarify an argument and are otherwise cited

5 ZEUMER, *Leges Visigothorum*.

6 Old Catalan usually refers to the languages used in the literary sources of the 12th onwards. In Catalan studies the term *català preliterari* – preliterary Catalan is used to designate the language before its widespread literary use. The 11th Century foreshadows this development with the first sources written nearly completely in Catalan.

next to the Latin text in which they are embedded. Translations to English, if not otherwise indicated, are mine.

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I. Introduction & Objectives

Being called to court usually is negative news. It invokes imagery of tension and conflict. The effect it can have on individuals is huge. Not only can it draw what one considers private into the public sphere it also invokes fear of a negative outcome as a sentence can change one's life forever. Individuals can have doubts about procedures and the necessary steps to take, they can become afraid to commit errors and contemplate tactics and strategies to avoid those, and how to finally step out of court without overly harsh repercussions.

Every court session has a before and an after, as it is situated somewhere in the middle of a conflict. By its nature it cannot stay isolated but is always a clear and identifiable moment within time. Portraying such confrontations also means to inevitably obey general rules of narration; this applies to both the modern historian as well as to the people of the past as conflicts have to be narrated to exist within society.

This work's main concern is court procedure and its change over time. However reading through the sources unveils many layers of conflict, sometimes lying in the past and sometimes lurking at the edge to re-emerge in the future. The documents that allow insight into these conflicts are temporal testimonies that narrate the past and agreed about the future. All three aspects affect each other and cannot exist individually, as conflicts precede trials while narratives and the vocabulary are the vehicles with which these come to life. These narratives, however, are again subject to legal norms and procedures and thus follow their own rules.

The Wheel of Justice: Court Procedure, Conflict Resolution and Narratives in Medieval Catalonia (950-1130) analyses the interconnection and dynamics of these three aspects and how they change over time. They are linked to society and the individuals living in it and thus reflect an aspect of daily life that for some was exceptional, for others routine, but for all of them meant being bound to certain restrictions and rules. Some of these are still valid for us today but others seem distant and difficult to understand. The amount of source material from Catalonia allows us to highlight continuities and breaks, ruptures and new solutions, negotiated through society and directed by its elite. They show all strata in society be it the powerful or the poor, the ones with titles and properties and the ones that only appear once within

the documentation. All of them were bound to customs, traditions and laws from the past and through living within these they created them anew.

The time frame of the work is wide, analysing sources related to the administration of justice in Catalonia from roughly 950 to 1130 or, put another way, from the start of the rule of count Borell II (948-992) up to the end of the rule of Ramon Berenguer III (1086-1131) of Barcelona. The time frame was consciously chosen to break with the artificial boundaries millennia automatically propose. This work leaves what could be considered strictly political history aside but nevertheless coincides with the two rulers; other time frames would have been possible but would have been equally artificial. The bulk of source material available in regard to conflict resolution grows exponentially in the time after Ramon Berenguer III and the 12th century undergoes changes with dynamics of their own and thus such a break seemed reasonable.

Other limits must be addressed here as well. Due to the large amount of documentation available some topics had to be left aside or only just had the surface scratched, like, for example, questions regarding how gender affected narratives in charters or how excommunication of individuals was used as a tool to pressure people to go to court and many more. These cuts are always painful but necessary decisions as without limits there can be no substance.

The first two chapters give a short introduction into the historiography and the sources, and are meant to give a general state of affairs and set up the reader for the central part of this work, which introduces the method used to analyse the sources: The Wheel of Justice.

This main chapter is divided into three parts: Preludes, Trial & Resolution. An inherent problem of analysing charters in regards to court procedure is repetition and the only way around this was by addressing specific parts of procedure, and in that way establish a basis so that the reader can understand them in the more complex examples without having to address them again and again.

This means that the chapter Preludes sets the basis of understanding how court cases were affected by the factors of space and time to later show how this in return affected procedure, conflict resolution and its narratives.

The second part of the analysis looks at the different stages of the trial while dedicating more pages to new methods regarding the resolution of conflicts as, for

example, would be the case for ordeals. As the most insightful charters of the time period studied relate to individuals defying justice more room is given for these cases as they show the complexity of procedure and the application of the law as well as many other aspects.

The last part of analysis is very selective as the reader will have read through many cases and thus already seen many outcomes of trials. This chapter therefore focuses on certain aspects of justice in relation to resolutions found in the documentation that show change.

II. Historiography

The list of merits of those carving out a political, social, economic and legal history, just to mention a few, from the vast charter material preserved in Catalonia for the time period studied here is long; perhaps too long. An overview to situate this work within this framework is necessary, not only to highlight discrepancies and differences but above all to showcase the enormous amount of work that was done in the last decades, without which this work would not have been possible.

In particular the changes in society in 11th century Catalonia that have been described both as a feudal revolution and in milder terms as a mutation of society towards feudalism (*mutació feudal*) have drawn not only the author of this work but also others towards seeing the Catalan archives as what they are: an enormous treasure trove of sources. The work of the French historian Pierre Bonnassie was central to this change. The following chapters try to map out how and why this happened and why the work of Bonnassie was and is still central even though published over 40 years ago. Thereafter a research overview shall be given which does not necessarily strive for completeness but nevertheless aims to provide a certain summary.[7]

Historians dedicating themselves to the study of Catalan historiography were, with a few exceptions,[8] rare prior to the 1980s due to the political circumstances of the last century.[9] In particular the work of Albert Balcells, and Enric Pujol whose doctoral

7 Several other authors already analysed these developments, each from a slightly different perspective, including the corresponding literature, comp.: Kosto, A. J. (2001), *Making agreements in medieval Catalonia*: *Power, order, and the written word, 1000-1200* (Cambridge studies in medieval life and thought, 4th ser., 51, Cambridge, UK, New York: Cambridge University Press), p. 4-25; Benito i Monclús, Pere (2003), *Senyoria de la terra e tineça pagesa al comtat de Barcelona (segles XI-XII)* (Anuario de estudios medievales Annex, 51, Barcelona: Consell Superior d'Investigacions Cientifíques), p. 91-122; Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 5-27. Sabaté i Curull, Flocel (2010), 'La Catalunya dels segles X-XII i la definició historiogràfica del feudalisme', *Catalan Historical Review*, 3: 163–184.

8 The historian and politician Miguel Coll i Alentorn (1904-1990) was certainly one of those exceptions. See: Balcells i González, Albert (2004), 'Introducció', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 14: Abans dels anys vuitanta era excepcional el cas d'algú que s'hagués començat a especialitzar en historiografia catalana com Miquel Coll i Alentorn, que havia fet incursions en les època més recents després d'estudiar les més remotes. For his work, see: Salrach i Marés, Josep Maria (1984), *Miquel Coll i Alentorn, Historiador*: *Miscel·lània Coll i Alentorn en el seu vuitantè aniversari* (Barcelona), esp. p. 84-89.

9 Jordi Canal i Morell in 1986 used the words, "almost non-existent". Canal i Morell, Jordi (1986), 'El conflicte remença vist pels historiadors dels segles XIX i XX', *Revista de Girona*, 118, p. 463: A

thesis on the “Ferran Soldevilla era” was good starting point,[10] along with others, enabled the creation of the “first synthesis of the history of Catalan historiography” which makes it now possible to get an overview of Catalan historiography.[11]

Modern Catalan historiography from the beginning of the 19th century until the end of the civil war in 1939 was roughly divided into two stages, first considering the period of Romanticism[12], followed by a phase of positivist historical thinking[13] culminating in the Second Spanish Republic. Following on, the Civil War and the post-war era can be considered as a major break in research and as a period of hardship, followed by the revision, modernisation and internationalisation of Catalan medieval history.

Catalunya, malauradament, els estudis sobre historiografia són gairebé inexistents. A profundir-hi, permetrà d'entendre millor la nostra història i els homes que se n'han ocupat, és a dir, els que l'han escrita.

10 Pujol i Casademont, Enric (2001), *Ferran Soldevila i la historiografia catalana del seu temps, 1894-1971* (Ed. microfotogràfica, Bellaterra: Publicacions de la Universitat Autònoma de Barcelona).

11 A further logical step was the reference work by Antoni Simon i Tarrés the *Diccionari d'Historiografia Catalana*, (Comp. DHC) which greatly facilitates an introduction to Catalan historiography. Hence, the way was paved for a scientific conference on the 23rd and 24th of October 2003, which would result in the first comprehensive "synthesis of the history of Catalan historiography". Another important reference work for orientation, but unfortunately inadequate for the Catalan historiography. Balcells i González, Albert (2004), ‘Introducció’, in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 15: Els textos que componen el llibre que teniu als dits constitueixen la primera sintesi d'història de la historiografia catalana i són el resultat de les jornades scientifiques organitzades per encàrrec de la Secció Històrico-Arqueològica de l'Institut d'Estudis Catalans i celebrades a Barcelona els dies 23 i 24 d'octubre del 2003 a la Casa de la Convalescència.

12 For an overview: Grau i Fernández, Ramon (2004), ‘La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)’, in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 141–60.; Ghanime i Rodríguez, Albert (2009): Historiografia romàntica. In: Simon i Tarrés, Antoni (Hg.): Tendències de la historiografia catalana. Valencia: Universitat de València, S. 345–350. Grau i Fernández, Ramon (2004), ‘La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)’, in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 141: Entre les revolucions de 1835 i de 1868 la cultura catalana, i en especial la historiografia, evolucionà sota la influència predominant del romanticisme. Dins la cultura occidental, el romanticisme, nascut com a revisió crítica de la il·lustració, va encetar el debat modern al voltant dels límits de la raó i ha donat lloc fins als nostres dies a un seguit de rebrotades (els diversos neoromanticismes), enriquides progressivament pels empelts amb un racionalisme que també ha sabut reaccionar a les crítiques i anar-se fent més comprensiu.

13 See: DHC, Positivisme; Pujol i Casademont, Enric (2009), ‘Positivisme historiogràfic’, in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), 365–75.

II.1. Catalan Historiography before the Revolution

Catalan historians in the middle of the era of liberal revolutions in the 19th century were convinced that feudalism had existed in Catalonia.[14] It was, however, not understood as a Gothic institution but as an Carolingian import through the *reconquista* of Catalonia. For most of these historians one book, the source-critical reconstruction of the genealogy of the counts of Barcelona *Los condes de Barcelona vindicados, y cronología y genealogía de los reyes de España considerados como soberanos independientes de su marca* by Pròsper de Bofarull Mascaró (1777-1859), published in 1837, was the cornerstone and the most important reference work.[15] Bofarull's work, however, was never designed for a broader audience[16] and in the

14 The signing of the Constitution of Cadiz in 1812, which was liberal at the time, led to an upsurge of liberal currents in the province of Catalonia. The subsequent *desamortización* or confiscation of church property, decisively in the course of the 19th century, and the thereof dissolution of the *señorias* inevitably required a legal and historical engagement with the *Ancien Régime*. Comp. Simon i Tarrés, Antoni (2004), 'La historiografia del segle de les llums (de Maians a Capmany)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 117–40..; Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 141–60, p. 143-144: És ben conegut que els historiadors arxivers del segle XVIII van fer *tabula rasa,* que van tallar amb la tradició historiogràfica barroca per poc veraç i van mirar de reconstruir el discurs sobre el passat de cap a cap i des d'unes bases més pures: a partir sols dels documents autenticats. Tota la historiografia contemporània deriva d'aquesta revolució metodològica, que empeltà l'escriptura de la història en l'arbre de les ciències i del coneixement empíric i la va allunyar de la literatura creativa. Comp. Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors). p. 560: No em puc remuntar a les historiografies del XVII o XVIII, però que és evident que en el moment de la desamortització liberal al segle XIX i de la descomposició de les senyories jurisdiccionals, la gent es va haver d'interrogar sobre què era una senyoria jurisdiccional, la gent es va haver d'interrogar sobre què era una senyoria jurisdiccional, des de quan hi havia en aquest país seynories jurisdiccionals i territorials, i com s'havien format aquest grans patrimonis dels monestirs que eren desamortitzats. I aquesta problemàtica política de la revolució liberal va generar una polèmica que va col·locar el feudalisme al centre mateix dels debats polítics i intel·lectuals.

15 Pau Piferrer i Fàbregas (1818-1848), Jaume Tió i Noè (1816-1844), Víctor Balaguer i Cirera (1824-1901) and also Pròsper's nephew, Antoni de Bofarull i de Brocà (1821-1892) they all referred to *Los condes de Barcelona vindicados* to support the historical authenticity of their statements. Comp. Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 143-145.

16 Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 144-145: El punt fort del primer dels Bofarull era l'erudició: el domini de la documentació reial dipositada en l'Arxiu de la Corona d'Aragó, l'expertesa en el reconeixement de documents de l'època medieval i el control de la producció crítica acumulada pels homes de les generacions immediatament anteriors. Però com a la majoria d'aquests darrers, li mancava la capacitat d'escriure per un públic no especialitzat. Aquesta impotència personal, sumada a l'absència de models clars dins la tradició local, dugué Pròsper de Bofarull a permetre i a estimular, fins i tot, entre els seus seguidors l'exploració de la faceta literària de la historiografia, en castellà, com a llengua moderna de la cultura superior a Espanya, i en la perspectiva del segle, és a dir segons l'estil romàntic conreat amb èxit per autors alemanys,

years 1860-63 *Historia de Cataluña y de la Corona de Aragón of* Víctor Balaguers Cirera was published, the main representative of Catalan Romanticism popular at the time. While historians of subsequent generations have always been inclined not to take Balaguer's work seriously, the achievement of this opus is the popularisation of a Catalan national history.[17] Balaguer's work, the "pinnacle of romanticism" is "romantic on the surface and liberal at its core". This liberalism became the lens through which to see a comprehensive interpretation of history.[18]

These early historians all agreed that the import of feudalism from the north was not met with resistance. The native population instead gratefully accepted the help to liberate themselves from the Muslims[19] and, according to Pròsper de Bofarull, placed themselves under the protective rule of Charlemagne.[20] However, this achievement

britànics i francesos.

17 Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 143: Forma part de la reconstrucció més usual de la història de la historiografia catalana moderna considerar que aquestes dues obres no poden situar-se en el mateix pla; que la primera és una obra de primer regle, fruit d'una investigació seriosa, mentre que la segona és un treball de mera divulgació, en els confins de la mera literatura i allunyat de les exigències crítiques pròpies de la disciplina. El nostre argument principal s'apartarà d'aquesta estimació tradicional i considerarà que, precisament, la *Historia de Cataluña* de Víctor Balaguer és una conseqüència, sinó l'obra més ambiciosa i reeixida dins l'estil romàntic afavorit dins aquell ambient. Per aquesta raó, convertim de d'ara l'obra de Balaguer en el punt de referència principal de la nostra dissertació analítica.

18 Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 153: Una superfície romàntica i un fons liberal: aquestes són les dues coordenades que emparenten la historiografia de Víctor Balaguer, […]. La seva selecció d'elements dins la història catalana respon directament, o bé al designi didàctic progressista, o bé a l'afany de captar lectors nous, o bé a tots dos objectius sumats. L'erudició crítica aplicada a l'aclariment monogràfic, que és el paràmetre més apreciat sempre per la corporació dels historiadors, queda molt en segon terme –per no dir que és absent– a la *Historia de Cataluña y de la Corona de Aragón*, el cim de la producció balagueriana.

19 Bofarull i Mascaró 1836, 1f.: Las continuas incursiones de los Muzlimes, el fuego, la espada, el entusiasmo religioso, y en suma, la ignorancia en que envolvió al Mundo el seductor sistema político-religioso del pseudo Profeta de Medina, no nos dejaron de aquellos cuatro primeros siglos del sacudimiento Español mas que muertes, desolación, cenizas y escombros, y la confusa memoria de muy pocos y aun desfigurados sucesos, trasmitidos después de unos á otros escritores sin el menor gusto, crítica ni comprobacion siquiera con las escasas piezas justificativas que nos quedan de tan bárbaros como heróicos tiempos.

20 Bofarull i Mascaró 1836, 3f: Recobrada la libertad y reconocidos y obligados á los grandes ausilios de Carlo Magno y de su hijo y nieto Ludovico Pío y Garlos Calvo, se pusieron bajo su proteccion y dominio con ciertos privilegios que estos emperadores les concedieron después de recibirlos en su vasallage, y de establecerles la autoridad de unos Condes para que los gobernasen en su nombre y en el de sus sucesores en el imperio. According to Piferrer i Fabregas (1839), the "brave Catalans" had previously fled from the invaders to the Pyrenees to sound the war horns "naked and hungry" against the Arab occupiers for eighty years. Pau Piferrer 1839, II.,17: […] aquellos valientes catalanes, desnudos, hambrientos, hicieron, resonar la bocina de ataque y lucir la espada de venganza en los oidos y ojos de los invasores per espacio de ochenta años. Comp. Bofarull i Mascaró, 1836, II: Retirados á sus montes, siempre con las armas en la mano y nunca desalentados, mantuvieron en continua alarma por espacio de unos ochenta años á sus conquistadores, y ausiliados y capitaneados por los monarcas de Francia, y engrosados con los fugitivos Godos que de las partes de España se refugiaron en la Gothia , Marca ó Septimania, lograron por fin, á últimos del año 801, arrancar de las almenas de Barcelona las lunas

was by no means the work of the Franks alone, but also the merit of the native population, which thereby founded a nation.[21] It was the people who made a pact with the powerful in Balaguer's view of history,[22] in which Catalonia, and with it the Catalans, strove towards freedom.[23]

Meanwhile, the Catalan bourgeoisie had turned its gaze to Paris[24] and Balaguer's view of history, which was only loosely based on the sources, was contradicted by a generation of lay historians characterised by a strong positivism.[25] These revisions of history, however, left the origin of feudalism mostly aside or even prolonged its existence back to Roman times.[26] Even when the Middle Ages became the "*período*

agarenas. Comp. Sunyer i Molné 2006, 65. Therefore the mountains in the north of the Spanish peninsula became the cradle of nations in Víctor Balaguers vision. Comp. Sunyer i Molné, Magí (2006), *Els mites nacionals catalans* (Vic: Eumo). 65-66.

21 Comp. Sunyer i Molné, Magí (2006), *Els mites nacionals catalans* (Vic: Eumo), p. 66: […] la seva preocupació bàsica consistia a resseguir les sublevacions dels ‚catalans', però també a demostrar que la recuperació de terreny als musulmans era obra, més que dels francs, dels naturals del país, que construïen la seva nació.

22 Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 156: Més que no pas les llegendes pintoresques que amenitzen les pàgines de la seva *Historia de Cataluña*, és crucial per a Balaguer, per exemple, la presentació de les expedicions carolíngies al sud dels Pirineus com l'efecte d'un pacte entre les dues parts beneficiàries de la campanya contra els moros, i de l'entronització de Lluí el Piadós com el resultat d'una elecció lliure dels catalans i no de la conquesta militar franca. La resta de l'Edat Mitjana –feudalisme inclòs– és vista, en conseqüència, com el desplegament d'un sistema polític basat en la primacia de la llei pactada sobre la voluntat del monarca i en preeminència creixent de les institucions parlamentàries i de la participació popular en la dinàmica nacional.

23 Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 155-156: Com en els escrits polítics del seu predecessor il·lustrat, però de manera més insistent encara, en els treballs històrics de Víctor Balaguer l'apologia de Catalunya és indestriable de l'apologia de la llibertat. El passat català hi és rememorat sempre en funció d'aquest valor específicament modern però que és vist també com la substància mateixa de l'epopeia humana i la causa final de tot el moviment dels segles.

24 Jordi Cassasas attests a strong influence by the *Société Positiviste*, founded in 1848. Comp. Casassas i Ymbert, Jordi (2004), 'La historiografia del positivisme', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 163.

25 The positivists published their contributions in the *Revista de Gerona* and one can speak of an *Escola de Girona*. Antiquity societies for the study of archaeological monuments were founded. The most influential were the *Societat Arqueològica Tarraconense* (1844) and the *Societat Arqueològica Valenciana* (1871). Comp. Pujol i Casademont, Enric (1996), 'Fi de segle i avenç científic. La historiografia catalana a la fi del Vuit-cents', *El contemporani: revista d'història*, 10, p. 32.

26 Coroleu i Inglada, José (1878), *El feudalismo y la servidumbre en la gleba de Cataluña* (Girona: Imprenta y librería de Vicente Dorca), p. 8-10.

nacional"[27] and Víctor Balaguer's statements were completely dismissed the provenance of feudalism were not seen as a central question of research.[28]

One of the declared aims of the following generation of historians was a non-provincial history, combined with a "scientific rigour".[29] However the historians of the time saw medieval oppression by feudal lords as a necessary evil. The general insecurity of the time would have made it necessary to place oneself under the protective rule of the nobility. Only the medieval urban citizens, with whom the Catalan bourgeoisie increasingly identified during this period, would have offered protection side by side with the king; they would have become the ones to create proto-democratic structures, such as the *Consell de Cent* or the *Diputació del General del Principat de Catalunya*.[30] The high productive pre-war era culminating in the second Spanish Republic was heavily affected by the outbreak of the Spanish Civil War who was to make a "deep and traumatic cut".[31]

However the *generació de la República* produced a historian who has been considered by some as the founder of modern Catalan historical sciences: Jaume Vicens Vives (1910-1960).[32]

The turning away from the pre-war generation's historiography, which he decried as completely romantic, finds parallels within the Annales school, which also wanted to distance itself from its predecessors.[33] Vicens Vives ensured the definitive

27 Pujol i Casademont, Enric (2004), 'La historiografia del noucentisme i del període republicà', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 190: El passat medieval es va mantenir encara com l'àmbit d'anàlisi priveligat, ja que segons la consideració d'Antoni Rubió i Lluch era el ‚període nacional'. No obstant això, també es produí una obertura els temps moderns […].

28 Pujol i Casademont, Enric (2004), 'La historiografia del noucentisme i del període republicà', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 189: La desautorització de Víctor Balaguer fou general, es començà a destriar els elements llegendaris o falsejats de les cròniques medievals i de les principals fonts escrites, i s'inicià una sistemàtica i veritable depuració historiogràfica.

29 Pujol i Casademont, Enric (2009), 'Noucentisme historiogràfic', in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), p. 189: [...] una historiografia desprovincianitzada amb una major exigència de rigor cientific.

30 Comp. Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 12.

31 Barceló i Perelló, Miquel; Riquer, Borja de; Ucelay Da Cal, Enric (1982): Sobre la historiografia catalana. In: *L'avenç* 50, p. 71: Les dues fases de la historiografia catalana són evidentment, molt aproximatives. De fet, representen més dues tendències succesives que se sobreposen que no pas dues etapes clares, netes i totalment separades. L'any 1939, en canvi, va significar un tall profund i traumàtic en la vida catalana.

32 Comp. DHC, Vicens i Vives. Sobrequés i Callicó, Jaume, and Morales i Montoya, Mercè (2010) (eds.), *Jaume Vicens i Vives*: *Visions sobre el seu llegat* (Barcelona).

33 Furió i Diego, Antoni (2004), 'La historiografia catalana sota el franquisme', in Balcells i González,

establishment of Catalan historical sciences at Catalan universities[34] and, despite the repressive measures of the Franco regime, managed to build a school that was increasingly oriented towards France.[35]

An indispensable historian for the Early Middle Ages is Ramon d'Abadal i de Vinyals (1888-1970). Among his most important historical works before the war was the edition of the *Usatges* together with Valls i Taberner (1913). He directed the journal *La Publicitat*, the mouthpiece of the regional party *Acció Catalana*, which he co-founded in 1922 and organised a conference in December of the previous year, together with the southern French historian Josep Calmette (1873-1952), which was titled: *El feudalisme i els orígens de la nacionalitat catalana*.[36] The Institut d'Estudis Catalans subsequently commissioned him with a mammoth project: the edition of all medieval Catalan charters before the year 1000. This ambitious project became the seed for the outstanding work on the Carolingian period in Catalonia, thus the title: *Catalunya carolíngia: els diplomes a Catalunya*. His political activity had already been interrupted by the dictatorship of Primo de Rivera (1923-1930), and after the end of the civil war Abadal withdrew from politics altogether. He processed his experiences

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Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 206: Però també és cert que la seva aportació i la seva veritable significació han estat condicionats d'alguna manera, sobretot en el cas de Soldevila i Vicens, pel filtre i la valoració desenfocada que el mateix Vicens i els seus deixebles han sabut imposar, en impugnar gairebé tota la historiografia anterior, desacreditada com a ‚romàntica - en una operació que recorda bastant la que van dur a terme els fundadors de l'escola d'*Annales* i els seguidors posteriors amb la historiografia precedent, posada toda en el mateix sac i vituperada desdenyosament com a ‚positivista o ‚evenemencial -, per il·luminar millor o directament magnificar a la pròpia aportació. [Footnote: Com veurem més endavant, aquesta operació l'havia iniciada ja el mateix Vicens, en un article titulat significament - significament pel que té de consciència i voluntat de ruptura i d'inici i afirmació d'una via historiogràfica nova, i també perquè remet directament a l'escola d'*Annales*, autoqualificada igualment de nova història - "La nova història", publicat a *Serra d'Or* el gener de 1960].

34 Barceló i Perelló, Miquel; Riquer, Borja de; Ucelay Da Cal, Enric (1982): Sobre la historiografia catalana. In: *L'avenç* 50, p. 68-69: La historiografia espanyola, com la d'altres societats europees en procés de formar Estats nacionals, és en gran mesura i en els seus aspectes més decisius l'elaboració de funcionaris de la recerca lligats majoritàriament a la Universitat i, en canvi, la historiografia catalana, que retornava sempre a teixir el tapís sovint desteixit per la fragilitat política, és fonamentalment, fins a J. Vicens i Vives, resultat d'un treball fet per intel·lectuals i publicistes deslligats de la Universitat i agombolats per industrials i polítics. Comp.: Barceló i Perelló 1986, 6: És sabut que la tradició major de la historiografia catalana, des d'A. Rovira i Virgili a F. Soldevila i R. d'Abadal, fou produïda i mantinguda fora de la Universitat. Només J. Vicens Vives tingué oportunitat d'emprendre una relativament curta, però ubèrrima, recerca dintre la Universitat. Capitalment, però, i paral·lelament, per pisos freds i poc il·luminats, el mestratge de F. Soldevila, per exemple, anava estimulant dedicacions i recerca llarg de la nit franquista.

35 Comp.: Claret i Miranda, Jaume (2004), *La repressió franquista a la universitat espanyola* (Barcelona).

36 At the University of Toulouse, Abadal was to enthuse about the importance of this conference as late as 1963 (DHC, Abadal i de Vinyals, 36): *En ce qui me concerne personellement, je puis vous dire que ces conférences furent le point de départ qui devait informer dorénavant la direction et surtout, la méthode de més études historiographiques. Elles furent, après cet heureux moment, la règle constructive de mes travaux.*

of the war years in the Puigdolena sanatorium (1946-48) and published "L'abat Oliba i el seu temps" in the same year as his release.[37] After being admitted to the Acadèmia of Bones Lletres de Barcelona in 1949, Abadal was ready to resume his work on Carolingian charters and in 1950 finally published the first volume in this series.[38] One of his most important works was certainly *Els primers comtes catalans* (1958), in which he was not only able to finally arrange the lineages of the various counts, but also made the discovery, which was important for Catalan self-confidence at this time, that the counts of the Marca Hispanica were acting increasingly independently during the times of the crumbling Carolingian Empire.

A distinctive feature of Catalan historiography was to be the growth of Marxist-inspired publications in the 1970s and 1980s,[39] although the third generation of the Annales school rejected this kind of historiography.[40] After the death of Vicens Vives, who had always doubted the usefulness of a Marxist historical perspective,[41] the

37 Ramon d'Abadal i de Vinyals (1962), *L'abat Oliba, bisbe de Vic i la seva època* (3rd edn., Barcelona: Aedos), first pub. 1948, El Guió d'Or.

38 Feliu i Montfort, Gaspar (2011), 'Ramon d'Abadal. La tenacitat en el treball de base', *Butlleti de la Societat Catalana d'Estudis Històrics*, 22, p. 157-183; 185: El títol, *Ramon d'Abadal: la tenacitat en el treball de base,* vol recordar la que considero més coneguda, admirada i exemplar de les virtuts d'Abadal: la capacitat de tornar a començar, als cinquanta-dos anys i després de veure capgirada la seva vida i la seva economia, una obra que deu anys abans havia deixat enllestida i lliurada a la impremta; parlo, naturalment, de la seva obra bàsica, el volum II d'*Els diplomes carolingis a Catalunya*, on, com és prou sabut, publicà tots els documents dels emperadors i els reis francs fins l'any 1000. És el títol que he triat, però ni de lluny l'únic possible per a definir Abadal com a historiador: li escauria igualment ‚historiador i polític', o bé ‚constructor dels fonaments històrics de Catalunya', i fins i tot m'havia temptat ‚un historiador senyor, un senyor historiador', i encara en podríem imaginar d'altres. En definitiva, la personalitat de Ramon d'Abadal és molt més polifacètica del que es pot expressar en una ratlla de títol, però se'm fa difícil no acabar amb els judicis de dues persones que el van conèixer molt bé: Mundó afirma que ‚Ramon d'Abadal era un senyor en el sentit més elevat de l'expressió', i Font i Rius el defineix com ‚un patrici català amb una projecció universal'.

39 Comp. Pujol i Casademont, Enric (2001), *Ferran Soldevila i la historiografia catalana del seu temps, 1894-1971* (Ed. microfotogràfica, Bellaterra: Publicacions de la Universitat Autònoma de Barcelona), p. 715-730.

40 Pujol i Casademont, Enric, Congost i Colomer, Rosa, and Torres i Sans, Xavier (2009), 'Historiografia marxista', in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), p. 325–344; p. 339: L'auge de la historiografia d'inspiració marxista durant la dècada del 1970 i bona part de la del 1980 fou una de les característiques més singulars de la historiografia dels Països Catalans enfront de la historiografia europea. De fet, molts dels treballs d'història que es poden qualificar de marxistes sortiren a la llum durant els anys setanta, és a dir, a l'època de la tercera generació dels *Annales* francesos, que coincidí, per tant, amb un cert rebuig d'aquesta tradició. Aquesta fet, i la forta influència del grup dels historiadors marxistes britànics, atorgà al conjunt de la historiografia marxista catalana un caràcter molt particular." For example, the Brenner theses (Brenner, R. (1976), 'Agrarian class structure and economic development in pre-industrial Europe', *Past & Present*, 70: 30–75.) were richly discussed.

41 Aróstegui, J. (2002), 'La teoría de la historia en Francia y su influencia en la historiografía española', in G. Chastagnaret (ed.), *La historiografía francesa del siglo XX y su acogida en España*. *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid), p. 396: Las versiones de lo ocurrida en el Congreso de 1950 nos presentan a un Vicens que saluda entusiasmado el método estadístico-demográfico y que se niega a

historical materialism of Pierre Vilar's (1906-2003)[42] and British-influenced Marxism would prevail at Catalan universities.[43]

However, Vicens Vives and with him his contemporaries remained convinced that Catalonia differed from the rest of Spain in that it would have been particularly "European," which meant feudal.[44] This was in line with the view of Spanish historians that the Iberian peninsula had managed without feudalism. Catalonia would be the only region of Spain to have developed feudalism through an outside influence: the Frankish Empire.[45]

Vicens' turning away from the Middle Ages and towards the neglected early modern period and contemporary history ensured an intensive study of the transitions from feudalism to capitalism, which Pierre Vilar also dealt with intensively. This resulted in the absurd situation that in the only region of Spain where feudalism was assumed to exist, no one investigated its origins. For example, neither Abadal nor Vicens were explicitly interested in the origin of what they were sure was an existing feudalism.

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aceptar como valor heurístico en historia la lucha de clases. Pierre Vilar ha dicho posteriormente que lo hizo así porque estaba en presencia de un hombre del régimen franquista como era Antonio de la Torre. Una explicación muy escasamente convincente. Vicens nunca rectificó su posición en otras circunstancias más favorables, pero cabe albergar la duda de que era pronto para ese cambio.

42 As a student of Ernest Labrousse (1895-1988), Vilar advocated historical materialism. The indexing of his *Histoire de l'Espagne* (1947) by the Franco regime did not prevent the dissemination of his writings, but rather ensured increased interest in his subsequent writings. His *La Catalogne dans l'Espagne moderne. Recherches sur les fondements économiques des structures nationales* (1962) became a standard work of university teaching. For the influence of Vilar on Spain Comp.: Congost i Colomer, Rosa, and Nadal i Oller, Jordi (2002), 'La influencia de la obra de Pierre Vilar sobra la historiografía y la conciencia española', in G. Chastagnaret (ed.), *La historiografía francesa del siglo XX y su acogida en España*. *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid), 223–39. For Catalonia comp.: Fontana i Lázaro, Josep (2004), 'Pierre Vilar i la història de Catalunya', *L'avenç. Revista de història i cultura.*, 297: 13–21.

43 Until the October Revolution of 1917, there was no coherent historical account from a Marxist perspective, but by the 1930s historical Marxism was gaining momentum. Comp.: Pujol i Casademont, Enric, Congost i Colomer, Rosa, and Torres i Sans, Xavier (2009), 'Historiografia marxista', in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), p. 325.

44 Comp. Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 13.

45 Central to this development was the book by the exiled Spaniards Abilio Barberos and Vigil Marcelos, *La formación del feudalismo en la Península Ibérica.* Comp.Barbero, A., and Vigil, M. (1978), *La formación del feudalismo en la Península Ibérica* (Barcelona: Crítica).. Antoni Riera i Melis on this (Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors), p. 562): En aquest moment concret Catalunya era considerada com una regió especial dins del context hispà, perquè seria l'única que a causa de la influència franca, una influència estrangera, havia tingut feudalisme.

A good friend of Vicens i Vives, who described him as the "Spanish Marc Bloch",[46] was the French medievalist Philippe Wolff (1913-2001) and the exchange programmes[47] initiated by Vicens i Vives, especially with northern Catalonia, brought, among others, a young student named Pierre Bonnassie to Barcelona.[48] Under the guidance of Vicens i Vives, the latter was able to conduct research in the Barcelona archives from 1954-55 and wrote his thesis (*Maîtrise*) on the organisation of work in Barcelona in the 15th century.[49] After several teaching positions, Bonnassie succeeded in gaining a foothold at the University of Toulouse-Le Mirail and began preparing an extensive doctoral thesis, which he was to defend in 1972 after over a decade of archival work.[50] It took another four years until *La Catalogne du milieu du Xe à la fin du XIe siècle, Croissance et mutations d'une société* was fully published.[51]

Between the publication of the two volumes Francisco Franco died, on the 20th of November 1975. The dictator's death triggers the transition in Spain (1975-1982). The work of Bonnassie appeared as a translation in 1979, *Catalunya mil anys enrera (segle X-XI),* and led to a radical reassessment of the origin of Catalan feudalism: *Catalan feudalism is not, as traditional historiography repeats, the direct product of the Carolingian conquest. It will only be developed much later, in the 11th century.*[52]

46 Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors), p. 395: Un autor francés bien conocido de Vicens, Philippe Wolff, llegó a denominar nuestro autor el Marc Bloch español.

47 Fabre, A., and Villanova, J. L. (1997), 'Jaume Vicens Vives: vida i obra geográfica i geopolítica', *Treballs de la Societat Catalana de Geografia*, 45, p. 64: Després d' entrar en contacte amb l' escola dels *Annales,* sera un dels introductors i impulsadors, a Espanya, dels mètodes estadístics i d'investigacions amb un gran component econòmic i social. En clara consonància amb nous corrents de la historiografia internacional procura l'obertura de la historiografia espanyola a l'exterior i, en aquesta línia, serà receptor, interlocutor i inspirador d'estudiosos estrangers a Espanya (Elliot, Vilar, Wolff, Carrete, Marinescu, etc.).

48 Comp. DHC, Bonnassie.

49 The thesis was published in Spanish in 1975: Bonnassie, P. (1975), *La organización del trabajo en Barcelona a fines de siglo XV* (Barcelona: Consejo Superior de Investigaciones Científicas).

50 Comp. DHC, Bonnassie, p. 241: Es formà a la Facultat de Lletres i Ciències Humanes de la Universitat de Tolosa (1952-55) sota la direcció de Philippe Wolff. Obtingué el diploma d'estudis superiors (1955) amb el treball *La organización del trabajo en Barcelona a fines del siglo XV (1975),* fruit d'una primera recerca en arxius barcelonins (1954-55) sota la direcció de J. Vicens i Vives. Agregat d'història el 1957, després d'haver ensenyat en liceus de Marsella i Tolosa (1957-62) passà a exercir la docència a la Universitat de Toulouse-Le Mirail (1962-97). Entre el 1961 i el 1972, amb estades freqüents als arxius de Vic, la Seu d'Urgell, Barcelona (ACA) i Montserrat, preparà una tesi doctoral sobre la Catalunya dels segles X i XI, que defensà l'any 1973 davant un tribunal presidit er G. Duby i format per Ph. Wolff, G. Caster, M. Durliat, R. Fossier i Ch. Higounet. Fou publicada originàriament en francès, amb el títol *La Catalogne du milieu du Xe à la fin du XIe siècle, Croissance et mutations d'une société* (2 vol., 1975-76), i traduïda i editada en català: *Catalunya mil anys enrera (segles X-XI)* (2 Vol., 1979-81).

51 Bonnassie, P. (1975-1976), *La Catalogne du milieu du Xe siècle à la fin du XIe siècle: croissance et mutations d'une société*, 2 vols. (Toulouse: Presses Universitaires du Mirail).

52 I will hitherto use the Catalan translation as a reference. Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols., 1,p. 13: *La feudalitat catalana no és pas, com repeteix la historiografia*

Antoni Riera i Melis recalled this "decisive moment in Spanish history" in 2001: “It was the end of Franco's regime, in the universities, as all my colleagues will remember, everyone was improvising a Marxist education. At that particular moment, Pierre Bonnassie, from a very well understood Marxism, made an absolutely brilliant approach to feudalism, it was the first time that a coherent explanation of this process was given."[53]

Bonnassie's Catalonia was "celebrated" by the historians of the time as the hitherto diffuse concept of feudalism was replaced by a definition created within the renowned French historiography.[54]

tradicional, el producte directe de la conquesta carolíngia. Només es desenvoluparà força més tard, el segle XI.

53 Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors, p. 561: No va ser fins a finals dels seixanta i començaments del setanta quan es produí un fet important, que encara no hem valorat del tot bé, que van ser les investigacions i finalment l'aparició de l'obra de Pierre Bonnassie, *La Catalunya de mitjan segle X a mitjan segle XI*, en un moment decisiu per a la història d'Espanya. Era el moment final del franquisme, a les universitats, tots els meus col·legues ho recordaran, tots estaven improvisant una formació marxista. En aquest moment concret, Pierre Bonnassie, des d'un marxisme molt ben assumit, fa un plantejament absolutament brillant del feudalisme, és la primera vegada que es dóna una explicació coherent d'aquest procés. Utilitza Catalunya, segons explica ell mateix, per la seva extraordinària riquesa documental. I crea un model d'una transició curta de l'esclavisme al feudalisme, bastant violenta en un moment determinat, i replanteja totalment aquest període d'una manera diferent a com ho havia fet Abadal i estableix una primera explicació del feudalisme.

54 Pujol i Casademont, Enric, Congost i Colomer, Rosa, and Torres i Sans, Xavier (2009), ‘Historiografia marxista’, in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), p. 341: Al final de la dècada dels setanta, els medievalistes catalans, que havien seguit de prop autors com G. Duby, R. Hilton, A. Barbero, M. Vigil i Reyna Pastor, celebran la publicació en català de *Catalunya mil anys enrera*, de Pierre Bonnassie, que convertí la Catalunya de l'Alta Edat Mitjana en un bon marc d'estudi per a la revolució feudal i el feudalisme europeu.

II.2. The Debate around the Feudal Revolution & Historiography Today

While the success of Bonnassie's work can be partly explained through the situations within the Catalan historiography, his radical reassessment of feudalism in Catalonia can be best explained through the history of French medieval research.[55] Marc Bloch (1886-1944) in his influential book *La société féodale*, published in 1939, divided feudalism into two different feudal ages. According to this model, feudalism was already established in the 9th century and extended into the middle of the 11th century, while a second feudal age would then extend from about 1050 up into the 12th century.

Another milestone and the starting point for a whole series of regional studies is George Duby's (1919-1996) doctoral thesis on the Mâconnais, published in 1953.[56] He revised Bloch's view and established a 3-phase model in French research. According to Duby, the Carolingian order lasted until the end of the 10th century. It was not until the turn of the millennium that society underwent a radical upheaval in three generations (930-1030), resulting in a feudal social structure. These new results were to become the guiding concept of French medieval studies. In a series of regional studies, the majority of which were produced within the mark of a *thèse d'État*, French historians sought and identified this social change. Thomas Noël Bisson judged retrospectively in 2000: "Bonnassies *La Catalogne* [...] is arguably the masterpiece of *la terre et les hommes* in its ripe phase. [...] it is the most coherent, incisive and cogent of all the *thèses* since Duby's."[57] The results of these regional studies culminated in the magisterial summaries *La mutation féodale, Xe-XIIe siècle* by Jean-Pierre Poly and Eric Bournazel in 1980[58] and Robert Fossier's *Enfance de l'Europe* in 1982.[59]

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55 Patzold, S. (2012), *Das Lehnswesen* (Beck'sche Reihe, 2745: C. H. Beck Wissen; Orig.-Ausg, München: Beck), p. 63-70.

56 Duby, G. (1953), *La Société aux XIe et XIIe siècles dans la région mâconnaise.* (Paris: Armand Colin). Comp. Bougard, F. (2008), 'Genèse et réception du Mâconnais de George Duby', *Bulletin du centre d'études médiévales d'Auxerre*, 1: 1–23. Comp. Cheyette, F. L. (2002), 'Georges Duby's Mâconnais after fifty years: reading it then and now', *Journal of Medieval History*, 2002: 291–317.

57 Bisson, T. N. (2000), 'La terre et les hommes: A programme fulfilled?', *French History*, 14/3, p. 325.

58 Poly, J.-P., and Bournazel, E. (1980), *La mutation féodale, Xe-XIIe siècle* (2. Auflage, Paris: PUF).

59 Fossier, R. (1982), *Enfance de l'Europe*: *Xe - XIIe siècles; aspects économiques et sociaux*, 2 vols. (Nouvelle Clio, 17, Paris: PUF).

A reference conference that should still have an impact for a long time to come was held 1978 in Rome: *Structures féodales et féodalisme dans l'Occident méditerranéen (Xe-XIIIe siècles)*. The hitherto prevailing Francocentrism, which assumed a perfectly developing feudalism between the Seine and the Loire, was challenged there by Bonnassie, among others: „*En définitive, on peut se demander s'il ne conviendrait pas d'inverser le postulat qui, partant d'un soi-disant modèle septentrional, déclarait ‚incomplètes' les féodalités méridionales: l'inachèvement ne serait-il pas à rechercher entre Loire et Rhin?*"[60]

Most recently, since a conference in Girona in 1985 the notion of a profound social change in the 11th century was widely accepted[61] and it was clear for the participants that the "main axes" of this meeting had to be the works of Pierre Bonnassie and Pierre Guichard.[62]

To describe Bonnassie's *Catalogne* in a nutshell does not do his work justice, but does show how this model suggested a clear change of society that could be attacked from various angles while at the same time worked as a catalyst for research.[63] The Toulousian Professor divided his model of social change into four phases. First, a society based on the inheritance of the count's office reaching into the beginning of the 10th century was followed by a transition period of a prefeudal Catalonia which already held the seed of feudalisation, but in which the old order still prevailed. Only after short period of crisis (1020/30-1060) would feudal society be created, in only

60 Bonnassie, P. (1980), 'Du Rhône à la Galice : genèse et modalités du régime féodal', in , *Structures féodales et féodalisme dans l'Occident méditerranéen (Xe-XIIIe siècles). Bilan et perspectives de recherches. Actes du Colloque de Rome (10-13 octobre 1978).* (Publications de l'École française de Rome, 40, Rome), p. 44.

61 Portella i Comas, Jaume (1986) (ed.), *La formació i expansió del feudalisme Català: Actes del colloqui organitzat pel Collegi Universitari de Girona* (Estudi general, 5-6, Girona: Universitari de Girona).

62 M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (2003) (ed.), *El feudalisme comptat i debatut.*: *Formació i expansió del feudalisme català.* (Valencia), p. 12: „Era clar que els dos eixos principals de la reunió havien de ser dos llibres llavors recents, el de Pierre Bonnassie (La Catalogne du milieu du Xe a la fin du XIe siècle : croissance et mutations d'une société. Toulouse, 2 vols., 1975-1976) i el de Pierre Guichard (Al-Andalus. Estructura antropològica de una sociedad islámica en Occidente. Barral, Barcelona, 1976). Es van encarregar les ponències a aquests dos historiadors francesos, els quals acceptaren, generosament, fer-les."

63 Thomas Bisson showed vision in his review. Bisson, T. N. (1977), 'La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société by Pierre Bonnassie; La organización del trabajo en Barcelona a fines del siglo XV by Pierre Bonnassie', *Speculum*, 52/4, p. 925: For all its range and depth, La Catalogne is an admirably disciplined work. If it has not quite the luxuriance of erudition as Toubert's recent study of Latium (for which the sources are more diverse and more suggestive), it is distinguished by a power of concept and expression perhaps unmatched in its genre since Duby's Societe … mâconnaise. It will be examined and discussed as have few other such books, for Catalonia was not only a provincial society but also an incipient nation. It will provide impetus for useful new research: for example, on the comparative tendencies of the regional structures within Catalonia. But it will not soon be superseded.

one generation.[64] Bois' provocative thesis of being able to prove the change from antiquity to feudalism in a village of the Mâconnais by a change in the mode of production from a slave-holding society to a society in which serfdom prevailed, around the year 1000, and understanding this micro-study as evidence of a Europe-wide rupture, caused far-reaching reactions.[65] In 1992, Dominique Barthélemy launched an attack on the paradigmatic model of rapid transformation around the turn of the millennium.[66] A scholarly debate followed Barthélemy's statements. In the following years, it was to grow from a controversy among French historians into an international scholarly dispute. This "titanic combat" among the giants of historical research[67] not only demonstrates the growing interconnectedness but also the differences between the various "national" historiographical traditions.[68]

An article by Thomas Bisson with the unambiguous title The Feudal Revolution in the magazine Past & Present heated up tempers and caused the fronts to harden even further. Thomas Bisson, an expert on Catalan history of the 12th and 13th centuries who in 2012 had himself affirmed that Catalonia was for him the "*trampoline*" for understanding lordship, would bring Catalonia more into the

64 Bonnassie, P. (1986), 'Sur la formation du féodalisme catalan et sa première expansion (jusqu'à 1150 environ)', in Portella i Comas, Jaume (ed.), *La formació i expansió del feudalisme Català:. Actes del colloqui organitzat pel Col·legi Universitari de Girona* (Estudi general, 5-6, Girona: Universitari de Girona), p. 12: Ce qui frappe le plus, c'est la rapidité et la violence des transformations qui ont affecté la société catalane au XIe siècle. Le régime féodal, qui ailleurs a parfois mis un siècle à s'imposer, l'a emporté ici en l'espace d'une génération, en vingt ou trente ans (entre 1030/1040 et 1060). Tous ceux qui ont quelque peu fréquenté les archives du XIe siècle savent avec quelle brutalité la documentation se transforme à cette époque. Tout change: la nature des actes (avec l'apparition et la multiplication immédiate des *convenientiae* et des serments de fidélité), leur forme, leur contenu, le vocabulaire, la syntaxe, les procédures contractuelles ou judiciaires ... On a l'impression d'assiter à un séisme.

65 Bois, G. (1989), *La mutation de l'an mil. Lournand, village mâconnais de l'Antiquité au féodalisme.* (Paris: Fayard).

66 Barthélemy, D. (1992), 'La mutation féodale a-t-elle eu lieu? (note critique)', *Annales. Économies, Sociétés, Civilisations.*, 47/3: 767–777.

67 Moore, R. I. (2003), 'Feudalism and revolution in the making of europe.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), p. 20: "It had better admit at once that I have neither the learning to intervene directly in this titanic combat, nor the courage to attempt to arbitrate between the giants who have engaged in it, or the numerous and well armed squadrons which rally to their support. On the contrary, so far as I have anything to contribute to that debate it will be to suggest with typical Anglo-Saxon incisiveness and logical rigour that both are right, though not perhaps both right in quite the same ways."

68 The vigorous debate can be traced in the *Revue historique de droit français et étranger*: Poly, J.-P., and Bournazel, E. (1994), 'Que faut-li préférer au 'mutationnisme'? ou le problème du changement social.', *Revue historique de droit français et étranger*, 72: 401–412. Barthélemy, D. (1995), 'Encore le débat sur l'an mil!', *Revue historique de droit français et étranger*, 73: 349–360. Poly, J.-P., and Bournazel, E. (1995), 'Post scriptum', *Revue historique de droit français et étranger*, 73: 361–362. Barthélemy finally summarises his thoughts in a monograph, Barthélemy, D. (1997), *La mutation de l'an mil a-t-elle eu lieu? Servage et chevalerie dans la France des Xe et XIe siècles* (Paris). Comp. also: Piel, C. (1999), 'Le Moyen Âge de Dominique Barthélemy. À propos de la parution de son ouvrage La mutation de l'an mil

research spotlight.[69] In addition to Barthélemy, Stephen D. White, Timothy A. Reuter (1947-2002) and Chris Wickham also took part in the debate.[70]

In the period from 1996-2010 there was a final revision of Bonnassie's Catalogne, which was made possible by the "productive work of the 80s and 90s".[71]

Nevertheless, a simple division into *mutacionistes* and *non-mutacionistes* would be a mistake; rather, the aim now is to understand the undeniable difference between the 9th and 12th centuries in the various areas of society, and how social change undoubtedly happened as the discussion rather focused on velocity and still constitutes a ”formidable challenge to historians disinclined to recognize feudal societies as such“.[72]

Chris Wickham appeased during these debates several times and his thoughts on the issue are appealing.[73] The increase in international participation highlights the

a-t-elle eu lieu?', *Cahiers d'Histoire. Revue d'histoire critique*, 74: 125–134.

69 Bisson 2012, 1f.: „Enlloc d'Europa no queda tan ben illustrada aquesta història com a Catalunya. Els crítics ben informats han entès, encertadament, que la meva investigació a Catalunya era el trampolí per al descobriment que a tota Europa el mode de poder normal durant els segles XI i XII no era el govern, sinó la senyoria. Faig una distinció conceptual –sociològica– entre el comportament polític i la dominació, i, encara que no rebutjo "feudalisme", un terme utilitzat amb èxit per Marc Bloch, Georges Duby i Pierre Bonnassie, sostinc que, fins i tot en el cas dels autors citats, hagués estat millor parlar de senyoria, no de feudalisme. Era senyoria, no "feudalisme", el que s'estengué després del segle IX; i deixin-me recordar-los que, mentre que el mot "feudalisme" no es va en documents, els mots "senior", es troben en incomptables documents medievals."

70 For a summary, see: MacLean, S. (2007), 'Review article: Apocalypse and revolution: Europe around the year 1000.', *Early Medieval Europe*, 1/15: 86–105. Bisson, T. N. (1994), 'The "Feudal Revolution"', *Past & Present*, 1994: 6–42; Barthélemy, D. (1996), 'The "Feudal Revolution"', *Past & Present*, 1996: 196–205. White, S. D. (1996), 'The "Feudal Revolution"', *Past & Present*, 152: 205–223. Reuter, T. (1997), 'The "Feudal Revolution".', *Past & Present*, 1997: 177–195. Wickham, C. (1997), 'The "Feudal Revolution"', *Past & Present*, 1997: 196–208. Bisson, Thomas Noël (1997): The 'Feudal Revolution': Reply. In: *Past & Present* 155, S. 208–225.

71 Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors) p. 563: Avui, precisament, es tractaria, en aquesta taula rodona, de demonstar tota aquesta riquesa dels treballs que s'han fet als anys setanta, vuitanta i noranta, especialment al vuitanta i al noranta, i mostrar; com deia, que avui la visió que tenim del feudalisme és molt més complicada i que, malgrat la vigència d'aquesta obra cabdal i perfectament articulada, que durarà molts anys, ja hi ha altres visions que es van obrint pas a poc a poc i precisament avui tractaríem de mostrar aquesta complexitat amb aquesta taula rodona que es diu: "Espai i temps del feudalisme".

72 Bisson, T. N. (2000), 'La terre et les hommes: A programme fulfilled?', *French History*, 14/3, p. 325-326.

73 Wickham, C. (2000), 'Le forme del feudalesimo', in , *Il feudalesimo nell'alto medioevo*. *Settimane di Studi del Centro Italiano di Studi sull'Alto Medioevo*, 2 vols. (Spoleto), p. 49-50: It is true, as I said earlier, that historians to often believe that ideal types are real, and feudal ideal types have certainly been very much too often believed to be real. But I do not think one can do without them. The problem about historical *métarécits* in my view is not that they are intrinsically false, [...] more, it is that they are too often based on ideology, usually the ideology of national identity, rather than on coherently thought-out frameworks of interpretation. We should try to give them rigour, to make them into proper scientific paradigms (to use the terminology of Thomas Kuhn), rather than to abolish them. We will never, anyway, succeed in doing that, for historians need paradigms to think with, just as do all other social and natural scientists. It is for this reason too, that I do not see any of my types as themselves carrying «plus risques que d'avantages», if they are coherent, at least. If historians use them wrongly, it is not

existence of different national traditions, whose technical vocabulary can in turn lead to misunderstandings,[74] while at the same time opening up "New landscapes of debate".[75] Out of the American school of Thomas Bisson[76] some historians emerged that are relevant for our purpose here, like John Shideler[77,] Nathanial Taylor,[78] Stephen Bensch[79], Paul Freedman[80] and especially Adam Kosto.[81] While the work of Michel Zimmermann in particular regarding Catalonia can be considered indispensable,[82] Jonathan Jarrett's contributions over the last years are very helpful as well.[83]

Freedman had openly criticised how through the work of Bonnassie Catalonia had become a playground for the individual agendas and arguments of historians.[84] His argument weighs heavy, considering that over the last two decades, Catalan historiography has managed to build a strong local research tradition which has seen a

necessarily because of the concepts themselves.

74 Reynolds, S. (2012) (ed.), *The Middle Ages without feudalism*: *Essays in criticism and comparison on the medieval West* (Farnham: Ashgate Variorum).

75 Bagge, S., Gelting, M. H., and Lindkvist, T. (2011) (eds.), *Feudalism. New Landscapes of Debate* (The medieval countryside, 5, Turnhout).

76 Vgl.: DHC, Bisson, 225: Ha centrat la seva recerca a la França i la Catalunya medieval, i ha creat una important escola de medievalisme català als Estats Units. [..] Creà, especialment durant els seus anys de catedràtic a la Universitat California (Berkeley), una important escola de medievalisme, que féu una especial atenció als temes relacionats amb la història medieval de Catalunya i del Sud de França. En aquesta Universitat fundà el Gaspar de Portolà Center for Catalan Studies i, alguns anys després, a la Universitat de Harvard, impulsà els estudis de català (iniciats al febrer de l'any 2000) i l'adquisició de la col·lecció Joan Gili, que conté documents medievals catalans. […] Si es valora la solidesa de la seva obra de recerca, en el prestigi internacionalment reconegut entre el medievalisme i en el fet que molts dels seus antics alumnes hagin orientat la seva recerca vers els temes catalans […], cal concloure que Bisson és un historiador de primera línia, que ha donat als estudis del medievalisme català una dimensió netament internacional.

77 Shideler, J. C. (1983), *A medieval Catalan noble family*: *The Montcadas 1000-1230* (Berkeley, London: University of California Press).

78 Taylor, N. L. (1995), 'The will and society in medieval Catalonia and Languedoc, 800-1200' (Harvard University).

79 Bensch, S. P. (1994), 'From Prizes of War to Domestic Merchandise: The Changing Face of Slavery in Catalonia and Aragon, 1000-1300', *Viator*, 25: 63–94.

80 Freedman, P. (1983), *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia*.

81 Kosto, A. J. (2001), *Making agreements in medieval Catalonia*: *Power, order, and the written word, 1000-1200* (Cambridge studies in medieval life and thought, 4th ser., 51, Cambridge, UK, New York: Cambridge University Press).

82 Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez).

83 Jarrett, J. (2010), *Rulers and Ruled in Frontier Catalonia, 880-1010: Pathways of Power* (Woodbridge [u.a.]: Royal Historical Society).

84 Freedman, P. (2002), 'Senyors i pagesos al camp feudal', in Sabaté i Curull, Flocel and J. Farré (eds.), *Els grans espais baronials a l'Edat Mitjana, desenvolupament socioeconòmic*. *Reunió científica* (Curs d'Estiu Comtat d'Urgell, 1, Lleida: Pagès), p. 14: Tantmateix, Catalunya en aquest sentit, per als historiadors francesos, juga un paper essencial per a la definició de la mutació feudal i això és una mica empipador veure-ho gairebé exclusivament a través de l'obra de Bonnassie. Cal dir que els historiadors francesos llegeixen Bonnassie i diuen que aquesta és la definició del problema de Catalunya i no saben llegir res més.

rise in studies dismissing the arguments of Bonnassie in many aspects, while specifying them in others, up to a point in which the work is not necessary and reduced it to the main argument of social change.[85]

Two conferences around the turn of the year 2000 especially show the diversity of answers and the various revisions as well as many of the main protagonists in this process.[86]

The list of names is long and includes Gaspar Feliu,[87] Víctor Farías[88], Lluís To,[89,] Pere Benito,[90] and Tomas de Montagut[91], among many others.

Without a doubt the Catalan society changed during the 11th century and tension and conflict were considered central for this change which had to affect the legal system in one way or another.

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85 Comp. Riera i Melis, Antoni (1997), 'La Historia Medieval en Cataluña (1990-1995). Un balance breve de las últimas investigaciones.', *Anuario de Estudios Medievales (AEM)*, 27/1: 501–570.

86 The first held in from the 11th -13th of Juli 2001: Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors). The second on the 7th - 8th of February 2002: M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (2003) (ed.), *El feudalisme comptat i debatut.*: *Formació i expansió del feudalisme català.* (Valencia).

87 Feliu i Montfort, Gaspar (2009), *La llarga nit feudal*: *Mil anys de pugna entre senyors i pagesos* (Història, València: Universitat de València). Feliu i Montfort, Gaspar (2000), 'Aspectes de la formació del feudalisme a Catalunya', *Recerques: Història, economia i cultura*, 41: 179–203. Feliu i Montfort, Gaspar (1996), 'La pagesia catalana abans de la feudalització', *Anuario de Estudios Medievales (AEM)*, 26/1: 19–40.

88 Farías i Zurita, Víctor (1989), *La sacraria catalana: 950-1200.*: *Aspectos y modelos de un espacio social.* Farías i Zurita, Víctor (1993), 'La sagrera catalana (c. 1025 - c. 1200): Características y desarrollo de un tipo de asentamiento eclesial', *Studia historica. Historia medieval.*, 11: 81–121. Farías i Zurita, Víctor (1993-1994), 'Problemas cronológicos del movimiento de Paz y Tregua catalán del siglo XI.', *Acta historica et archaeologica mediaevalia*, 14-15: 9–37. Farías i Zurita, Víctor (1994), 'Una querimonia desconeguda procedent de l'antic arxiu de Sant Cugat del Vallès (ca. 1160-1162)', *Gausac*, 5: 99–104. Farías i Zurita, Víctor (2002-2003), 'Entre ofensiva monárquica i resistencia senyorial. Sobre els orígens de la «servitud» dels homes de mas a la Catalunya dels segles XII-XIV', *Recerques: Història, economia i cultura*, 45-46: 139–170. Farías i Zurita, Víctor, Martí i Castelló, Ramon, and Catafau, A. (2007) (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines).

89 To i Figueras, Lluís (1993), 'Señorío y familialos orígenes del "hereu" catalán (siglos X-XII)', *Studia historica. Historia medieval.*, 1993: 57–80. To i Figueras, Lluís (1995), 'Drets de justícia i masos: hipòtesi sobre els orígens de la pagesia de remença', *Revista d'historia medieval*, 6: 139–149. To i Figueras, Lluís (1991), 'Un regard périphérique sur La mutation de l'an mil', *Medievales: Langue, textes, histoire.*, 21: 47–53.

90 Benito i Monclús, Pere (1990), 'Violències feudals i diferenciació social pagesa', *Fulls de Museu Arxiu de Santa Maria de Mataró*, 37/4: 15–27. Benito i Monclús, Pere (2000), 'Els "Clamores" de Sant Cugat contra el fill del gran senescal, i altres episodis de terrorisme nobiliari (1161-1162)', *Anuario de Estudios Medievales*, 30/2: 851–886. Benito i Monclús, Pere (2003), *Senyoria de la terra e tineça pagesa al comtat de Barcelona (segles XI-XII)* (Anuario de estudios medievales Annex, 51, Barcelona: Consell Superior d'Investigacions Cientifíques).

91 Montagut Estragués, T. d. (2008), 'Barcelona, a Society and its Law. 11th-13th Centuries', *Catalan Historical Review*, 1: 35–46.

Conflict studies addressing the issue of how societies solved discords in a wider sense, expanding from the legal conflict, were strongly influenced by the way American historians looked at them.[92] These works follow the likes of Frederic Cheyette[93], Stephen White,[94] Patrick Geary,[95] Guy Halsall[96] and, from another historiographic tradition, Gerd Althoff.[97] The influence of some of these authors can be clearly discerned in the works of José Ruiz Domènec[98] or Blanca Garí de Aguilera.[99]

In 1992 Josep Maria Salrach considered that the study of justice and collection of court-related documentation is still work to be done,[100] and dedicated several works to this endeavour during the next decades,[101] to finally combine his capacity as a

92 Brown, W. C., and Górecki, P. (2003), 'What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970-2000.', in W. Brown and P. Górecki (eds.), *Conflict in medieval Europe. Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 1–35.

93 Cheyette, F. L. (2003), 'Some reflections on violence, reconciliation and the "feudal revolution"', in W. Brown and P. Górecki (eds.), *Conflict in medieval Europe. Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 243–64. Cheyette, F. L. (1970), 'Suum cuique tribuere', *French Historical Studies*, 6: 287–299.

94 Especially see his collection of essays regarding feuding and peace-making in eleventh-century France: White, Stephen D. (2004): Feuding and peace-making in eleventh-century France. Aldershot. For his wide reaching influences see the introduction of the volume dedicated to Stephen D. White: Tuten, B. S., White, S. D., and Billado, T. L. (2010), *Feud, violence and practice*: *Essays in medieval studies in honor of Stephen D. White* (Farnham, Surrey, Burlington, VT: Ashgate Pub.).

95 Geary, P. J. (1994), 'Living with Conflict in a Stateless France. A Typology of Conflict Management Mechanisms', in P. J. Geary (ed.), *Living with the Dead in the Middle Ages*, 125–62.

96 Halsall, G. (1998) (ed.), *Violence and society in the early medieval West* (Rochester, NY, USA: Boydell Press).

97 Althoff, G. (1997) (ed.), *Spielregeln der Politik im Mittelalter*: *Kommunikation in Frieden und Fehde* (Darmstadt). Comp. Patzold, S. (1999), 'Konflikte als Thema der modernen Mediävistik', in H.-W. Goetz (ed.), *Moderne Mediävistik. Stand und Perspektiven der Mittelalterforschung* (Darmstadt), 198–205.

98 Ruiz-Domènec, J. E. (1982), 'Las prácticas judiciales en la Cataluña feudal', *Historia. Instituciones. Documentos.*, 9: 245–272.

99 Garí de Aguilera, Blanca (1984), 'Las querimoniae feudales en la documentación catalana del siglo XII (1131-1178)', *Medievalia*, 5: 7–49. Garí de Aguilera, Blanca (1985) (ed.), *El linaje de los Castellvell en los siglos XI y XII* (Barcelona). Garí de Aguilera, Blanca (1987), '"Haec sunt rancuras…". Análisis de una querimonia catalana del siglo XI', in , *Homenaje Juan Torres Fontes*, 2 vols. (Murcia), 605–12. Garí de Aguilera, Blanca (2003), 'La resolución de conflictos en la Cataluña del siglo XI. Apuntes para una relectura de los inventarios de "agravios" feudales', *Acta historica et archaeologica mediaevalia*, 25.

100 Salrach i Marés, Josep Maria (1992), 'Agressions senyorials i resistències pageses en el procés de feudalització (segles IX-XII).', in , *Revoltes populars contra el poder de l'estat* (Col·lecció Actes de congressos, no. 3, Barcelona: Generalitat de Catalunya, Departament de Cultura), p. 11: L'estudi de la justícia i el recull de les actes de judicis de la Catalunya carolíngia i dels primers comtes és una feina a fer.

101 Salrach i Marés, Josep Maria (1997), 'Prácticas judiciales, transformación social y acción política en Cataluña (siglos IX-XIII)', *Hispania: Revista española de historia*, 57/197: 1009–1048. Salrach i Marés, Josep Maria (2000), '"Multa placita et contenciones". Conflictos de los siglos X - XII en el Cartulario de Sant Cugat del Vallès', in C. Sánchez-Albornoz, J. Pérez, and S. Aguadé Nieto (eds.), *Les origines de la féodalité. Hommage à Claudio Sánchez Albornoz : actes du colloque international tenu à la Maison des Pays ibériques les 22 et 23 octobre 1993* (Collection de la Casa de Velázquez, v. no 69, Madrid: Casa de Velázquez; Universidad de Alcalá), 197–229. Salrach i Marés, Josep Maria (2000), 'Justicia y violencia.

"specialist in synthesising the history of Catalonia"[102] with his knowledge of the sources into a very dense work which can be considered the most cohesive publication regarding justice in Catalonia up to the turn of the millennia published so far.[103] Both the investigation of Jesús Fernández[104] regarding the court of Barcelona and Jeffrey Bowman's[105] study of the legal practice in Catalonia also tackle the same sources as this work, but with different goals in mind.

This work aims to make its own small contribution to this enormous amount of research that was done so far as its focus is the administration of justice the next chapter will introduce the source material available and at the same time clarify certain limitations attached to it.

El porqué de una problemática', *Historiar: Revista cuatrimestral de historia*, 4: 99–115. Salrach i Marés, Josep Maria (2003), 'Tradicions jurídiques en l'administració de justícia a l'edat mitjana: El cas de l'"Aliscara-Harmiscara" i la humiliació penitencial.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), 71–102.

102 Barceló i Perelló, Miquel (1994), '¿Qué arqueología para Al-Andalus?', in Malpica y Cuello, Antonio and Quesada y Quesada, Tomás (eds.), *Los orígenes del feudalismo en el mundo mediterráneo* (Biblioteca chronica nova de estudios históricos, 30, Granada: Universidad de Granada), p. 154.

103 Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo).

104 Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10: 9–93.

105 Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press).

III. Introduction to the Sources

Pierre Bonnassie estimated "without fear" that the total number of charters from Catalonia dating into the 10th and 11th century was over 15,000.[106] The source editions published in recent decades show how much energy into Catalan research has been invested here.

Ramon d'Abadal already emphasised the importance of this corpus for the history of Europe but the ambitious edition projects, initiated in pre-Republican times, had come to a standstill after the civil war. However, *Catalunya Carolíngia,* the project once led by Ramon d'Abadal, was resumed in 1986, and because of the political circumstances only from 1999 onwards reached "a level of normalcy" that allowed it to be finished in 2020, after a hundred years.[107] Today it consists of 8 monographs comprised of a total of 17 volumes which are in the process of being digitalised.[108] These volumes make it clear that Bonnassie had underestimated rather than exaggerated the quantity of documentation, especially compared to other regions in Europe, or as Jesús Alturo put it: "We have to keep in mind that a state like France does not keep in its archives as many pre-10th century charters as those of our territory, which exceed [the number of] 7000".[109]

Chronologically, this vast amount of source material is enriched through the charters and contracts of the counts of Barcelona, from which the archives of the Crown of Aragon would later be formed. Those had already astonished German

106 Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (Barcelona), 1, p 17: Sigui com vulgui, cal avaluar sense temor en més de quinze mil el nombre d'escriptures d'aquesta època conservades a Catalunya. És a dir, almeny cinc mil per al segle X, més de deu mil per al segle XI. Zimmermann speaks of more than 10000. Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), I, p. 9.

107 For the history of the project, comp. Puig i Oliver, J. de (2017-2019), 'Catalunya Carolíngia: Cent Anys', *Arxiu de Textos Catalans Antics*, 32: 719–750; p. 743: Finalment a partir del 1999 l'edició de Catalunya Carolíngia assolia un nivell de normalitat que no havia tingut mai fins aleshores i que ja no perdria.

108 The project is moving forward towards a complete digitalisation of its content: https://catcar.iec.cat/, accessed 30 Jan 2021.

109 Alturo i Perucho, J. (2005), 'A propòsit de la publicació dels diplomes de la Catalaunya Carolíngia', *Estudis romànics*, 27, p. 289: En reiterades ocasions m'he fet ressò del fèrtil esplet de publicacions documentals que viu el nostre país aquests darrers decennis. A la riquesa de fonts diplomàtiques que honoren els nostres arxius, però, no li havia correspost fins ara ni el mínim interès institucional ni la suficient dedicació científica per donar a la llum un bé de Déu tan considerable. Pensem que un estat com el francès no conserva en els seus arxius tants diplomes anteriors al segle X com els del nostre terrer, que supera els 7000.

medievalists of the 19th century[110] and represent "the greatest secular archive surviving from eleventh-century Europe".[111]

This means that together with the sources from monastic institutions, the archives of the episcopal sees and other archives which were mainly published through the *Fundació Noguera,* almost all the sources from the 9th to the beginning of the 12th century have appeared in editions over the last 50 years.[112] One could make a point that Bonnassie's special achievement was to search through and evaluate this disparate material,[113] which was largely unedited at his time and which Bisson, right after the publication of the Thèse d'Etat, had calculated to be around 85 percent.[114] Only relatively few pieces of source material await editing, which allows one to look at the documentation as a whole.[115] The last remaining bulk of unedited source material mostly belongs to some monastic institutions but some is also in private or family

110 Especially as there exists no comparable centralised archive in German-speaking countries. See: Jaspert, N. (2004), 'Die deutschsprachige Mittelalterforschung und Katalonien: Geschichte, Schwerpunkte, Erträge', *Zeitschrift für Katalanistik*, 17: p. 161-180, 180: Die Erklärung ist nicht in Katalonien, sondern in Deutschland zu suchen. Das große Interesse der deutschsprachigen Forscher für das Barceloniner Kronarchiv zum Beispiel wird verständlicher, wenn man bedenkt, daß ein vergleichbares Zentralarchiv für das römisch–deutsche Reich fehlt.

111 Bisson, T. N. (2002), 'Catalunya carolíngia, 4: Els comtats d'Osona i Manresa; Els pergamins de l'arxiu comtal de Barcelona de Ramon Borrell a Ramon Berenguer I', *Speculum*, 77, p. 960.

112 To not impede text flow a rather complete list can be found in the "Published Documents and Editions" entry of this work.

113 Bisson, T. N. (1977), 'La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société by Pierre Bonnassie; La organización del trabajo en Barcelona a fines del siglo XV by Pierre Bonnassie', *Speculum*, 52/4, p. 922: Nor were the sources, whether printed or not, such as to attract scholarship: apart from two legal codes and one chronicle, none of these composed in the period in question, the records are almost exclusively legal instruments of limited diversity. Pierre Bonnassie is the first historian to try to assemble and control this documentation for the early history of Catalonia. His work rests chiefly on the analysis of some ten to twelve thousand records of sales, donations, wills, exchanges, conventions and settlements, oaths, grievances, and the like.

114 Ibid.: Yet as Bonnassie set to work, few other scholars could be said to have mastered any appreciable part of his subject (indeed, the only obvious instance is Ramon d'Abadal on the earliest counts of Catalonia), and the reason for this failing was clear: in spite of the new editions, the overwhelming bulk of the sources (perhaps in the proportion of 85%) remained in manuscript.

115 Paul Freedman took the predominance of the sources from the Arxiu Capitular d'Urgell within the work of Bonnassie as an occasion for broad but respectful criticism. Freedman, Paul (2002): Senyors i pagesos al camp feudal. In: Sabaté i Curull, Flocel und Joan Farré (Hg.): Els grans espais baronials a l'Edat Mitjana, desenvolupament socioeconòmic. Reunió científica. Balaguer, 10, 11 i 12 de juliol de 1996. Lleida: Pagès (Curs d'Estiu Comtat d'Urgell, 1), p. 11-12: El comtat d'Urgell, segons voldria demonstrar, juga un paper molt important en la historiografia global del feudalisme i això es veu sobretot a través de les obres fonamentals de l'eminent historiador francès de Catalunya, Pierre Bonnassie. Per bé que no estic sempre d'acord amb les conclusions de Pierre Bonnassie, és evident que la seva magistral obra gaudeix d'una importància cabdal per a la historiografia de la Catalunya medieval. […] No tota la documentació, en el llibre de Bonnassie, dels orígens de la senyoria feudal pertany a la Seu d'Urgell. L'argument de Bonnassie és demonstrar un canvi social fonamental en tota la Catalunya del segle XI, però cal subrattlar el punt clau que ocupa el comtat d'Urgell en un model de revolució feudal al segle XI, model per a Catalunya i, en algun sentit, per a tota l'Europa medieval.

ownership. However, regarding charters the term 'few pieces' is relative in comparison to other regions in Europe.

Despite the enormous abundance of this documentation, there is still one major shortcoming: there are virtually no narrative sources from Catalonia before the 12th century, which makes "painstaking research" through the surviving charters a necessity.[116]

The early narrative source material was thus titled as the "primitive period" in regards to its value from a historiographic viewpoint, as it is only fragmentary and its narrative value very limited.[117] Only in the 12th century, with the *Gesta Comitum Barchinonensium*[118] which was presumably written together with the *Usatici Barchinonae* (*Usatges*)[119] and the *Liber feudorum maior*[120] in the period from 1150-1195, is there the first coherent narrative source that marks the start of a lively dynastic historiography, which helps immensely with telling political history.[121]

116 Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (Barcelona), 1, p 24: "I les cròniques?, es pot dir. Cal constatar que manquen totalment. Cap vida de sant. Cap genealogia nobiliària. Del segle X, no res. Del segle XI, dot rotlles mortuoris amb tots els llocs comuns del gènere que no ofereixen gairebé cap més interès que el d'indicar-nos el camí seguit pels monjos encarregats de fer-los conèixer a llurs germans de dellà els Pirineus. Dels segle XII, finalment, un esbós d'escrit historiogràfic., els *Gesta comitum Barcinonensium*, nomenclatura més que no pas narració, i gairebé inutilitzable a causa del caràcter fantasiós de les dades que forneix per al període anterior a Ramon Berenguer I." Jarrett, J. (2003), 'Power over past and future: Abbess Emma and the nunnery of Sant Joan de les Abadesses', *Early Medieval Europe*, 12/3, p. 229: Catalonia is an area of medieval Europe that lacks narrative source material before about the twelfth century. Before then the outline of its history must be gleaned from references to the area from the Frankish or Umayyad courts (in the latter case at considerable removes) and by painstaking research through the area's thousands of surviving charters.

117 Alturo i Perucho, J. (2004), 'La historiografia catalana del període primitiu', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), p. 19: „Es tracta d'un conjunt de manifestacions escrites amb notícies de caràcter històric en general molt breus, fins a l'elaboració dels Gesta comitum barcinonensium editats en llatí i en català per Jaume Massó i Torrents i Louis Barrau-Dihigo. Per a aquest període cal tenir en compte no solament els textos purament i estrictament historiogràfics, sinó també altres textos de caràcter memorialístic, com els epigràfics, biogràfics, encícliques mortuòries, llegendaris, actes de dotació d'esglèsies, obituaris, necrologis i col·leccions diplomàtiques generals, que ens informen d'esdeveniments que poden tenir cabuda en la microhistòria i també en la macrohistòria." See also: Salrach i Marés, Josep Maria, and Rubiés i Mirabet, Joan Pau (1985-86), 'Entorn de la mentalitat i de la ideologia del bloc de poder feudal a través de la historiografía medieval fins a les quatre grans cròniques', *Estudi general: Revista de la Facultat de Lletres de la Universitat de Girona*, 1985-86: 467–510.

118 Barau-Dihigo, Massó, *Gesta*; Cingolani, Álvarez, *Gestes.*

119 Discussed in the next chapter.

120 Edited by Francisco Miquel Rosell (Miquel, *Liber Feudorum*), though most of its content is better accessed through the later edition of the documentation from the ACA (Feliu, Salrach, *Els pergamins;* Baiges, Feliu, Salrach, *Els pergamins*). Comp. Also Kosto, Adam J. (2001): The Liber feudorum maior of the counts of Barcelona: the cartulary as an expression of power. In: *Journal of Medieval History* (27), S. 1–22.

121 Comp. Cingolani, S. M. (2006), '"Seguir les vestígies dels antecessors". Llinatge, reialesa i historiografia a Catalunya des de Ramon Berenguer IV a Pere II (1131-1285)', *Anuario de Estudios Medievales (AEM)*, 36/1: 201–240. The author also shows that charter material nevertheless allows for

This one-dimensional nature of the source material limits the historian's perspective and influences the results significantly, especially if compared to other regions in Europe where the situation is radically opposite, or as Timothy Reuter stated, a "Catalan Thietmar" of Merseburg would "undoubtedly transform our view".[122] The methodically correct handling of narrative within these charters thus becomes a central question in their evaluation.[123]

This work would not have been possible without the recently published diplomatic collection of justice and conflict resolution in medieval Catalonia.[124] It is the first time that a complete overview of the scattered charter material regarding these matters is possible and the work will be heavily referenced, instead of referring to the earlier editions which could have been another option. But as the collection in many cases was able to establish more exact dating of charters, as well as to give the enormous work its due, this more recent work was opted for instead. For our time frame, this includes 479 charters with at least 159 additionally published in the next volume. Roughly 400 are cited in this work and as the collection is accesible online no index of the documents was added as the publication already did this work.

It is clear that every historian looking at this vast material has to make crucial decisions as to which kind of charters he draws the attention of the reader and bases

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an analysis of questions regarding the strategies of legitimation and memory. Cingolani, S. M. (2008), 'Estratègies de legitimació del poder comtal: l'abat Oliba Ramon Berenguer I la Seu de Barcelona i les Gesta Comitum Barchinonensium', *Acta historica et archaeologica mediaevalia*, 2008: 135–175.

122 Reuter, T. (1997), 'The "Feudal Revolution"', *Past & Present*, 1997, p. 193: One of these real differences lies in the kinds of thing we can know. Our view of regions whose history is primarily know through charters with a bit of hagiography thrown in (like that of most of the post-Carolingian Midi, for example) will be inherently different from our view of regions whose history is primarily known through narrative sources, especially when these are rich and juicy: think, for example, of Gregory of Tours' Francia, Bede's Northumbria, Thietmar's Saxony or Orderic's Normandy; or indeed of the necessary contrasts between our view of Visigothic Spain, derived largely from law-codes, and our view of Merovingian Gaul, derived largely from writers like Gregory of Tours. I doubt whether there is any methodological corrective which will let us allow for such differences fully and confidently. And they cut both ways: fuller charter evidence would undoubtedly transform our view of Henry II's Saxony as seen by Thietmar of Merseburg or early eleventh-century Normandy as seen by Orderic, but so would a southern French or Catalan Thietmar transform our view of the Midi.

123 Comp. Benito i Monclús, Pere, Kosto, A. J., and Taylor, N. L. (1996), 'Three typological approaches to Catalonian archival evidence, 10-12 centuries', *Anuario de Estudios Medievales (AEM)*, 26/1: 43–88. Jarrett, J. (2013), 'Comparing the Earliest Documentary Culture in Carolingian Catalonia', in J. A. Jarrett and A. S. McKinley (eds.), *Problems and possibilities of early medieval charters* (International medieval research, volume 19, Turnhout, Belgium: Brepols), 89–126. Jarrett, J. (2020), 'A Likely Story: Purpose in Narratives from Charters of the Early Medieval Pyrenees', in S. Barton and R. Portass (eds.), *Beyond the reconquista*. *New Directions in the history of medieval Iberia (711-1085) : in honour of Simon Barton* (The medieval and early modern Iberian world, volume 76, Leiden, Boston: Brill), 123–42.

124 Josep M. Salrach, Tomàs Montagut (dir.), Justícia i resolució de conflictes a la Catalunya medieval. Col·lecció diplomàtica. Segles IX-XI. Textos Jurídics Catalans, 37. Barcelona 2018.

his argument. As this work is concerned with change in procedure and how this affected the resolution of conflicts it is important to introduce the different types of charters as well as the law codes that give insight into how justice was administered, regulated and executed.

III.1. Types of Sources

The various editions differ – sometimes partly, sometimes completely – in the way they classify the documentation. This work thus opts for a close reading of how contemporaries defined sources case-by-case.

However for the most part three ideal charter types that are directly related to trials can be clearly distinguished at the middle of the 10th century. The sacramental oath of the witnesses brought forward to testify in the cases (*condiciones sacramentorum*), the recognition and evacuation of rights, property etc. by the defendant or the plaintiff (*recognitio*, *definitio*, *professio*, *evacuatio*), and the court proceedings or court records (*iudicatum*, *iudicium*, *noticia*). These were not necessarily strictly separated documents[125] but most charters combine elements of each as, for example, the witnesses' statement could be copied or added to by scribes followed by the recognition and signatures of the losing party. Agreements reached in a court could receive several names by contemporaries (*pactum*, *conventum*, *convenientia et al.*) but rarely stand alone as a definition, evacuation and so on could be agreed upon.

Charters that defined some rights (*definitio*) and also disclaimed any right to take the suit up again (*evacuatio*) seemed to not have been enough for contemporaries on some occasions, who opted for security charters (*carta securitatis*) and waivers of complaints to ensure that they would not have to go to court about an issue again. Most editions did not opt to classify these as their own charter type, as they indeed rarely are, but nevertheless they deserve attention and occasionally survived as an standalone document.

Other type of charters that inform one about previous judicial decisions could come in many forms, be it donations (*carta donationis, largitionis*), sales (*carta vindicione*), purchases (*carta emptionis*), or swap contracts (*carta comutacionis*), and sometimes money is paid as amends or to reach a settlement (*carta compositionis*). These types of documents could themselves become part of an agreement or sentence,

125 It is the exception that all three types of documents are preserved, as is the case for a trial dating on the 21st of August 842, that also serves to emphasise the long tradition these documents are embedded in. SALRACH, MONTAGUT, *Justícia,* doc. 6-8.

or be the result of one. The work will also occasionally refer to testaments and documents related to last wills.

Pledged property in form of bailment (*cartam pignoris, impignorationis, impignerationis*) without the transfer of ownership, as in most cases for a credit, also caused friction and conflict if not paid back.

Complaints and grievances (*querella*, *rancura* (1040 onwards), *clamores*, and *querimonia*) – usually in plural as they form an inventory or list of complaints – were sometimes included in the documentation of the 11th century but start to appear more frequently as separate documents during the 12th century.

Besides these documents there is quite a range of charters that escape clear categories which shall be addressed throughout the work, as they give insight into the rich culture surrounding legal activities and the written word in Catalonia.

The prevalence of Visigothic law in Catalonia during the time period studied in this work, up to the 12th century, is well known.[126] On the basis of a former law code[127], the Visigothic king Liuvigild (569-586) produced a new codification after consolidating his rule, to which each successor added their part, resulting in a new version of the code in the middle of the 7th century that was divided into 12 books. The original title as the book of trials, *Liber iudiciorum*, promulgated in 654 by King Recceswinth (653-672), is the basis of the surviving manuscripts. Further additions were made by the kings Erwig (680-687) and Egica (687-702) and the law was kept in use in Catalonia. The variety of names given to the law code, like *Liber Iudicum* (book of judges) and its different versions throughout time can be confusing and for the sake of simplicity this work refers to them as *Leges Visigothorum* (LV), as well as *Liber*, *Lex* or simply Visigothic law.[128]

126 Comp. for Catalonia: Mundó i Marcet, A. (1991), 'El Liber Iudiciorum a Catalunya.', in J. M. Mas i Solench (ed.), *Documents jurídics de la història de Catalunya* (1. ed., Barcelona: Generalitat de Catalunya Departament de Justícia), 13–22. Pons i Guri, Josep M. (1991), 'El Dret als segles VIII-XI', in , *Symposium internacional sobre els orígens de Catalunya*. *Segles VIII-XI : [celebrat a Barcelona del 11 al 15 de desembre de 1989]* (Memorias de la Real Academia de Buenas Letras de Barcelona, [Barcelona]: Comissió del millenari de Catalunya; Generalitat de Catalunya), 131–59.

127 Usually refered to as the Code of Euric (Codex Euricianus) that must be mostly reconstructed from other codes as only some titles have been preserved in fragmentary form. See: Ors, *Código de Eurico*, p. 15-70. Beyerle, F. (1950), 'I. Zur Frühgeschichte der westgotischen Gesetzgebung. Volksrechtliche Studien IV', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*, 67/1: 1–33.

128 Carlos Petit gives a good overview of the literature: Petit, C. (2014), *Leges Visigothorum*, HRG, III, col. 697-704. See also: Iglesia Ferreirós, A. (1996), *La creación del derecho*: *Una historia de la formación de un derecho estatal español: manual* (2 ed. corr, Madrid: Marcial Pons), I, p. 201-240. Zeumer, K. (1944), *Historia de la legislación visigoda* (Barcelona: Universidad de Barcelona, Facultad de Derecho), p. 13-68. For the manuscript tradition and much more, see: García López, Y. (1997), *Estudios críticos de la "Lex Wisigothorum"* (Memorias del Seminario de Historia Antigua, 5, Alcalá de Henares: Universidad

The *Usatges* as a law code or compilation[129] of the customs of Barcelona was put into consideration on various occasions throughout the work. While positions regarding the exact date of a first compilation vary, the generally accepted opinion of researchers at this time seems to be that the code was compiled around the middle or last third of the 12th century,[130] and that its oldest parts stem from the customs and the resolutions of the court of Ramon Berenguer I, to which they are falsely attributed.[131] For this work only parts considered as the oldest were put into contemplation.[132]

de Alcalá).

129 Regarding the distinction between the two, see: Kosto, A. J. (2001), 'The limited impact of the "Usatges of Barcelona in twelfth-century Catalonia', *Traditio*, 2001, p. 54: The Usatges are generally labeled a "code" based either on their "official" promulgation (by Ramon Berenguer I or RamonBerenguer IV) or on their later inclusion in the Constitutions de Catalunya. It is more accurate for the eleventh and twelfth centuries to refer as I do here to a "compilation" – a collection for use by judges rather than officially promulgated legislation – as Ramon Berenguer IV does not seem to have issued the *Usatges* formally; the only evidence for promulgation points to Ramon Berenguer I and, […] it is false.

130 Valls i Taberner, Ferran (1925), 'El problema de la formació dels "Usatges" de Barcelona', *Revista de Catalunya*, 2: 26–33. Valls i Taberner, Ferran (1935), 'Noves recerques sobre els "Usatges de Barcelona"', *Estudis universitaris catalans*, 20: 69–83. Bastardas i Parera, J. (1977), *Sobre la problemàtica dels usatges de Barcelona: discurs llegit el dia 10 de març de 1977 en l'acte de recepció pública* (Barcelona: Reial acadèmia de bones lletres de Barcelona). Udina i Martorell, Frederic; Udina i Abelló, Antonio M. (1986): Consideracions a l'entorn del nucli originari dels " Usatici Barchinonae". In: Portella i Comas, Jaume (Hg.): La formació i expansió del feudalisme Català: Actes del col·loqui organitzat pel Col·legi Universitari de Girona, 8-11 de gener de 1985. Girona: Universitari de Girona (Estudi general, 5-6), S. 87–107. Pons i Guri, Josep M. (1989), 'Documents sobre aplicació dels Usatges de Barcelona anteriors al segle XIII', in , *Recull d'estudis d'història jurídica catalana* (Barcelona: Fundació Noguera), 51–65. Iglesia i Ferreirós, Aquilino (2011), 'The Birth of the Usatici', *Imago Temporis. Medium Aevum*, 5: 119–134.

131 For this projection, see: Cingolani, S. M. (2006), '"Seguir les vestígies dels antecessors". Llinatge, reialesa i historiografia a Catalunya des de Ramon Berenguer IV a Pere II (1131-1285)', *Anuario de Estudios Medievales (AEM)*, 36/1, p. 226: En el cas dels Usatges, el fet mateix de fer remuntar la redacció al temps de Ramon Berenguer I, en lloc dels últims anys del de RamonBerenguer III i els de Ramon Berenguer IV, crea una dimensió de passat mític que confereix autoritat a l'acció present gràcies a la continuïtat del llinatge […].

132 The standard editions at the moment are ABADAL, VALLS, *Usatges* and BASTARDAS, *Usatges*. An English translation is available, see: KAGAY, *The Usatges of Barcelona.* Antonio Pérez Martín announced work on a new critical edition that seems still in progress. See: Pérez Martín, A., 'Hacia una edición crítica del texto latino de los Usatges de Barcelona', *Glossae. Revista de Historia del Derecho Europeo.*, 1995/7: 9–32. Masferrer, A. (2015), 'Antonio Pérez Martín. Notas sobre su contribución a la historiografía jurídica española y europea', *Historia et iusrivista di storia giuridica dell'età medievale e moderna*, 7/19: 1–19. According to Joan Bastardas the codex in the middle of the 12th century would only include Us. 1-15, 17-62, 64-84, 91-95, 97-138.

III.2. Limitations

The rich charter documentation is bound by certain limitations that are especially visible in regards to the resolution of conflicts. First of all, despite some exceptions most of the preserved documentation stems from the powerful institutions of the time, whether secular or ecclesiastical, which seemed to have preserved in their archives only the documents corresponding to judgments that were favourable to them. This generally translates to increases of property and rights which allowed them to receive a variety of incomes, benefits and tributes.[133] At the first glance this seems like a very one-dimensional picture per se, however, every time one side preserves documents to guarantee their legal rights this automatically means that another side lost and consequently one also gets an insight into the one that did not get the upper hand in a case. In the process of investigating the evidence judges asked both parties for written evidence and the ease with which many individuals showcased their scriptures exhibits by itself the importance of the written word in medieval Catalonia, as well as an understanding of the different type of charters, and most plainly that private individuals possessed those scriptures. Certain limitations are also responses to the necessities of the material, as parchment demanded a quick or essential summary of events. However, many charters are nevertheless quite detailed about procedure.

During this work the reader will encounter several documents that break with this notion of longevity, for example the written complaints surely used in court but that were not dated, or waivers of complaints that were clearly temporal and theoretically not useful for "further generations". Some of those are preserved as originals and some were copied into cartularies, and these kinds of documents put a lot of questions on the table as they look like exceptions but, because of the above-mentioned documentary filter of preserving sources related to property rights, could well have been quite common.

This makes statistical work difficult, just to give one example. Donations, sales, swap contracts and sometimes other documents give insight into many types of crimes and judicial interventions indirectly, as the property that is sold, donated or

133 Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo), p. 19.

exchanged came into the possession of the person effectuating the legal action due to someone having been convicted of a crime. Individual cases of crimes such as theft or homicide are therefore regularly preserved because of a fine paid in the form of a property transaction. Based on these sources, neither a quantification of homicide rates nor a close quality reading on motivations behind direct violent actions is strictly possible.

The best way to get an idea of procedure, mentality and the application of the law should thus centre around the narratives of court charters, and so this work is concerned with different narrative strings and the vocabulary used in legal quarrels rather than being focused on the political sphere.

As we will see the legal language also had an effect on how cases are narrated, while things that seem neutral at first sight, especially the dialogues carefully narrating the investigation of evidence that create a lively picture of court disputes, are still influenced by the result. They were confirmed by testimony and signatures but were still subject to conscious collection that created a selective memory. Sometimes it is hard to not fall back into a positivist view. The narratives surely reflected what happened during trials to a certain degree and certainly had to be convincing for contemporaries, and as such many still are for us today. Meanwhile, a modern reader of such documents automatically has a tendency to doubt narratives that are unusual or reflect the otherness of the Middle Ages.

With these brief preliminary remarks in mind, the main body of the work aims to arrange itself precisely around the problem of court procedure and narratives. In order to do this, the next chapter will lay out the basic tools to give the analysed material a certain non-chronological order.

IV. Analysis – The Wheel of Justice

But let justice roll down like waters, and righteousness like an ever-flowing stream.[134]

The aim of this chapter is threefold. Firstly, it introduces an approach for the following chapters on how trials can be visualised chronologically on a case-by-case basis that could be adopted for any trial. This chronological scheme not only allows one to visualise the different stages of a conflict but also permits pinpointing the creation of legal documentation within that framework. Secondly, it provides some considerations on narratives. Thirdly, it introduces a way on how to adopt the very same model to order the enormous amount of sources through a framework of analysis.

Visualisation of Trials

There are several ways to visualise the chronology of a conflict that involved a trial. The easiest approach, as it is "such a familiar part of our mental furniture"[135], is to use a timeline starting with the cause of conflict, followed by the decision to bring this conflict to court and the goal to resolve the issue, and – if successful – the acceptance of that newly established legal reality, be it formulated through an arbitrary agreement or a court sentence.[136] Every conflict that requires a trial to be solved has, if viewed retrospectively, a point of departure. The cause of conflict is not always clear and, especially if brought to court, is not necessarily the real issue at hand, and can also be serving as a placeholder in a wider conflict. However, perceived injustice must be formulated to proceed within the limits of the legal system.

134 Amos 5:24.

135 Rosenberg, D., and Grafton, A. (2010), *Cartographies of time* (New York: Princeton Architectural Press), p. 10.

136 This is easy as in intersubjectively intelligible as timelines to cartograph time have been in use since the 1450s for timelines, see: Rosenberg, D., and Grafton, A. (2010), *Cartographies of time* (New York: Princeton Architectural Press), p. 96-149, 169-179.

Thus the starting point is not necessarily defined as a crime but as the detectable origin of the cause of a conflict (Red – Cause of Conflict). As the focus of this work lies on the legal procedure and as a trial or trials are fixed in time, they are ideal as another cornerstone in a timeline (Blue – Trial). The resolution found in court or through arbitration also needs to be acted out, for instance a property must be handed over or a compensation must be paid (Yellow – Resolution). As some documentation refers to past trials and court resolutions the generic term 'aftermath' seems fitting (Green – Aftermath).

Fig. 1: Timeline of a Conflict Brought to Court

The depicted line therefore follows a chronological order and between every step visualised graphically time must pass by. In that manner, for instance, allegations must be expressed by the plaintiffs or a date for a trial must be found, a tribunal must not only be formed but also informed about where and when the trial will be set. After the resolution of a lawsuit the consequences of the court's verdict must be effectuated and so on.

Most charters can be dated to a specific moment in time when they were signed and thus became legally valid documents. Because of the legal impact these charters had within society, new conflicts could often arise, due to time passing old resolutions were forgotten, or sometimes a party simply forced another trial to cause inconveniences. To visualise this fact it is worthwhile to use a circular design instead of a linear one. The respective moments in between one stage and the other can be represented as well as moments of transition.

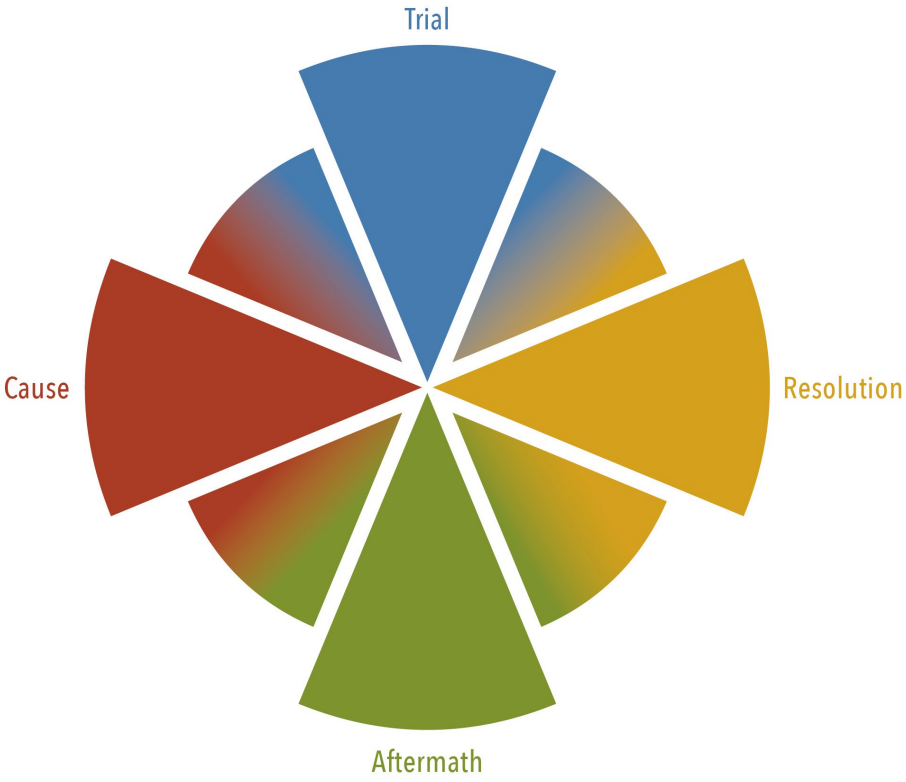

Fig. 2: Circular Visualisation of a Conflict Brought to Court

Before applying this scheme to the source material, it is useful to illustrate its application on some simple examples, for instance, an issue revolving around an

inheritance. Upon his death, a male family member leaves some of his property to a monastery as a donation in his will. This angers the heirs and they refuse to give up their property to the religious institution. The monks go to court about it and the two parties agree that the widow can live on the property until her death, and afterwards it will be handed over to the monastic community. The moment of her lively departure arrives but her children, again, do not agree to hand over the property. Once more the issue is brought to court and the cycle begins again. The cause that initiated the first turn is the death and the donation charter issued beforehand. The court's resolution seems to have solved the issue but was not seen as satisfactory for the family and thus the case is brought to court again. This time the cause of conflict is the last agreement that is not respected and thus the wheel of justice keeps turning.

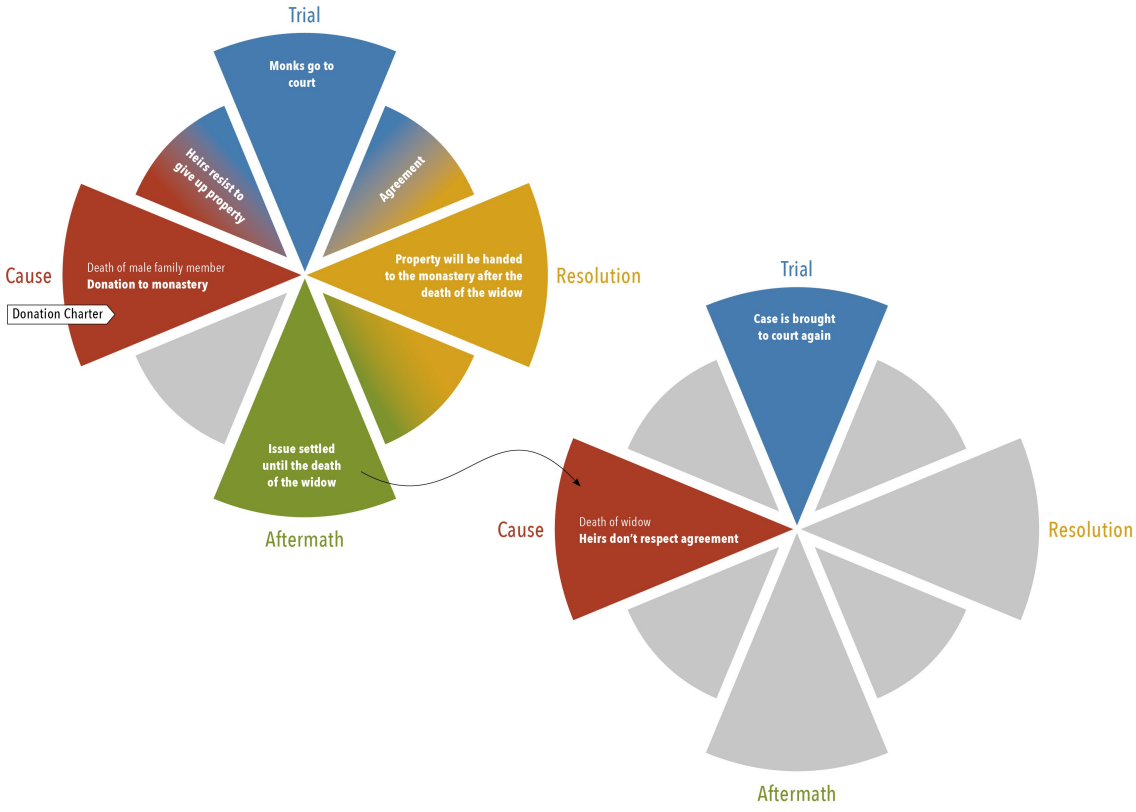

Fig. 3: Resurgence of a Conflict Brought to Court.

Such a visualisation of court cases also allows one to identify the moment at which a legal document is signed within the whole process. To give another example: someone committed a crime, in this case a homicide, and the issue is brought to court.

The perpetrator is found guilty and as a resolution the court dictates that a compensation must be paid. For our example let us say it is a property that is given to the family members of the victim. The victim's family decides to sell the property and it is the sales charter that is preserved as the only source of information about the case. References within the sales charter reveal why the property came into the possession of the vendor, thus informing a reader about the homicide, the trial and the verdict of the court, but leaves open where that case was solved, who attended the court, or if the property was handed over by the *saio*.

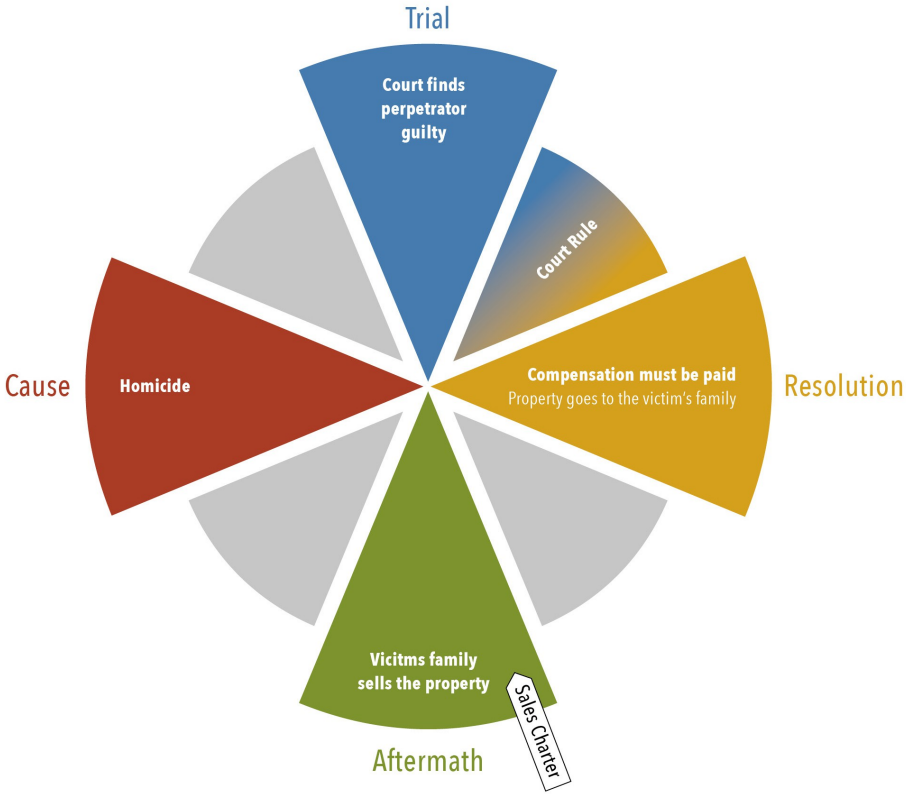

Fig. 4: Visualisation to Pinpoint a Charter Being Signed

This leads to another area which this type of circular chronography helps to map: grey zones – legal actions or events that probably took place but are not indicated in the source. The judicial apparatus of the time may not have been as standardised in its procedures as is ours today but it nevertheless followed a court procedure and stated the irregular more than the regular. We are not informed about these grey areas because the inherent logic of the legal documentation does not need to mention them, but this does not mean that they did not happen. Placing a charter within this framework and comparing it to the different types of charters that were created during other conflicts can help to highlight what kind of documentation may have been created but is lost to the historian today.

Narratives, Legal Procedure and the Wheel of Justice

Because it is very convenient for matters to be recorded for the future,
not so much through words as through writing.[137]

Social sciences and humanities do not only analyse narratives but also produce them. The scientific understanding based on the simple discovery of facts has been under attack since the last third of the twentieth Century. Already Hayden White has pointed out that history is a narrative discipline that has to connect events to produce what could then be considered history.[138] This often-called linguistic or narrative turn lets the historian question his own writing constantly, as even the simple presentation of facts needs narration to be understandable within his own field. However, evidence-based scientific historical narratives nevertheless have a verifiable relationship to reality and are thus distinguishable from fiction.

As mentioned above the lack of central political narrative sources characterises Catalan historiography. On a conceptional level, hence, the researcher is faced with a problem. Based on the *Poetics* of Aristotle the basic elements constituting a narrative are just three in number. First there must be an identifiable actor. This could mean a collective or individual that conditions or actions can be ascribed to. Secondly, a narrative needs to start and finish at a certain point. Thirdly, a narrative must have a plot, a red thread that holds the narrative together. This means that there must be a constant assumption of causality. In film theory this is known as the Kuleshov effect, as the Soviet film maker Lev Kuleshov showed that the audience filled the gap between one scene and another with meaning. While the first scene Kuleshov showed the viewers was always the same, the expressionless face of the actor Ivan Mosjoukine, the next scene was different and the audience therefore interpreted an impression into the first scene depending on the image they saw in the second scene, unaware of the fact that the first shot stayed the same. A chronological sequence thus implies the risk that a gap is filled up with a causal correlation.[139]

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137 MARTÍ, Oleguer, servent de les esglésies..., doc. 59: *Rerum gestarum certitudo futurorum noticie cercius commendatur scriptis quam verbis*.

138 White, H. V. (1973), *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore).

139 This chapter follows the thoughts and concepts found in: Sutterlüty, F., Jung, M., and Reymann, A. (2019), 'Narrative der Gewalt. Eine Einleitung', in F. Sutterlüty, M. Jung, and A. Reymann (eds.), *Narrative der Gewalt*. *Interdisziplinäre Analysen* (Frankfurt am Main: Campus), 9–31.

This can be applied to historiographical macro-narrative based on charters due to the lack of a dominant political narrative. As charters themselves present small narratives, the macro-narrative of the historian combining these micro-narratives by selecting a certain group of sources or by having a certain question in mind always risks falling into the Kuleshov trap. As this conundrum cannot be solved but only addressed, the question arises: how this is relevant for our purpose here? This work takes the risk of choosing an abstract actor for analysis: the judicial procedure and its change over time. Thus we are faced with other narratives presented above, like exploitation of farmers through violent castle-holders, or changes in society defined by some as a feudal mutation or by others even as revolutionary. All these sources produced important insight into the organisation of the medieval society of Catalonia, often by showing the application and administration of justice as most documents are of legal nature.

While this work builds on the works of others to create a new narrative with an abstract protagonist, it also needs to respect the narrative rules the documents themselves present as narratives in charters become more detailed.[140] The narrative of these documents tends to be twofold. First it is necessary to conceptualise the narrative character of certain legal sources by contextualising them according to their own character, what Jarrett described as a "formulaic medium", and their limits due to the legal tradition and norm.[141] Adaptation and change therefore is not always a clear sign of the judges or scribes being sloppy but rather a sign of sticking with tradition while still tailoring it to every individual case. Choice of formulae still made it possible to present one narrative or another that fitted each lawsuit, and this work tries to not brush over the formulae but to see them as a conscious choice rather than a simple decorum.[142] The motivations to include a narrative into a charter can be diverse, ranging from "a stratagem to make safe the unusual or even fraudulent, working to elicit audience

140 Davies, W. (2010), 'Judges and judging: truth and justice in northern Iberia on the eve of the millennium', *Journal of Medieval History*, 2010, p. 195-196: It is appropriate to remember Tim Reuter's comments here, published a decade ago: he pointed out that the narratives in charters all over western Europe became more detailed, precisely at this time, his 'long' tenth century; 'Every charter tells a story' and understanding the story (what and why it was told the narrative strategies) was just as important as considering the authenticity of the text.

141 Jarrett, J. (2020), 'A Likely Story: Purpose in Narratives from Charters of the Early Medieval Pyrenees', in S. Barton and R. Portass (eds.), *Beyond the reconquista*. *New Directions in the history of medieval Iberia (711-1085) : in honour of Simon Barton* (The medieval and early modern Iberian world, volume 76, Leiden, Boston: Brill), p. 123.

142 Ibid. p. 130: With any narrative constrained by a formula, be it of form or of content, there is an obvious likelihood that the expectations placed upon that narrative by the formula will overwhelm its relation to the actual facts of the matter with which it deals. Choices of formulae may indeed be made to bring this about as we shall see.

sympathy or cooperation when regular, legal norms were insufficient,"[143] to creating a memoir of the event, and many others. Narratives in charters thus not only serve the modern reader by giving insight into medieval mentality, but also reflect choices by the scribes that sometimes can be hard to understand from a modern perspective. All too often detail is omitted when it is found on other occasions and these holes can be filled through the notion of a common procedure; however every time this is done the historian runs the risk of obscuring the individuality of the case by putting it into a bigger scheme.

The second important aspect to keep in mind is the moment in time when a document was drafted. Specifically here the analysis of the legal procedure is very useful because the difference in length and detail of charters can be largely understood through the circumstances of the judicial procedure and its moment of creation within this process, as well as the case itself. Both aspects are naturally linked as, for example, a sales charter as a result of trial could only be drafted after the property had been handed over properly. While the generic visualisation of the production of documentation within the legal apparatus of the time is risky due to exceptions, it is still worthwhile for the possible analysis of narratives within the charters. For instance, accusations and court resolutions refer to past actions and depict actors in a certain way, while being simultaneously created with expectations for the future, whereas a trial that tries to establish a new commonly accepted truth automatically marginalises the standpoint of one party, and this sometimes results in the villainising of one side and the heroising of the other. Pacts and agreements have a tendency to show the two parties involved as equals while allowing the projection of a common future outcome and so on.

143 Ibid. p. 123.

The Wheel of Justice as a Framework of Analysis

The main protagonist of this work is an abstract one: legal procedure. For that reason, the metaphor of the spinning wheel of justice that tirelessly continues to turn its rounds shall also provide the framework for the analysis of the sources. For this matter the central part of this work is divided into three chapters: the prelude, the trial, referring to court sessions and assemblies and the resolution, describing the outcome and agreement found in this way.[144]

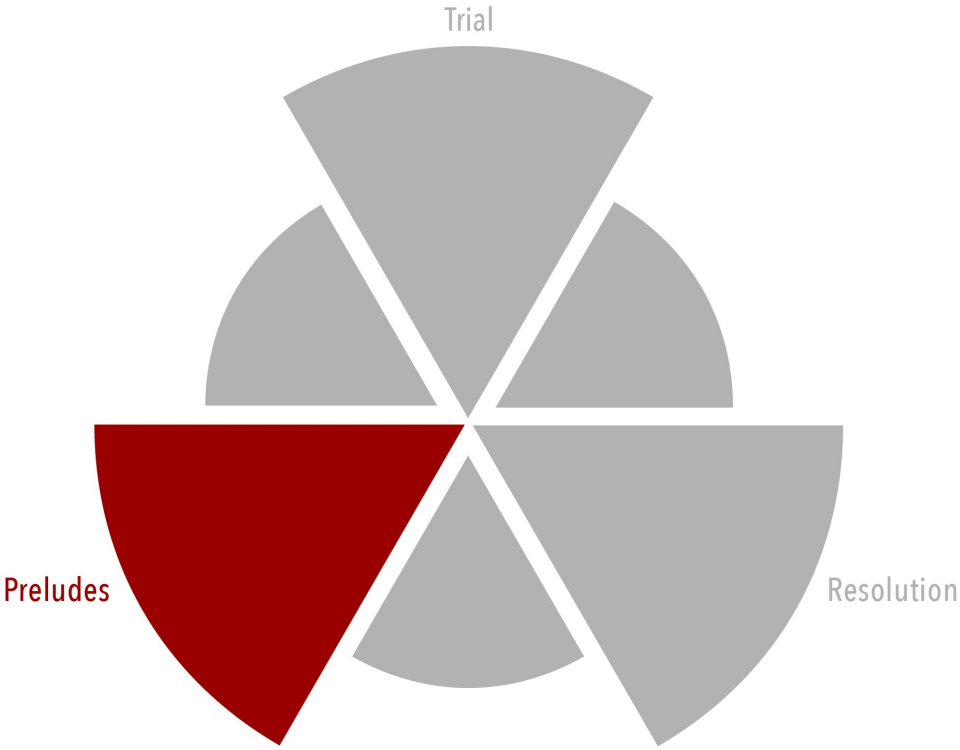
The preceding activities before a trial involved the selection of the place as well as an adequate date, informing all the participants and ensuring sufficient conditions for a trial.

The trial itself, first of all, gives information through the composition of the tribunal and its attendees, followed up by the court order, which includes the interrogation of witnesses and the inspection of legal documentation presented by the two parties. This could imply several meetings, as crucial witnesses may not be present at the first meeting, or the adjournment of the court due to its transfer to another place, for instance, to make an inspection of the disputed property or rights possible. The dynamics of a trial are flexible and change due to the testimony presented in court and the decisions taken by the judges. An oath can be reinforced through an ordeal, the verdict of the court could be faced with resistance from a party, or one that abandons the court before an oath could be taken. Recognising a crime or simply that one party has presented better claims was necessary to conclude the trial and draft a charter that finalised the trial legally.

The resolution of a conflict shows the flexibility and options at hand of the legislator to handle conflicts within the framework of the law, while the aftermath of a court's decision is understood as a the new reality, considered final, which ended the conflict and was understood by contemporaries as a moment of peace. Consequences vary and are looked at specifically to fully understand the procedures that took place.

144 The decision to divide the chapter Analysis into four chapters including the moments of transition was made for the sake of simplicity.

IV.1. Preludes



IV.1.1. Event

On account of which the litigants and quarrelers came to the Castle of Calaph; and there both sides assured, that they would go to the court of bishop Folc and accept the court's decision about these things on the designated day.[145]

Two central factors play a role for setting a court date: the location of the event and the time at which the proceedings should take place. They "were important parts of the *mis en scene* […] sessions took place on public festival days, usually Sundays, or in the case of one of the assemblies at Chorges, the Saturday before Palm Sunday. As the dates emphasised the public nature of the assemblies, so too did the settings. The Chorges assemblies normally took place at the church of Saint Christopher, both outside (apparently on the porch) and within."[146] Patrick J. Geary's profound analysis of the dynamics and mechanism of looking at trials in France makes it clear that considering the dimensions of time and place can help to understand the workings of the justice system.

Several factors must be taken into account when considering the place and time of the event. First and foremost, the date and place of a court meeting does not necessarily correspond to the date and place of when and where the informing charter was drafted. While the narrative of the charter sometimes gives insight on how, in complicated cases, these dynamics worked, in many cases only the final resolution and last date are given. The reasons vary as do the types of charters. The introduced model of the wheel of justice is helpful to explain when and why a charter was drafted, informing us about trials and what kind of information one would expect and is not delivered, and vice versa.

The sheer quantity of charters preserved from Catalonia allows one to establish, to a certain degree, which places were the most common for trials and which days were considered adequate. This in turn makes it possible to highlight the unusual and thus deliberately chosen. This will be important for the trials showcased in the subsequent chapters.

145 SALRACH, MONTAGUT, *Justícia,* doc. 505: *Propter hoc diu placitantes et altercantes venerunt in castrum Calaph; et firmaverunt directum ex utraque parte in manu Fulchonis episcopi, ut facerent et acciperent directum de iamdictis rebus ad diem constitutum.*

146 Geary, P. J. (1994), 'Living with Conflict in a Stateless France. A Typology of Conflict Management Mechanisms', in P. J. Geary (ed.), *Living with the Dead in the Middle Ages*, p. 153.

Therefore, the following chapter will first of all deal with the dates on which court hearings were held, which days were avoided or legally allocated for such court hearings and what else can we learn from the scope of time and planning judges had to put into those events in the first place. That also includes legal timespans considered adequate as well as deadlines.

Subsequently, the focus will then highlight the most common places where court hearings were held. The legal system is also subject to social change, and the location of judicial assemblies was affected by that as well. A hearing without the local community attending was surely not as impactful and, considering the legal implications that, for example, the *boni homines* would have to fulfill depending on the case, was just not acceptable. Thus the exceptions – for example, disputes settled far away – give some insight as well as it shows centres of legal activity like courts drawing people seeking justice in, while trials could be adjourned and relocated if need be.

IV.1.1.1. Selecting the Place

He shall appear without delay at the place chosen by the judge in order to conclude the case with the plaintiff.[147]

The Visigothic law code does not dictate any exact locations where court assemblies should be held. Nevertheless, according to the law, the judges had a certain say so about the where and the when. Meanwhile, unless the scribe, the place of conservation or other circumstances make it possible to locate where a part of the court proceedings took place or give clues about where the charter was drafted, many documents simply provide this information on their own.

Locations were mentioned by naming the general place, the locality, where it was held – like *Matam de Pera,* today's Matadepera – or by a geographical description, like *in valle Nespula,* today's Nespla near Mura.[148] This information is usually given next to the list of main participants, either before the composition of attendees is listed or right after it. In many instances the place can be deduced through the narrative part of a charter, when one can read that a decision was done at a church council in Narbonne[149], for example, or sometimes we learn where the charter was drafted and this information is given in the dating line of the *eschatacol*, like in one charter drafted *in Mata Plana*, today's Mataplana.[150]

Gatherings took place at monasteries, like in 1088 when the count Bernat II of Besalú *came to the monastery of Saint Mary of Arles with many noble men*[151], or

147 LV II.1.12: […] *si certe talis sit, de cuius fide dubitetur, pro se fideiussorem adibeat quatenus peractis temporibus supradictis ad finiendam cum petitore causam, ubi iudex elegerit, remota dilatione occurat*.

148 Martí, *Oleguer, servent de les esglésies*..., doc. 25: *His vero altercantibus interveniens domnus Arnallus, Ausonensis episcopus, et clerici eius ad cuius diocesim prefatus pertinet locus, convocato domno Barchinonensi episcopo Raimundo et clericis eius, egit inter eos placitum apud Matam de Pera multis circun[a]stantibus viris nobilibus, in quorum presentia prolate sunt voces ab utrisque partibus;* Salrach, Montagut, *Justícia,* doc. 147: *Pateant aures fideles qualiter ego in Dei nomine Marcus episcopus qu[i] et iudex accessi in comitatu Minorisa in valle Nespula et audivi peticionem qua Borrellus iudex apetivit Olibane,* […].

149 Salrach, Montagut, *Justícia,* doc. 319: *Unde etiam, ne eructantis cataclismi fluctibus naufragetur, quas [...] scripturarum [...] et ad nostri adiutorii incrementum, catholicorum congregamus concilia, ex que [...] concilium Deo inspirante in Galliarum partibus, in Narbonensi urbe, eiusdem urbis reverendo metropolitano [Guifredo] in pontificali trono presidente, stipante prefulgida sacerdotum Dei corona undique.*

150 Ferrer, *Diplomatari*, doc. 67: *Factum est hoc anno MCXXV Dominice Incarnationis, anno XVII regni Ledovici regis, II kalendas octubris, inter in Mata Plana.*

151 Salrach, Montagut, *Justícia,* doc. 469: *Anno ab Incarnatione Domini MXC, indictione XIII, venit Bernardus comes apud monasterium Sanctæ Mariæ Arulis cum multis nobilibus viris, hoc est,* […].

neuralgic points of cities (*in civitate*), be it Barcelona, Empúries, Olèrdola or more specifically in the old part of the City of Guissona.[152]

While bigger settlements like Girona could be described as *urbs*[153], the place descriptions for smaller town or villages could range from *vicus*[154] to *pagus*[155]; however, the most common wording used for small towns within the documentation is *villa*.[156] Another way to determine where at least part of the legal proceedings took place is when witnesses had to swear an oath on the altar, and thus the church where this legal procedure took place can be determined.[157] While this information is certainly helpful it does not necessarily allow one to determine the exact location of the court meeting as these in many cases were separate legal proceedings.

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152 SALRACH, MONTAGUT, *Justícia,* doc. 77: *Dum resideret Gauzfredus, gratia Dei comes, in civitate Impurias, pariter cum* […] *vel aliorum multorum bonorum hominum qui cum ipsis residebant*. Ibid. doc. 188: *Omnibus hominibus Deum credentibus cognitum sit qualiter actum est placitum ante domna Ermessindis comitissa suorumque procerum vel iudicum in civitate Olerdulla,* […]. Ibid. doc. 209: *Notum sit, tam presentibus quam futuris, quod anno Dominicae Incarnationis millesimo XXIIII et Roberti regis Franchorum XXVIIII, infra terminos Gessone prisce civitatis acta est audientia inter* […]. Ibid. doc. 333: [...] *de civitatis Barchinone* […].

153 SALRACH, MONTAGUT, *Justícia,* doc. 388: […] *in prenominato placito apud prescriptam urbem coram prescripto principe et episcopo et magna multitudine magnatum,* […].

154 SALRACH, MONTAGUT, *Justícia,* doc. 140: *Idcirco, dum resideret venerabilis Berengarius, gratia Dei sedis Helenensis episcopus, in pago Rossilionense, in vicho Elna, unacum mutitudine clericorum suorum katerva,* […]

155 Here clearly referring to the town of Ix and not the region. SALRACH, MONTAGUT, *Justícia,* doc. 343: *Hoc tamen fuit in pago Exio in audiencia Adalberti iudicis et Bernardi Seniofredi vicecomitis et alii plures* […].

156 Berga, SALRACH, MONTAGUT, *Justícia,* doc. 186: *Noticia facta omnibus hominibus sit cognita et patefacta in presencia istorum nobilium virorum subtus commemorantium, id est: Bardina, vicecomite, qui est assertor vel mandatarius ex partibus Sancte Marie cenobii Serra Taxi vel de Reinardo abbate, et in presentia Reimundi, Wifredi, Seniofredi nec non et alii Seniofredi vicescomiti et aliorum nobilium virorum ibidem assistencium, in presentia domni Wifredi comitis in villa Berga.* Toló, SALRACH, MONTAGUT, *Justícia,* doc. 398: *Et hoc placitum fuit iudicatus in villa qui vocatur Tolo ante dominum comitem* […]. Castelló d'Empúries, SALRACH, MONTAGUT, *Justícia,* doc. 429: *Presentibus sit notum et futuris non fiat incognitum qualiter venit homo nomine Elisiarius coram domino Ugoni comiti in villam Castilionis coram plurimis magnatibus atque iudicibus subterius scripti,* […]. SALRACH, MONTAGUT, *Justícia,* doc. 501: *Hoc quidem placitum fuit XV dies constitutum apud ecclesiam Santae Mariae villae Castilionis* […]. Tuixén, SALRACH, MONTAGUT, *Justícia,* doc. 431: *Notum sit omnibus hominibus tam presentibus quam futuris qualiter venitdomnus Bernardus episcopus alme Virginis Marie Sedis Vicho Urgelli in villa vocitata Toxen ante aula Sancti Stephani* [...]. Talltorta, SALRACH, MONTAGUT, *Justícia,* doc. 458: *Hec est scriptura noticie sicuti venit domnus Bernardus, Urgellensis episcopus, in Cerritania intus villa que vocatur Taltorta ante domnum Guilelmum comitem et querelavit se* [...]. Vallossera, SALRACH, MONTAGUT, *Justícia,* doc. 472 *Et intervenientibus bonis hominibus ad istud placitum in villa Ursaria* […]. Sant Geli, SALRACH, MONTAGUT, *Justícia,* doc. 492 *Hec est noticia iudicii quod datum est apud villam Sancti Egidii inter* […]. Vilatzir (today's Torre d'en Malla), RIUS, *Cartulario*, doc. 862: *Sciatur a cunctis qualiter ego Rotilandus, gratia Dei abba Sancti Cucuphatis, et Bertrandus, prepositus eiusdem loci, nec non et Bernardus chamararius petivimus tibi Stefane Vitale in placito constituto intus in Villa Azir,*

157 SALRACH, MONTAGUT, *Justícia,* doc. 102, 137, 141, 170, 204, 213, 214, 216, 242, 277, 296, 304, 312, 339, 413, 349, 350, 551, 542; PUIG, *El monestir de Gerri*, doc. 86. BARAUT, «Els documents», IX, doc. 1229; MARTÍ, Oleguer, servent de les esglésies..., doc. 94.

General place names given in the charters, however, give the general notion that if someone contemporary would have read or heard the charter that this individual would probably know exactly where the assembly met as local places of justice surely were commonly known and thus no needed further explanation.

Nevertheless many charters specify where assemblies took place and a certain standardisation of the wording used in these cases should not be mistaken as a pure formal convention but rather as a sign of continuous practice.

One can make a modern distinction between assemblies in front of churches and meetings that took place inside of buildings or structures. While this distinction is artificial it serves the purpose of detecting judicial gatherings that stand out because of their special circumstances and do not fit in these categories. These rather special events show that due to circumstances any location could become a place of justice. Settings could be a castle, in front of the count's palace, the col of a hill,[158] the confluence of two rivers[159] or even an open field if the two parties involved looked for a neutral spot between territories to avoid giving one side an advantage.[160] But in most cases, if no court was close or the legal procedure needed the judges to be *in situ*, people gathered in front of churches to discuss legal business – even acts like recognising someone's rights could be done here, for example, *ante limina Sancti Felicis, qui est in Tiano*.[161]

158 Salrach, Montagut, *Justícia,* doc. 467: *Postea simul venimus ad placitum in ipso collo de Albios in presencia de vice comite de Chardona et* […].

159 In that case of the rivers Rialb and Segre, SALRACH, MONTAGUT, *Justícia*, doc. 192: *Acta esta audientia consistentibus illis Hisarno de Chabodeze sive Miro de Pontes vel etiam Marchovallo de Mamachastro sive Wilelmo de Midiano aut Maior de Tolone cum ceterum hominum et illo iudice Sallane in locum destinatum ubi albi Rialbi miscuit se in flumine Segri.*

160 SALRACH, MONTAGUT, *Justícia,* doc. 437: *Et ipso placito sia inter Montanana et Espils ad ipso campo de ipsa Pesa*. SALRACH, MONTAGUT, *Justícia,* doc. 438: […] *sic siat ipso placito, siat ad ipso campo de ipsa Pessoa aut ad Sancto Laurencio super Montagnana et de istos duos locos ubi ipso rege voluerit* […].

161 SALRACH, MONTAGUT, *Justícia,* doc. 306: *Ante limina Sancti Felicis, qui est in Tiano, et in presencia nobilium virorum, idem sunt, Bremundo Mironi et Fulconi Radulfo et Erimbal Recosindo et Odoni sacer et Bernardus Ioanni et alii plurimi viri, recognosco me ego Conpamgnus Ermemir simulque exvacuo in vestrorum presencia de ipsa terra que dicunt Capo de Moro, unde te Bonifilius presbiter repebam iniuste et absque lege et videncius manifesto, quod probare non possum, neque per ullam vocem ibidem me retinere possum.*

IV.1.1.1.1. The Church Portal as a Place of Justice

Hate evil, and love good, and establish justice in the gate;[162]

Although judicial assemblies could take place "in crowded rooms"[163] the most common place to hold court in the documentation was in open spaces, mostly in front of churches. The rigorous study of Barbara Deimling focusing on Italy and Germany shows that church doors served as typical places for trials, assemblies and hearings and this can be confirmed for Catalonia as well.[164] Although it is out of the time scope this work is concerned with, it is worthwhile to point out that the rich charter material from Catalonia clearly shows the continuous use of the space in front of churches as places of assembly and administration of justice reaching easily back to the 9th Century,[165] thus closing the gap from earlier narrative sources from the Carolingian period to the mostly later court sources from the 11th and 12th Century mostly used by Deimling.

This is extraordinary as it demonstrates a continuous use and shows that the practice of gathering in front of the churches to discuss legal matters was already in place at the borders of the Carolingian Empire from early on. At the same time, this could already have been a well-established practice since at least the 7th Century when places of communal meeting became places of justice, and potentially this simply did not change after the integration of the territory into the Carolingian Empire.[166]

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162 Amos, 5:15.

163 Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 108: Judicial assemblies took place in crowded rooms.

164 Deimling, B. (2016), 'The Courtroom. From Church Portal to Townhall', in W. Hartmann and K. Pennington (eds.), *The History of Courts and Procedure in Medieval Canon Law*, W. Hartmann and K. Pennington (Catholic University of America Press), p. 30–50. Deimling, B. (1998), 'XI. Ad Rufam Ianuam: Die rechtsgeschichtliche Bedeutung von „roten Türen" im Mittelalter', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 115/1, p. 507-509. Ackermann, M. R. (1993), 'Mittelalterliche Kirchen als Gerichtsorte', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 110: 530–545. Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press), p. 25-52.

165 The earliest example dating in the year 879 when witnesses testify that they heard and saw the legal action taking place in front of the church of Estoer, comp. SALRACH, MONTAGUT, *Justícia,* doc. 25: […] *quia nos iamdicti testes scimus et bene in veritate sapemus, occulis nostris vidimus, et aures audivimus, et presentes eramus in dicte valle Confluentana, in locum Exalata, ante domum Sancti Andree, apostoli Christi, et in placitos laicales*; SALRACH, MONTAGUT, *Justícia,* doc. 28: *Et vidimus alias scripturas et audivimus ante ecclesiam Sancti Andree locum Exalata presentes multos hominibus, ubi legebant Protasius vel ceteri monachi Et vidimus alias scripturas et audivimus ante ecclesiam Sancti Andree locum Exalata presentes multos hominibus, ubi legebant Protasius vel ceteri monachi* […].

166 For Italy, see: Chavarría Arnau, A. (2016), 'Ante ecclesia in conventu: alcune riflessioni sul capitolo 343 del Codice di Rotari', in , *Alla ricerca di un passato complesso*. *Contributi in onore di Gian Pietro*

Many Catalan sources pinpoint the places of assembly and where people met for trials as being in front of the church. For instance, people came before the Bishop *ante ecclesiam* or congregated at daybreak in front of the church of Sant Martí at Castellnou dels Aspres for a trial, while other charters tell us about altercations happening there during trial.[167]

The combination of sources leaves no doubt that people went, met and stayed *ante aula*[168] or *ante domum*[169] at least during a large part of the judicial meeting. Not only do the squares in front of churches allow the congregation of bigger crowds, as some of the churches were rather small and otherwise would have been packed, they also do not hinder latecomers from joining, as well as providing other organisational

Brogiolo per il suo settantesimo compleanno (Dissertationes et Monographiae, 8, Zagreb, Motovun: International Research Center for Late Antiquity and the Middle Ages), 101–8. Coleman, E. (2003), 'Representative Assem blies in Communal Italy', in P. S. Barnwell and M. Mostert (eds.), *Political assemblies in the earlier Middle Ages* (Studies in the early Middle Ages, 7, Turnhout, Belgium: Brepols), p. 194: Such assemblies were not a creation of the communes, however: city-dwelling Italians had been in the habit of meeting together for many centuries, primarily to elect their bishop. The earliest evidence for this is the Edict of the Lombard king Rothari (636-52), issued in 643, which refers to the holding of a *conventus ante ecclesiam.* In the eleventh century, assemblies held in Milan are mentioned by the chroniclers Amulf († after 1077), Landulf Senior († after 1085), and Landulf of S. Paolo († 1136 or later). The assembly was therefore already a venerable civic institution in many north Italian cities before the appearance of communes in the early twelfth century.

167 Castellnou dels Aspres, SALRACH, MONTAGUT, *Justícia,* doc. 123: *Et fuerunt summo diluculo congregati ante ecclesiam Sancti Martini, qui situs esse videtur in sepe iamdicto alode Tordarias*. Ibid. doc. 234: *S+m Eiz, S+m Sanza femina, nos qui ista donacione fecimus et firmare rogavimus in antea Sancti Andream de Castelvel ad ipsa fosa ad ipso omines qui sunt firmatores in ista carta.* Santa Creu de Joglars, Ibid. doc. 251: *Notum sit omnibus ominibus tam presentibus quam futuris qualiter omo Isovardus nomine, pro[lis condam] Trasovario, abuit altercacionem racionis cum Ermesindis, sorore sua, simulque et cum Arnallo, viro suo, ante ecclesiam Sancte Crucis [sit]a in pago Iugalares, in placi[to] Seniofredi Luc[i]anensis et Ermesindis, eius coniuge, et Ledgardis femina, uxor condam Ellemar.* Ibid. doc. 494: *Et post hec venimus ante ecclesiam Sancte Marie* […]. Sant Julià d'Altura, Ibid. 351 / 352 . [...] *in placito ante Sancti Iuliani de Altura* […]. Clarà, Ibid. doc. 544 *In anno centesimo post millesimo venit predictus Ebrinus ante predictum episcopum in locum quod vocant Clera ante ecclesiam Sancti Saturnini et* […]. Sant Julià de Pera (today: Sant Julià dels Garrics), BARAUT, «Els documents», IX, doc. 1319. *Ut servicii vetuitatem vidi quod mihi vir meus vel filii vetaverunt, ante ecclesiam Sancti Iuliani Lavancie et ante multorum virorum conspectum alaudium prephatum reddidi ei. Postea vero in brevi tempore in Sancte Marie Sedis canonica pater manentem audivi, mox coram eo venire non permisi. Tunc autem ante Sancte iam dicte Marie galileam, in presentia Gerberti canonici et Bernardi Petri presbiteri et Guilelmi Tedballi canonici et multorum aliorum, alodium patri meo libenter iterum reddidi*.

168 SALRACH, MONTAGUT, *Justícia,* doc. 431: *Notum sit omnibus hominibus tam presentibus quam futuris qualiter venit domnus Bernardus episcopus alme Virginis Marie Sedis Vicho Urgelli in villa vocitata Toxen ante aula Sancti Stephani et* […]. Ibid. doc. 315 Seu d'Urgell *Ego vero Albertinus iudex, qui dirimendi causas potestatem abeo in vallo Capudense vel in aliis multisque locis ubique, venit ante aula Sancte Marie et ad me omo nomine Radulfus et dixit mihi quod fratrer suus Sanzbert, presbiter condam, reliquid ei suam hereditatem quad abebat in valle Capudense aut in Tost et in Hecha sive et in aliisque locis.*

169 SALRACH, MONTAGUT, *Justícia,* doc. 399: *Ego Seniofredus Gischafredi et uxor mea Adzalgaldis volumus ad noticiam deducere tibi, Arnallo Frugani, cunctorum tam presencium quam futurorum, qualiter nos petivimus te ante domum Sancta Cecilia in presencia Gerallus Guilabert et fratres sui et Arnallus Guilabert et Arnallus Languardus et aliorum plurimorum ominum videntibus et audientibus unam fontem iniuste.*

advantages as they were neuralgic points of community and well known beyond the local close community.

While magnates with their entourage and local folk travelled to churches *ad ecclesiam*[170] or *ad domum,*[171] the exact point of assembly in many cases is even more explicit as the assemblies met in front of the church door. This fact suggests that when the sources speak in rather vague manner about an assembly happening in front of the church, they actually imply meeting directly in front of the main entrance.

The documentation shows that assemblies were held *ante ostium*[172]*,* or in the case of the church Sant Marcel de Saderra, for example, *preforibus ecclesie.*[173] People

170 Sant Cugat del Vallès, SALRACH, MONTAGUT, *Justícia,* doc. 129: *Ego quidem Raimundus gratia Dei comes sistente in comitatu Barchinonense ad ecclesiam Sancti Cucufati martiris cenobii Octovianensis, anno videlicet Incarnationis Dominice DCCCC^mo^ XC^mo^ VI^to^, inditione VIII^va^, anno X^mo^ Ugone rege regnante. Convenimus pariter ad festivitatem supramemorati martiris cum innumera caterva fidelium* […]. Sant Benet de Bages, Ibid. doc. 139: *Annus Domini DCCCCXC nonus, inditione XII, anno IIII regi Roberto regnante. Convenimus pariter Gifredus et Marchus utrique iudices in comitato Minorisa ad ecclesiam Sancti Benedicti situm in crepidine alvei Lubricato, in presentia* […]. Sant Pere d'Ègara (Terrassa), Ibid. doc. 275: *In iudicio divino Bernardus Amatus, custus Terracia, et in audiencia Bernardus Minestral et Miron Atone et Guilielmo Guilmon et Guad[am]iro presbiter et Bonefilii Sesmon et Iohanes Stefanus et Rikarius presbiter et aliorum virorumqui inde aderant ad eclesia Sancti Petri Egara venit omo nomine Guadamirus, prole Moro, et* [...] Santa Cecília d'Elins, Ibid. doc. 392: *Hoc est iudicium quod fuit iudicatum ad Sanctam Ceciliam* [...].Sant Pere d'Orriols (Santa Maria d'Oló), Ibid. doc. 375: *Petrus vero iamdictus mandavit eis placitum ad ecclesiam Sancti Petri de Urriols ibique adfuere nobiles viri* […]. Malveí, Ibid. doc. 433: […] ad ecclesiam selvaticam qui est prope Mal Vicino Malveí […].

171 Santa Maria de Rocafort, SALRACH, MONTAGUT, *Justícia,* doc. 318: *Sed inter nos ad placitum constitutum in locum constitutum Palacio Vetulo addomum Sancte Marie que est infra termine Rokafort ibi in ipso loco pari modo convenientes adsistimus. Et in presencia virorum multorum nobilium cui nomina recitata ex parte debet hic esse causas nostras et contenciones ad finem perducimus cum illorum determinacione et consilio.* Santa Maria de Vilanant, Ibid. doc. 175: *Venerunt ante predicto iudice in villa Bundanti ad domum Sancta Maria* […]**.**

172 Sant Martí de Peralada, SALRACH, MONTAGUT, *Justícia,* doc. 158: *Idcirco dum resideret venerabilis Ugo gratia Dei comes in pago Petralatense in castro que nocupant Tolone ante hostium Beati Martini, una cum iudice qui iussit et iudicare causas dirimere et legaliter definire, id est,* […]. Santa Eugènia de Berga, Ibid. doc. 545: *Notum sit omnibus hominibus tam presentibus quam futuris quod ego Raimundo Bermundi cum meos castellanos Bernardo Berengarii et Bernardo Guielmi venimus ad placitum cum Arberto Salamone et suos heredes ante ostium ecclesie Sancte Eugenie cum multitudine clericorum, militum et rusticorum,* […].

173 Sant Marcel de Saderra, SALRACH, MONTAGUT, *Justícia,* doc. 299 *Manifestum sit cunctis militantibus christianis tam presentibus quam futuris quomodo vel qualiter motum fuit placitum altercacionis inter duos nempe sacerdotes, id est Ato et Adalbertus, in comitatu Ausonense, locum scilicet Sederrensi, preforibus ecclesie Sancti Marcelli que est sita in eodem loco.* Ibid. doc. 328: *Manifestum sit cunctis militantibus christianis tam presentibus quam futuris quomodo motum fuit placitum altercacionis inter sacerdotes Sancti Marcelli et parochianis coram Durandus vel filiis suis, id est Iaucifredus et Datoni et Galindus et Leopardus et Richel, filie eius, in comitatu Aussonense, locum scilicet Sederrensi, pre foribus ecclesie Sancti Marcelli que est sita in eodem locho*.

came and gathered *ante foras Sancti Petri*[174] or met at the church tower (*ad pinnaculum*).[175]

In the same sense the word *porticus* is applied, referring to the porch of the churches. People gathered *in porticu* or more specifically *ante hostia e[cclesie] Sancti Iusti, sub isto porticu.*[176]

174 At Sant Pere de Reixac, SALRACH, MONTAGUT, *Justícia,* doc. 150:*Certum quidem et manifestum est enim qualiter venimus ante foras Sancti Petri, situm in villa Rexago, in comitatu Barchinonense, supra alveum Bisaucio, in presentia* […]. Barcelona, Ibid. doc. 497: *Determinato igitur placiti die idibus augusti, ante fores prelibate ecclesie Sancte Crucis convenit*. Ibid. doc. 251: […] *Hactum est hoc ante fores Sancte Crucis predicte IIII idus iunii, anno III regni Enrici regis.*

175 Sant Sadurní de la Marca (Castellví de la Marca), SALRACH, MONTAGUT, *Justícia,* doc. 366: *Quapropter insistentibus viris inferius scriptis aliisque quam plurimis ad pinnaculum aecclesiae Sancti Saturnini martiris, cuius ecclesia aedes sita est ad radicem montis Chastri Vetuli, in ipsa Marcha* […].

176 Sant Sadurní de Palau d'Almanla (Montornès del Vallès), SALRACH, MONTAGUT, *Justícia,* doc. 223: *Acta est hec audientia in presentia domni Gondeballi et Guilelmi et Raimundi archilevite, utrorumque fratrum, et Raimundi, viri supra dicte Belliardis, et Bernardi Ovasii et Lupi Sancii et Seniuldi et Bernardi et Geriberti aliorumque multorum in porticu Sancti Saturnini aecclesiae, site in Palacio de Almanla vel in eius confinio.* Cervelló, Ibid. doc. 240: *Manifestum est enim quia retivi te in audientia domni Alamagni et matris suae Illiardis, presente iudice Bonofilio Marci necnon et aliis viris, Sendredo, Adalberto, Olibano Gocelmo, Unifredo, Remundo, Aenea, Gilelmo, Galindone, Gitard aliisque multus aggregatis, in ipso porticu aecclesiae Sancti Vincentii, sitae infra terminos castri Cervilionis,* […].Santa Cecília de Voltregà, Ibid. doc. 263: *Manifestum est et multis cognitum quia petisti [nobis in] portico Sancte Cecilie, infra terminos de Veltragano, pro alaude quod nobis re[qu]irebas per vocem condam Gonmari et Gersindis femina et filio suo condam Guadallo episcopo suisque nepotibus,* […]. Sant Just i Pastor (Barcelona), Ibid. doc. 268: *Ad noticiam tam presentium quam futurorum. Ego Guifredus, nutu Dei Barchinonensium iudex, deducere volo qualiter aput civitatem Barchinona, ante hostia e[cclesie] Sancti Iusti, sub isto porticu, instantibus* […]. Sant Cristòfol de Beget, MONSALVATJE, *Noticias históricas*, XI, doc. 423: *Propterea diffinio ikachisco evacuo predictam partem decimi quod non recte querelabam prefato Sancto Petro iam dicti loci in potestate dompni Petri, abbathis eiusdem loci, in presentia* [...] *et aliorum bonorum hominum cleric[orum et] laicorum in porticu ecclesie predicti Sancti Christofori ibi ad stantium.*

IV.1.1.1.2. Doors as Places of Transition

I am the gate; whoever enters through me will be saved.[177]

People therefore definitely congregated in front of the churches, however, thresholds and *porticus,* as well as doors, were considered places of transition, or as Isidor of Seville put it: a *porticus* is "a passageway rather than a place where one remains standing".[178] Thresholds, like no other part of a building, represent the border between one space and the other and thus are a place of transition. Isidor, with the motivation to instruct the reader about the etymological derivation of the word *uxor*, referring to an ancient practice emphasises that newly-weds would "avoid stepping on the thresholds, because at that place the doors both come together and separate."[179]

The importance and meaning of doors is many-fold but as Jütte puts it, in a very negative tone, "today, many of the cultural, legal, and political practices that were once associated with doors have fallen into oblivion, even among historians."[180]

It was a site of power as it allows inclusion and exclusion: while open doors welcome people to step in, closed ones exclude while simultaneously provide safety and protection against possible threats lurking outside. Knocking on doors, asking for permission of entry gives power to the one being inside, while passing without restraint, or rather forcing one's entry is an invasive action in itself, taking away that said power.

However, the church portal is not any kind of passageway and "passing through a church door, then, was by definition more than a simple act of entering: it was charged with religious meaning. The solemn entrance into the church was a firmly established and carefully staged part of religious processions."[181] Since late antiquity, entering the

177 John, 10:9.

178 Barney, *Etymologies*, XV.7.3: A portico (porticus), because it is a passageway rather than a place where one remains standing, as if it were a gateway (porta). Also porticus because it is uncovered (apertus).

179 Barney, *Etymologies*, IX.7.12.12. Wives (uxor) are so called as though the word were unxior, for there was an ancient custom that, as soon as newlyweds came to their husbands' threshold, before they entered they would decorate the door posts with woollen fillets and anoint (unguere, perfect unxi) them with oil. Hence the newlyweds were called 'wives' as if the word were unxior. And they would avoid stepping on the thresholds, because at that place the doors both come together and separate.

180 Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press), p. 255.

181 Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press), p. 38.

church meant crossing the threshold between the profane and the sacred.[182] The threshold of churches thus represent liminality as a spatial dimension in its purest sense as the term itself suggests.[183]

Leaving general concept aside this is also reflected in different kind of documentation from Catalonia itself as, for instance, issuers of wills who planned to go to pilgrimage clarified that they would travel to the thresholds of the holy sites. Travelling to the Cathedral of Santiago de Compostela was literally expressed as pilgrimage to the threshold of Saint James' – *pergere ad limina Sancti Iacobi.*[184]

While closed doors could represent security and shelter, church doors separating the sacred from the profane[185] could rather create anxiety when closed, as they represent the doorway to heaven and as such function as a metaphor of salvation. The excommunicated had no access to the sacred spaces, giving them a pretext of rejection as they had to stay in front of the door while mass was held. Only after repentance and purification they were led in again, holding the hand of the bishop that had excluded them, thus being reintegrated into the Christian community. Thresholds themselves could become the objects of purification and were blessed during the consecration of churches by the Bishop.[186] However the wording and vocabulary is not only reserved to expel the excommunicated to the thresholds of the churches; as with the pilgrims and additionally the tribunals, the attendees of trials travelled *ad limina* to hold court in front of the threshold of the churches.[187]

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182 For a very complete study, see: Van Opstall, E. M. (2018) (ed.), *Sacred thresholds*: *The door to the sanctuary in late antiquity* (Religions in the Graeco-Roman world, 185, Leiden, Boston: Brill).

183 For a critique of the widespread use of the term coined by Arnold van Gennep and further developed by Victor Turner, see: Downey, D., Kinane, I., and Parker, E. (2016), 'Locating Liminality: Space, Place, and the In-Between', in D. Downey, I. Kinane, and E. Parker (eds.), *Landscapes of liminality* (London, New York: Rowman & Littlefield International), p. 1–26.

184 Benito i Monclús, Pere (2007), 'Els primers pelegrins catalans a Sant Jaume de Compostel·la (segles XI-XII). Identitat, perfil social i procedència geogràfica', in , *El camí de Sant Jaume i Catalunya*. *Actes del congrés internacional celebrat a Barcelona, Cervera i Lleida, els dies 16, 17 i 18 d'octubre de 2003* (Biblioteca "Abat Oliba". Sèrie il·lustrada, 21; 1a ed., Barcelona: Publicacions de l'Abadia de Montserrat), p. 114, 117.

185 The conceptual tool of the sacred and the profane as an opposite pair are quite modern; for the genesis of this concept from Émile Durkheim to Mircea Eliade and a coherent critique, see: Borgeaud, P. (1994), 'Le couple sacré/profane. Genèse et fortune d'un concept « opératoire » en histoire des religions', 211/4, p. 387–418.

186 Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press), p. 41.

187 Sant Feliu de Codines, SALRACH, MONTAGUT, *Justícia,* doc. 136: *Anni millesimi Domini adfuit racio ante limina Beatisimus Felix martir egregius, situm namque comitatum Barchinonense, in parrochia Loparias, in locum Ficulis.* Barcelona*,* Ibid. doc. 205 [...] *ego iam dictus Berengarius comes ad limina beatae et gloriosae Virginis Mariae pro placito quod inter me et comitem Wifredum ac nepotem eius Willelmum vigebat.* Alella*,* Ibid. doc. 306: *Ante limina Sancti Felicis, qui est in Tiano, et in presencia*

From a viewpoint of materiality, it is certain that church doors in Catalonia were embellished with ornaments, many of which are still visible today with some even dating back to the 11th Century. But the decorated ironwork covering the portals is as charged with symbolism as the stone craftsmanship. Symbols of salvation or protection like eagles, pelicans, dragons or even chrismons dominate the ensemble of identifiable imagery.[188] Mostly, the artwork uses symbols that fit into the narrative of the mystery of redemption that opens the gates to paradise.

In northern Europe church portals and doors that corresponded to the place of justice were painted red[189], most probably alluding to the notion put forward by Saint Augustine that "Christ is the door, the door that was opened for you when his side was perforated by the lance".[190] The red color of church doors therefore alluded to the blood of Christ, which he had shed for the salvation of mankind in order to open the doors to heaven. Red coloured doors are no exception in Catalonia but the question if this was also a custom remains to be answered.[191]

Doors allowed a clear separation of spaces, giving keyholders (*claviger*) and doorkeepers a special position in society[192]; taking away the keys was similar to taking

nobilium virorum, idem sunt, […].

188 Ventosa i Serra, E. (2009), *Les Portes ferrades catalanes* (Diputació de Tarragona). Borrell i Sabater, M. (2007), *Portes, panys i forrellats d'esglésies i ermites* (Les terres gironines, Girona: Diputació de Girona).

189 Deimling, B. (1998), 'XI. Ad Rufam Ianuam: Die rechtsgeschichtliche Bedeutung von „roten Türen" im Mittelalter', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 115/1: 498–513.

190 *Sermones de Sanctis* (MPL 38: 1415): *Christus est janua. Et tibi est ostium apertum, quando est latum ejus lancea perforatum.* Not only Rabanus Maurus took this notion up (*Allegoriae In Universam Sacram Scripturam*, MPL 112: 1014: *Ostium est Christus* […] *quod per Christum intrant fideles ad regnum. Ostium, foramen in latere Christi, ut in libris Regum, Ostium lateris medii, et in parte erat domus dexterae, quod apertum erat latum Domini, unde salutis nostrae sacramenta perfluxerunt*) but also Angelomus of Luxeuil, who died around 895 and who went one step further in his *Enarrationes in libros Regum* (MPL 115: 404-411) giving some detailed thoughts relating the body of Christ with King Salomon's temple, thus converting the church as a building into the body of Christ. For his sources and his strong reliance on Augustine and Bede, see: Cantelli, S. (1990), *Angelomo e la scuola esegetica di Luxeuil*, 2 vols. (Biblioteca di Medioevo Latino, Spoleto).

191 The examples where red cows hide was preserved are from nowadays France. As hide has a higher chance of being preserved than regular paint the question remains open as I am not aware of any colour pigment studies on Catalan church doors that preserve ironwork from the 11th Century. Amenós Martínez, L. (2010), 'Les portes ferrades romàniques al sud del Pirineu català', *Quaderns del Museu Episcopal de Vic*, 3, p. 61: Abans de fixar les ferramentes, la superfície del batent es protegia amb cuir de bou o de vaca tenyit de color vermell, tal i com es podia veure fins fa pocs anys a les portes de Sant Julià de Brioude, a auzon o a Saint-Jean d'Orcival. Per tal de protegir la fusta de les inclemències del temps, el cuir s'aplicava lleugerament humit i es fixava amb cola de formatge.

192 The keyholder Saint Peter (SALRACH, MONTAGUT, *Justícia*, doc. 81: *beatissimi Petri regnique aetherei clavigeri*), finds his earthly reflection in Amaliri (Ibid. doc. 140: […] *unacum mutitudine clericorum suorum katerva, scilicet presbiterorum et hordine levitarum, id est Amaliricus presbyter et claviger* […]) and others Ibid. doc. 496: *Sig+num Companii Ellemarii, claviger Sancte Marie*. The position was usually held by a priest (*presbyter*) listed predonametly next to other minor orders.

away one's rights regarding the property.[193] The doorkeeper (*ostiarius*) watches "over everything inside and out, and making judgment between the good and the bad they receive the faithful and reject the unfaithful."[194] As the faithful obey the law of God, the unlawful could easily become the unfaithful and the decision to maintain the sacred space's purity was in the hands of the gatekeeper. A *legis ac iuris lator* like Ermengol, who was not only judge but also *ostiarius et ianitor,* surely recognised the outcasts in cases he had presided over, allowing only the faithful in.[195]

It is also noteworthy that in the Medieval Catalan documentation of the 10th to the 12th Century, gates and doors were used as an orientation landmark. They are specifically mentioned to define the boundaries of property that is to be sold or handed over and thus served as a delimitation of land. Streets passed by the gates of property thus defining the limits of the property itself. Property was defined as continuing up to the gate of Gonter (*qui pergit ante ianuas de Gonter*)[196], or in another case from 1044 the charter talks about a path that passes by the door of someone called Peter (*ipsam stratam qui transit ante portam predicti Petri*)[197] and so on.[198] A good example related to a case is dated on the third of August 1027. The spouses

193 The bishop of Urgell Pere Berenguer confiscated the keys of the priest and chaplain Guillem de la Portella because of theft. BARAUT, «Els documents», IX, doc. 1391: *Anno ab Incarnacione Domini Mº Cº XXº VIIº obiit Arbertus, presbiter et capellanus Sancte Marie d·Elvan, et G. de Portella rapuit cuncta mobilia que ille Arbertus abebat et [...] Berengarius, episcopus Sedis Urgelli, demandavit hunc sacrilegium et rapinam et tulit claves ilius ecclesie et misit predictum Guillelmum de Portella in iusticia et tota sua honore et emparavit illum fevum quem Guilelmus tenebat per Sanctam Mariam Sedis, et predictum Guilelmum de Portella ivit illi firmare directum videlicet per illum sacrilegium et per rapinam et per illum fevum.*

194 BARNEY, *Etymologies*, VII.12.32-33: Doorkeepers are the same as porters (ianitor), who in the Old Testament were chosen to guard the Temple, lest someone unclean in any way should enter it. They are called doorkeepers (ostiarius) because they are present at the doors (ostium) of the Temple. 33. Keeping the key, they watch over everything inside and out, and making judgment between the good and the bad they receive the faithful and reject the unfaithful.

195 SALRACH, MONTAGUT, *Justícia,* doc. 498: *Ermengaudus, legis ac iuris lator sancteque Urgellensis ecclesie ostiarius et ianitor, hoc laudavi proprioque meo signo confirmavi (Senyal).*

196 SALRACH, MONTAGUT, *Justícia,* doc. 160: *Et adfrontata istas terra cum illorum arboribus qui sunt supranominati, similis vel disimilis, de parte orientem in via qui discurrit vel in terra de me vinditore, de meridie in ipsa fonte que dicunt de Valle Guadaldo sive in terra de Iohanne, prope ipsas mansiones, de hocci in terra de Iohanno vel de Elias vel in ipsa stepera vel in via, et de circi in terra de Helias vel in ipsa via qui pergit ante ianuas de Gonter.*

197 SALRACH, MONTAGUT, *Justícia,* doc. 287: […] *ipsam stratam qui transit ante portam predicti Petri, in Provincials, et alium semitarium, ad sinistram partem, qui transit iuxta ecclesiam Sancti Martini et transit per mediam villam de Provincials, quod proprii alodii et proprii iuris et dominationis sunt predicti Petri et Bonucii et Bonifilii, fratri sui predicti.*

198 SALRACH, MONTAGUT, *Justícia,* doc. 176: *Et ipsos domos cum ipso orto est in burgo, foris muros civitatis Barchinone, in terminio et locum que dicunt ad porta Regumiro.* […] *Que affrontat ipso casalicio cum sua pertinencia de circi in ipso exio comunalis qui est inter me et Goltredo, de aquilonis in ipsa via qui transit ante ipsa porta et pergit ubique, de meridie in curte de Imul femina, de occiduo in ipsa via consueta qui transit subtus ipsa mura.*

Gombau and Guisla sold a property near Torelló (Osona) to the Priest Donadéu and his son Ató and received two ounces of gold and a mule for it. They got this property because of a homicide committed by a man called Galí. To describe the property they use a typical description: *Through this scripture of sale we sell you our house with all fields, barren and cultivated, entrances (ianuas) and gates (ostios) and all the material and pits which there are as well as all the trees or grapevines that lie within, meadows and pastures, woods and bare-lands, gardens* etc.[199] It is a standardised formula used to describe land, sometimes modified by adding some characteristics of the property, like a mill, an irrigation system or domestic animals used on the land.[200] Within these descriptions gates and door could represent the property, sometimes even going from door to door.[201]

In a certain way, the door did not only represent the whole property but was also an integral part of it, as without doors a building cannot exist.[202] There are also several indicators that in Catalonia "the claim to the whole house was symbolically expressed at the door as its pars pro toto."[203] Doors, gates and windows were taken away violently from disputed property in conflicts from the 11th to the 13th Century in Catalonia, not only for the material gains of the hinges but also because of the symbolic meaning. Apart from being a site of passage, doors thus also represented the honour of the house or castle and its inhabitants. Castle-holders swore oaths to let their liege lords in if demanded and not allowing them to pass, therefore, would have been considered treason. Meanwhile, enforcing the right of accommodation (*alberga*) unjustly could be described as a stay *injuste infra portas.*[204]

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199 SALRACH, MONTAGUT, *Justícia*: doc. 219: *Per hac scriptura vindicionis nostre vindimus vobis casa [cum] curtes, solos et superpositos, hostios et ianuas et cum ipsa matheria et foveas que ibidem sunt et guttas et stillicinios et casales dextructos et terras et vineas cultas et ermas vel cum omnes arbores seu vitis que infra sunt, pratis et pascuis, silvis et garricis, ortis, ortalibus, petris petrarum, aquis aquarum, viaductibus vel reductibus et molinos molentes et sua usibilia quod ad ipsos molinos pertinet et cum ipsos mulnares cum regos et caput regos et cum ipsas callaricias et trilias.*

200 Comp. SALRACH, MONTAGUT, *Justícia,* doc. 417: *Sit etiam manifestum qualiter damus tibi domos nostras proprias, cum solis et suprapositis, cum omnibus ex omni parte gutis et stillicidiis, hostiis et ianuis, foveis atque cloacis, et universis ad easdem* […].

201 SALRACH, MONTAGUT, *Justícia,* doc. 123: […] *et pervenerunt per ipsa limite usque in ipso semitario que vadit ad Tapias, et reverterunt ante ipsa porta que fuit de Suniario* […] *et descenderunt inde super ipso perario usque ad ipso portello qui est in ipso aquale iuxta ipso orto de Gumarane.*

202 Isidor of Seville dedicated a small section (Entranceways – De aditibus) to entranceways only to continue to describe other parts of buildings in a separate chapter. BARNEY, *Etymologies*, XV.7.

203 For this notion, see: Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press), p. 71.

204 SALRACH, MONTAGUT, *Justícia,* doc. 443: […] *ipsam meam stacionem et usaticum quod ego facio et parentibus meis fecerunt iniuste infra portas predicti monasterii* […].

But already Visigothic law was concerned with the legal implications of those who take refuge in a church[205] and that no one should dare to force someone out of a church, unless perhaps the one who has taken refuge in the church wanted to defend himself with weapons.[206] This already included the church's porch (*porticus*) as a sacred space.[207]

The so-called *sagrera*[208] constituted a sacred space of thirty paces surrounding churches and cemeteries in Catalonia and Roussillon.[209] While the term is of Visigoth origin and appears in various councils held in the Visigothic Kingdom, the sacralisation of the church area, however, seemed only to be effective after the Peace and Truce of God Assemblies and most probably only from the 1030s onwards. Chronologically this would imply that the space in front of churches was already a space used for judicial assemblies beforehand and not vice versa.[210]

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205 LV IX.3: *De his qui ad eclesiam confugium faciunt.*

206 LV IX.3.1: *Ne ad eclesiam confugiens abstrahantur, nisi armis defensus. Nullus de aeclesia ausus sit aliquem violenter abstrahere, nisi ad aecclesiam confugiens armis se fortasse defendere voluerit.*

207 LV IX.3.2. *Si ad aeclesiam confugiens, dum suis armis defenditur, occidatur. Qui ad aeclesiae porticus confugerit et non deposuerit arma, quae tenuit, si fuerit occisus, percussor in loco sancto nullam fecerit iniuriam nec ullam calumpniam pertimescat.* LV IX.3.4: *Ut debitor sive reus de aecclesia non abstrahatur, sed quae sunt debita reddantur. Eos qui ad aeclesiam vel ad ecclesiae porticus confugerint, nullus contingere presummat, sed presbitero vel diacono repetat, ut reformet, et seu debitor sive reus qui confugerat, si meretur occidi, apud repetentem aecclesiae custos interveniat, ut ei veniam det et exoratus indulgeat.*

208 The word will be used as a technical term in this work as translations are misleading.

209 After the pioneer study by Sister Karen Kennelly that drew the attention of Bonassie on the matter, it is particularly the work of Ramon Martí i Castelló, Víctor Farías i Zurita that needs mentioning. For more literature, see: Kennelly, K. (1968), 'La paz de dios y la sagrera en el condado de Barcelona', *Anuario de Estudios Medievales*, 5: 107–136. Riu, M., and Valdepeñas Lozano, M. (1994), 'El espacio eclesiastico y la formación de las parroquias en la Cataluña de los siglos IX al XII', in M. Fixot and E. Zadora-Rio (eds.), *L'environnement des églises et la topographie religieuse des campagnes médiévales. Actes du IIIe congrès international d'archéologie médiévale (Aix-en-Provence, 28-30 septembre 1989)*, 57–67. Martí i Castelló, Ramon (1988), 'L'ensagrament: L'adveniment de les sagreres feudals.', *Faventia*, 10: 153–182. Martí i Castelló, Ramon (2007), 'L'ensagrerament: Utilitats d'un concepte', in Farías i Zurita, Víctor, Martí i Castelló, Ramon, and A. Catafau (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines), 85–204. Farías i Zurita, Víctor (1989), *La sacraria catalana: 950-1200.*: *Aspectos y modelos de un espacio social.* Farías i Zurita, Víctor (1993), 'La sagrera catalana (c. 1025 - c. 1200): Características y desarrollo de un tipo de asentamiento eclesial', *Studia historica. Historia medieval.*, 11: 81–121. Farías i Zurita, Víctor (1993-1994), 'Problemas cronológicos del movimiento de Paz y Tregua catalán del siglo XI.', *Acta historica et archaeologica mediaevalia*, 14-15: 9–37. Farías i Zurita, Víctor (2007), 'La proclamació de la pau i l'edificació dels cementiris. Sobre la difusió de les sagreres als bisbats de Barcelona i Girona (Segles XI-XIII)', in Farías i Zurita, Víctor, Martí i Castelló, Ramon, and A. Catafau (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines), 13–84. Mallorquí, E. (2009), 'Les celleres medievals de les terres de Girona.', *Quaderns de la selva*, 21: 117–148.

210 Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 80: Sin embargo, el afán por dar con la seguridad de la veracidad y la rectitud en Dios empuja a tomar el juramento a los testigos frente a los altares, y también a celebrar los juicios en las puertas de los

Meanings and symbolism thus overlap: spaces around churches were places of peace and truce. While the door represented the entrance to salvation, the churches as holy sites with the saints' relics residing inside also meant that the property belonged to the saint himself and that he was present, serving as a connection to salvation while protecting the community that came to worship. The place in front of the church was a place of transition but the several stages of approaching the church, from hearing the church bells and seeing the tower up to the moment of stepping onto the holy ground, all invite assembly.

Gathering in front of the church portal to discuss legal matters that had an impact on the local community seems ideal as it served as a perfect stage for trials. Already in a sacred area, but still outside of the inner sanctum, it allowed for certain dynamics that were otherwise impossible, while at the same time it permitted a large public attendance and the involvement of the audience. Resistance or acceptance of the courts decision could be displayed publicly, and witnesses could be interrogated while the reactions of the crowd were interpreted by the judges. To finally cross the threshold and step in front of the saint to testify one had spoken the truth was a solemn staged act followed by many eyes, as was the performance of an ordeal appealing to god's justice with the crowd in the background. Documents could be read and heard, performative acts could be seen by the attendees that themselves could become the centre of attention as eyewitnesses in later trials of the ceremonies they had witnessed, and were loaded with symbolic meanings and gestures. The intervention of prominent locals helped to reaffirm their status, while the tribunal, most probably positioned right in front of the entrance, was elevated through a visual background as well as an ideological one.

While the final step is outside the scope of our analysis it is appealing to suggest that the representation of the Last Judgement on the tympanums of church portals in the 12th Century finally translated the tradition of the legal function of the church door into visual language.[211] The Last Judgement not only served as a reminder of the

templos. La condición sagrada inherente, concordando cronológicamente con la expansión de las *sagreres*, difunde enormemente la práctica en todo tipo de causas; como ocurre, entre otros muchos ejemplos, en 1040 frente a la isglesia de Sant Boi de Llobregat para dirimir las diferencias entre el obispo de Barcelona y la señora de Cervelló por los diezmos, o como en 1065, frente al templo de Sant Sadurní de Castellví de La Marca, se juzga una inducción al adulterio.

211 For this notion, see: Deimling, B. (2016), 'The Courtroom. From Church Portal to Townhall', in W. Hartmann and K. Pennington (eds.), *The History of Courts and Procedure in Medieval Canon Law*, W. Hartmann and K. Pennington (Catholic University of America Press), p, 30–50. Martyn, G. (2019), 'Divine legitimation of judicial power and its iconographical impact in Western culture', *Humanities*

earthly judgement, which could meet regularly at this point, but was also a warning for the final one, the heavenly judgement, which everyone had to face and no one could escape.[212] At the same time, however, the representation was probably also intended as an incentive for the judges who sat there, mirroring what was about to come – not unlike the Twenty-Four Elders in the book of revelation[213] – and acting as a reminder to follow God's justice and not to be distracted by earthly temptations, and thus these representations are precursors of later courtroom decorations showing the Last Judgement.[214]

While hearings in the open were common during the whole time period covered here, so were courts and the tendency to move to the inside increased during the 11th Century, again, not unlike in other places in Europe.

and rights global network journal, 1/1, p. 246-255.

212 Usually the church and father combined Rom 14:10: For we will all stand before the judgment seat of God, and 2. Cor. 5:10: For all of us must appear before the judgment seat of Christ, so that each may receive recompense for what has been done in the body, whether good or evil. Comp.: Augustinus Enchiridion 29, 110 CCSL 46, p. 108.

213 Revel. 4:4.

214 Comp.: Troescher, G. (1939), 'Weltgerichtsbilder in Rathäusern und Gerichtsstätten', *Westdeutsches Jahrbuch für Kunstgeschichte: Wallraf-Richartz Jahrbuch*, 11: 139–214. For more literature, see: Edgerton, S. Y. (1980), 'Icons of Justice', *Past & Present*, 1980, p. 24.

IV.1.1.1.3. Interior Spaces as Places of Justice

Open to me the gates of righteousness, that I may enter through them
and give thanks to the Lord. This is the gate of the Lord;
the righteous shall enter through it.[215]

While hearings and assemblies were mostly held in front of the churches, agreements involving a smaller group of people could be reached extrajudicially *in ecclesia,*[216]**;** Guillem, the abbot of Santa Cecília de Montserrat presided over a case that achieved the settling of a local dispute in which the participants congregated at Santa Maria de Camps (*vero congregati sunt intus in ecclesia Sancte Virginis Marie*)[217] where a peaceful distribution of the inheritance was achieved *pro causa amoris* of the most noble men.[218] Local conflicts under the jurisdiction of the local representative of justice thus could indeed happen within the local church. The circumstances sometimes also shed light on why a certain locality was chosen, such as when Folc, bishop of Barcelona and the viscount regent of Cardona, made a donation and the act was celebrated *in ecclesiam Sancti Vincentii* in Cardona,[219] whereas only four other trials clearly took place *intus in ecclesia.*[220]

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215 Psalm, 118:19-20.

216 SALRACH, MONTAGUT, *Justícia,* doc. 248. […] *et post obitum iamdicto Lobeti petivimus iamdicta Grudel in ecclesia Sancti Iuliani que est fundatus in Villa Torta* […].

217 Santa Maria de Camps, SALRACH, MONTAGUT, *Justícia,* doc. 294: *Hii vero congregati sunt intus in ecclesia Sancte Virginis Marie locum scilicet Cancis in presentiam* […].

218 SALRACH, MONTAGUT, *Justícia,* doc. 294: *Nobilissimi viri predicti simul consilium dantes pro causa amoris ita dicentes quam primam partem de prenotato alodio predictus Marhus iudex in suo proprio possedisset ipse et eius successores, aliam secundam partem possidisset in suo iure iamdictus Reimundus, terciam autem partem possedisset predictus Audesindus dum viveret. Et post eius discessu equaliter dividant Marhus aud successoribus eius cum Reimundo Guilelmo predicto aud cum successoribus eius. Ipsi igitur istum consilium adquiescentes et inter se pacificantes et per hanc scripturam diffinientes ita ut si ex his aliquis disrumpere conaverit, libram auri illi componat in potestate de cuius iure hec scindere conaverit.*

219 Cardona, SALRACH, MONTAGUT, *Justícia,* doc. 539: *Facta donatione ista apud Gardonam, in ecclesiam Sancti Vincentii.* […].

220 Terrassa, SALRACH, MONTAGUT, *Justícia,* doc. 171 *In iuditio domni Raimundi comitis coniugisque eius Ermesindis comitisse, residentibus primatibus palatii Borrello, episcopo Ausonensi, Ugone Cervilionensi, Seniofredo Rio Rubensi, Bernardo Sancti Vincentii, Gilelmo Castro Vetulensi, Mirone Ostalensi, Gitardo, abbate Sancti Cucuphati, et aliorum nobilium sive ceterorum virorum ibidem assistencium, venit Deusdedit, Barchinonensis episcopus, intus in ecclesia Sancte Marie Egarensis petivitque* […]. Masquefa, Ibid. doc. 212: *Acta est audiencia in comitatu Barchinonensis, infra terminos castri Mazchefae, intus in aeclesia Beate Marie Virginis, assistentibus* […]. Sant Feliu Vilajuïga, Ibid. doc. 422: *Hactum est hoc in villa Cannelis. Factum est hoc iudicium intus in ecclesia Sancti Faelicis in Villa Iudaica*. BARAUT, «Els documents», IX, doc. 1392: *Et si in nulla de predictis sacrariis nec in ciminteriis evenerit feridonem nullius hominis illa ferma et placitum teneo ad fevum per vos, tamen si est intus ecclesia fermam et placitum est vestrum.*

However, assemblies and meetings have a tendency to move to the inside during the 11th Century and the beginning of the 12th Century.

Monastic communities and canons concentrated their legal activities at central places like the cloister, but slowly but surely professionalised their local premises to administer justice.[221] The cloister of Girona (*claustro*) was the place of legal acts like a definition on Maundy Thursday 1084[222], or a trial between the Bishop of Barcelona and the abbot of Sant Cugat in 1117 with the presence of the papal legate cardinal Bosó[223], and the head schoolmaster of the see of Girona dictates his will in the cloister of Sant Martí (Sacosta) on the 6th of October 1078.[224]

This puts forward the question of where exactly legal issues were discussed in the abbeys of Sant Miquel de Cuixà[225] or Sant Cugat[226] when the participants of trials came *in cenobium.* Certainly Alamany, the son of the late Hug of Cervelló, recognised the rights of the monastery of Sant Cugat over the old Church of Santa Creu at Cervelló in front of the altar in the presence of all the congregated monks and other men standing around him.[227] This show of recognition close to the relics, however, does not necessarily represent the place of the judicial assemblies. Cloisters surely continued to be in use as places of justice in the beginning of the 12th Century when a trial was held in the cloister of Santa Maria de Solsona on Wednesday 21st of June 1121.[228]

The see of Vic from the days of abbot Oliba onwards was demonstratively an epicentre of justice and administration. Plaintiffs travelled to the see of Vic to present

221 Literature regarding cloisters as places of justice are, at least to my knowledge, rather scarce, comp.: Albrecht, S. (2004), 'Der Kreuzgang als Gerichtsstätte', in P. K. Klein (ed.), *Mittelalterliche Kreuzgänge* (Regensburg), 27–9.

222 SALRACH, MONTAGUT, *Justícia,* doc. 449: *Acta sunt hæc V kalendas aprilis, scilicet die cene Domini, intus in claustro Gerundensi, in presentia Gerundensis cleri inferius prenotati et Bernardi de Fonoliariis et aliorum multorum tunc temporis presentium, anno XXIIII regnante rege Philip[po]*.

223 MARTÍ, *Oleguer, servent de les esglésies*..., doc. 35: *Hoc autem iuditium factum est in presentia venerabilis viri Bononis sancte romane ecclesie cardinalis atque legati a reverendissimis viris Berengario gerundensis, Raimundo ausonensis episcopis, Berengario Arnalli archidiacono de Cartillano, Petro Bernardi sagrista gerundensi in ipsa civitate Gerunde in claustro, anno ab incarnatione Domini MCXVII, VIIII kalendas maii.*

224 MALLORQUÍ, *Col·lecció*, doc. 56.

225 Sant Miquel de Cuixà, SALRACH, MONTAGUT, *Justícia,* doc. 215: *Stephanus Ysarni venit en coenobio Sancti Michaelis Coxanensis* […].

226 Sant Cugat de Vallès, SALRACH, MONTAGUT, *Justícia,* doc. 459: *Et venimus ad placitum in cenobium Sancti Cucuphatis* […].

227 SALRACH, MONTAGUT, *Justícia,* doc. 312: […] *et ante sacrosanctum altare, in presencia tocius congregacionis monachorum et aliorum circumastancium hoc munus obtulit* […].

228 Ed. RODRÍGUEZ, *Col·lecció,* doc. 342: […] *unde in claustro celsonensis ecclesie constitutum est placitum ibique a supradictis viris factis querimoniis et dato responso pidicatum est inde rectum iudicium.*

their complaints and trials clearly took place *in sancta sede Sancti Petri Vicho*[229] from 1022 onwards. As two other trials took place at the choir right in front of the main altar (*in coro scilicet ante altare*)[230] of the Cathedral (*in coro katedralis aeclesiae beatissimi apostolorum principis Petri*)[231] it seems reasonable to propose it as the most plausible place of justice when the sources speak of *in Sede Vico*, especially for bigger trials with a huge attendance. That also means that it was in use as a place of assembly even during its remodulation and construction under bishop Oliba (1018-1046, consecrated 1038).

Smaller and more private meetings did not necessarily take place in the cathedral though. For example, people close to the see were called upon, like Guifré Isarn of Savassona who presented himself in 1099 in the refectory of Sant Pere in Vic[232] because of an allod he retained unjustly.[233] Other assemblies took place *in palatio episcopali* next to the cathedral.[234] Therefore Vic had three distinct locations where legal activities could take place depending on the size of the meeting as well as other factors. The cases from Vic show that the place of a hearing or trial was adaptable and depended on the occasion, ranging from rather private assemblies up to big gatherings within the episcopal church.

Due to the collection of churches in Urgell being constructed, modified and consecrated during the 11th Century it is very hard to pinpoint where judicial assemblies actually took place.[235] The construction of the church of Sant Miguel started

229 SALRACH, MONTAGUT, *Justícia,* doc. 193: *Hec ratio omnibus catholicis manifesta sit qualiter Oliba, sacer de loco Orsalitano, detulit querelam in sede Vici Sancti Petri ante domnum Olibam presulem vel congregationem canonicalem iamdicte sede, sub ordinatione Guifredi iudicis,* […]. Ibid. doc. 225: *Sciant omnes Deum credentes quia motus est placit in Sede Vico inter cenobium Sancti Petri Kastrum Serres et Witardo Taravellense* […]. Ibid. doc. 245: *Patulum sit homnibus hominibus qualiter venit ante me placitum in sede Vicho* […]. Ibid. doc. 259: […] *in placito gudichum et seniorum in sancta sede Sancti Petri Vicho* [...].

230 SALRACH, MONTAGUT, *Justícia,* doc. 305: *Ego Guilelmus, iudex, et Arbertus, similiter iudex, Henricusque, monachus et iudex, volumus mandare memorie cunctorum tam presencium quam futurorum hominum qualiter actum est placitum non minimum in ecclesia Sancti Petri sedis Vici, in coro scilicet ante altare, inter dompnum Guilelmum, predicte sedis episcopum, et Reimundum Guilelmi et fratrem eius Reinardum,*

231 RODRÍGUEZ, *Col·lecció*, doc. 98: *Anno Dominice incarnationis XXXIII post millesimum regni siquidem Henrici regis Franciae III idibus octobris mensis II feria, in coro katedralis aeclesiae beatissimi apostolorum principis Petri, actum fuit magnissima audientia inter* […].

232 Probably in the 2018 discovered chapter house.

233 SALRACH, MONTAGUT, *Justícia,* doc. 538: *Ipse vero iamdictus Guifredus, audiens vocem Sancti Petri, venit intus in refectorio iamdicte Canonice et recognovit omnem illud alodium quod* […]

234 SALRACH, MONTAGUT, *Justícia,* doc. 234: *Statimque ille devotus implevit et taliter in episcopali palatio ante seniores et iudice prosecutus est responsum* […]. Ibid. *Dominice Incarnationis anno millesimo LXº VIº actum est placitum in villa Vici, in palatio episcopali, ante domnum Raimundum,* […].

235 For an overview, see: Carrero Santamaría, E. (2010), 'La Seu d'Urgell, el último conjunto de iglesias.

somewhere between 1021 and 1023; as Bishop Ermengol in his will recognised the church as one of his works in 1033, it was probably finished by then. The now neighbouring church of the cathedral dedicated to Saint Eulalia is cited for the first time in 1036, while the Church of the Holy Sepulcher was finished around the middle of the century, then right afterwards between 1055 and 1092 the church of Sant Pere, today south of the cathedral, was rebuilt. Given this scenario it is unclear where assemblies took place. Men recorded in the area for a trial as well as visiting counts came *intus in Sede Vico Sancte Marie*[236] or *ante alme Marie Sedis.*[237]

However, after the consecration of the cathedral dedicated to Saint Mary in 1040 it did not take long for the sources to be more specific where legal action took place. A certain Reinard presented himself at the see in 1043 for an allod he was accused of holding unjustly and in reference to the cathedral he came *intus in prefata ecclesia.*[238] One can speculate that a trial dating in the year 1067, which took place in Urgell, was probably also acted out inside of the Cathedral but exact locations for trials in this time period are uncertain (*et hoc placitum fuit in sede vico Urgelli*).[239]

However, this situation clearly changes from 1090 onwards when all kinds of legal activity took place *in capitulo Sancte Marie Urgellensis.*[240] It seems very likely that

Liturgia, paisaje urbano y arquitectura.', *Anuario de Estudios Medievales*, 40/1: 251–291.

236 SALRACH, MONTAGUT, *Justícia,* doc. 157: *Manifestum sit omnibus et plurimis cognitum qualiter venit Poncius, abba Sancti Saturnini cenobii Urgellenssis, in Sede Vico alme Marie ante domnum Ermengaudum episcopum in presentia nobilium virorum clericorum atque laicorum,* […]. Ibid. doc. 226: *Omnibus non habetur incognitum sed quibusnam patefactum, qualiter venit Ermengaudus Urgellensis comes et marchio, vir clarissimus, XVIIII anno Nativitatis sue in sede Sancte Marie Vico ad diem Nativitatis Domini Nostri Ihesu Christi cum obtimatibus suis*, […].

237 SALRACH, MONTAGUT, *Justícia,* doc. 253: *Anno V regnante Enricho rege. Dum residerat domnus Ermengaudus comes ante alme Marie Sedis venerunt ante eum canonici Sancte Marie et ibi querelam fecerunt de omine nomine Udalard quod* […].

238 SALRACH, MONTAGUT, *Justícia,* doc. 283: *In Christi nomine. Notum sit omnibus hominibus quia venit Reinardus ante alme Marie Sedis intus in prefata ecclesia et pecierunt illud canonici iam dicte ecclesie ante domno Guillelmo episcopo* […]. Probably the first meeting also took place in the episcopal church. Ibid. doc. 301: *Notescant cunctis fidelibus qualia venit Eriman ad tempus constitutum mortis sue, intus in Sede Vico Sancte Marie iussit venire ante se Isarno prolis Sesgod et Miro Geirucio et Poncio sacer et alios quamplures et iussit, ut* […]. *Ut autem audivit Archimballus venit cum sua proclamosa querela ante seniori prephati Arnalli nomine Guilabert, et venerunt Guilabert et Arnallo et Seniofredo et alios quamplures eorum milites ad placitum in Sede Vico ante Guillelmo proli Bernardo archilevita et Bernardo proli Wilelmo vice comite et Guillelm Ardman et aliorum bonorum hominum, et iudicaverunt ut dedisset Archimballus ipsas provas iam iudicatas.*

239 SALRACH, MONTAGUT, *Justícia,* doc. 375: *Notescant cuncti ex primatis palacii, magna parvaque persona, qualiter querelavit se Guillelmus proli Geralli de domno Guillelmo episcopo de ipso kastro quem vocant Villa Maiore quod iniuste tenebat eum et debebat esse suum directum per voces parentorum suorum, et hoc placitum fuit in sede vico Urgelli in presentia Bernardi iudicis Sallani.*

240 SALRACH, MONTAGUT, *Justícia,* doc. 481: *Post spacia vero dierum trium venit ante nos prelibatus Guilelmus in capitulo Sancte Marie quo interfuimus nos omnes clerici aliique boni laici viri, videlicet* […]. PUIG, *El monestir de Gerri*, doc. 91: *In nomine Domini. Ego Odo gratia Dei Urgellensis episcopus residens in capitulo Sancte Marie Urgellensis Sedis, cum cannonicis et archidiachonibus eiusdem sedis,*

non-specified legal action also took place at the chapter, it being the under the recognition of castle tenure,[241] including donations and evacuations done by counts[242] or concessions of rights.[243]

At the end of the 11th century, the bishops of Urgell summoned their men and acted as feudal lords, but the proceedings were just as accessible for others as well and the initiatives of the local magnates presenting themselves independently were always positively evaluated in the documents. However, this does not mean that the bishops were not mobile within their jurisdiction and this mobility had to be secured in terms of infrastructure. This is particularly noticeable in regions where the bishops were often active because of possessions of the episcopal see, for example in Sanaüja where in the year 1052 the Bishop of Urgell put forward a case against the window named Adelaida which took place at the *domo pontificali* at Sanaüja.[244]

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cum consilio et voluntate eorum, reddo et concedo Sancte Marie Gerrensis cenobii, […]. BARAUT, «Els documents», IX, doc. 1265: Seu d'Urgell *Idcirco ego Tedioballus, volens pergere Iherusalem, predicti clerici vocaverunt me ad capitulum et fecerunt mihi querelam de iamdicta parrochia ut reddidissem illam Sancte Marie eiusque canonice*. MARTÍ, *Oleguer, servent de les esglésies*..., doc. 59: *Tandem vero intuitu concordie et pacis in presentia dompni archiepiscopi Ollegarii et venerabilis gerundensis episcopi Berengarii in ipso capitulo Barchinonensi definitum est ut* […]. BARAUT, «Els documents», IX, doc. 1383: [...] *cum comitisa uxor mea nomine Arsen venimus in capitulum Sancte Marie Sedis et ibi in manu domni Petri episcopi et clericorum Beate Marie*, […]. BARAUT, «Els documents», IX, doc. 1423: *in capitulo Sancte Marie Sedis habuit placitum cum Berengario Guilelmi de Bescharan* […]. BARAUT, *Els documents*, IX, doc. 1424. […] *venit Ermengaudus, gratia Dei comes Urgellensis, ad Sanctam Mariam Sedis et ibi, in manu dompni Petri episcopi et clericorum beate Marie in capitulo, recognoscit se de malefactis quas contra voluntatem Dei et Sancte Marie in multis causis iniuste egerat.* BARAUT, «Els documents», IX, doc. 1432. *Notum sit omnibus hominibus presentibus atque futuris, quod ego Ermengaudus et mulier mea nomine Poncia et Reimundus et Arnallus filios nostros venimus in capitulum Sancte Marie Sedis ad festivitatem Sancti Ermengaudi et ante presentiam domini Petri episcopi* […]. BARAUT, «Els documents», IX, doc. 1433: […] *et mandavit eis placitum ad diem sufficientem in capitulo Beate Marie et ipsi noluerunt tendere ad ipsum diem nec facere directum,* […]. BARAUT, «Els documents», IX, doc. 1458: […] *et hoc fecimus et iuramus vobis hoc super quatuor evengelia in capitulo Sancte Marie in manu domni Petri episcopi urgellensis et coram plurimorum clericorum eiusdem Sedis presencia.*

241 Bernat Ramon de Maçanet came to Santa Maria de la Seu d'Urgell acknowledging that his maternal uncle had donated the castle of Castellet as a remedy for his soul to this canonry and acknowledges that he owned the castle unjustly; he and his soldiers gave it back to the see and received it back from the bishop as a fief. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 547: *Omnibus notum sit hominibus qualiter ego Bernardus Raimundi de Mazaned veni ad Sanctam Mariam sedis Urgelli recognoscens quomodo avunculus meus dimisit pro anima sua castrum* […].

242 When count Ermengol VI of Urgell in 1116 evacuated the lordship and dominion of the monasteries of Sant Sadurní deTavèrnoles and Santa Cecília d'Elins to Santa Maria de la Seu d'Urgell BARAUT, «Els documents», IX, doc. 1293: *Notum sit omnibus fidelibus ad quorum aures hec scribtura pervenerit, quatenus Ermengaudus comes, Sedem Urgelli adveniens, reatum suum suorumque parentum sensit quod contra Dei precepta ecclesias Dei ausi sunt suo sibi dominio retinere.*

243 In 1123, after a complaint filed by the see, Pere Guillem de Fontanes granted and defined all his rights and everything he had in the town of Aiguatèbia and at the church of Sant Feliu in favour of the canonry. BARAUT, «Els documents», IX, doc. 1363: *Actum est hoc in prefata Sede in anno ab Incarnatione Domini nostri Ihesu Christi C° XX° Ii° post millesimum, XIIII kalendas marcii*.

244 SALRACH, MONTAGUT, *Justícia,* doc. 309: *Fuit autem hoc placitum in Sanauga videlicet intus in domo pontificali.*

There is no doubt that in the case of Barcelona the bishop conducted legal business *in episcopali domo* in 1061 before the construction of the episcopal palace.[245] At the turn of the millennium legal quarrels were brought forward *in domum Sancte Crucis,* the existing cathedral,[246] while roughly a hundred years later, like in Urgell, the designation changed to *in capitulo sedis* as a kind of standard description.[247]

In regards to the comital courts each count within the territory of his county held the county's own court, that being more or less influential depending on the political, social and economic capabilities.[248] While some of these courts were stable and straightforward for our modern understanding of how a court should function, others had a more flexible outlook and an itinerary character.

Upon first look the court of Barcelona produced the most documentation that references a "court" and therefore can be the most clearly defined, while less documentation is available for the smaller counties.

Also the vocabulary used in the legal documentation referencing the comital court of Barcelona does so in a clear manner using a style that fits with our modern conception of a courtroom with *multi* [...] *optimates,*[249] residing in a *comitali palacio*[250] in a *potentum coortem*.[251]

245 The property where the episcopal palace would be constructed in the future was bought 17 years later in 1078. Mària i Serrano, M., and Minguell i Font, J. C. (2010), 'The Bishop's Palace of Barcelona: architectural chronology of a building of twenty centuries of history', *locus*, 10, p. 65. For the documentation up to the year 1058, see: Vergés Trias, M., and Vinyoles Vidal, T. M. (2000), 'De la Seu de Frodoí a la Catedral romànica de Barcelona', *Boletín de la Real Academia de Buenas Letras de Barcelona*, 47: 9–49. SALRACH, MONTAGUT, *Justícia,* doc. 342: *Pactum securitatis, definicionis atque evacuacionis gratanter Barchinone in episcopali domo perhactum inter Remundum Senfredi et Guifredum clericum, eius fratrem.*

246 SALRACH, MONTAGUT, *Justícia,* doc. 127: [...] *intus in civitate Barchinona, in domum Sancte Crucis.*

247 SALRACH, MONTAGUT, *Justícia,* doc. 528: *Et hoc fecit et iussit iam dictus comes in capitulo sedis Barchinone*, […].

248 For more literature, see: Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10, p. 9–10.

249 SALRACH, MONTAGUT, *Justícia,* doc. 153/155: […] *cum documenta vel voces Beati Cucufati, et detulit querimoniam in Barchinona civitate, in palacio, quoram iam dictum principem suamque coniugem, ubi multi interfuerunt optimates et pontifices hii:* […].

250 SALRACH, MONTAGUT, *Justícia,* doc. 169: […] *intus in civitate Barchinona, in comitali palacio,* […].

251 SALRACH, MONTAGUT, *Justícia,* doc. 162: *Et nos ut hec audivimus, presti fuimus illis stare ad iustitiam ante nostram potentum coortem iudicumque instantiam.* Ibid. doc. 462: [...], *et propter hoc fuit iudicium in ipsa corte de nominato episcopo et de nominato comite* […]. *In iuditio domna Herminsindis, comitissa, et suos iudices, id est, Guifredum, Aurutium, Bonumhominem, intus in comitalem palatium, in civitatem Barchinonam, et in presentia Hudalardi vicecomitis ac universam coortem palatii seu adsistentia potentum atque nobilium virorum qui ibidem adherant.*

Even with a warden or caretaker of the palace (*custus palatii*),[252] probably of less importance than described by Hinkmar of Reims in the 9th Century[253] but together with Sendred as *custus monete,*[254] the documentation still shows the organisational depths of the court. However the legal competence of the judges of Barcelona is unquestionably the most remarkable testimony to the importance of the court of Barcelona. Font i Rius went so far as to speak of a "law school of Barcelona"[255] culminating in Ponç Bonfill Marc describing himself as *iudex palacii.*[256]

But the early dates counts were not stationary, and when on the move the counts were travelling with their entourage, so an "innumerable faithful crowd namely from both sexes and an abundant multitude from the palace" accompanied them.[257] Judicial assemblies were clearly held in the comital *palatium*[258] and there is no doubt that the most significant centre of justice around the turn of the millennium was the court of the counts of Barcelona.[259]

252 A certain Queruç in 1001 accompanied the judge Oruç to the church of Santa Maria de Cornellà for legal business and he is not only addressed within the document as *palacii custus* but also signs with that title. SALRACH, MONTAGUT, *Justícia,* doc. 141: […] *ante Auritio iudice et Aerutio, palacii custus* […]. S+*num Cherutius, palacii custus*. He is mentioned already in 985 and appears again in 1008. Ainaud de Lasarte, J., Gudiol, J. J., and Verrié, F. P. (1947), *La Ciudad de Barcelona*: *Catálogo monumental de España*, p.16. In a sales charter dating in the year 1000 the judge Oruç testifies next to *Recosindus custos comitis*. FELIU, SALRACH, *Els pergamins*, doc. 46: *Sig+num Aurucio iudice presbiter. Sig+num Ennego, cognomento Bonefilio. Sig+num Cherucius procurator. Sign+um Recosindus custos comitis.* For Oruç, see: Font i Rius, Josep Maria (2003), 'L'escola jurídica de Barcelona', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 78-82.

253 HINCMARUS REMENSIS, *De Ordine Palatii*, p. 62, 69, 88.

254 SALRACH, MONTAGUT, *Justícia,* doc. 112.

255 Font i Rius, Josep Maria (2003), 'L'escola jurídica de Barcelona', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 69–100. For a more detailed analysis of the judges and their function within the legal proceedings, see. p.

256 SALRACH, MONTAGUT, *Justícia,* doc. 223: *Igitur ego Bonusfilius Marci, iudex palacii, quomodo terminum causa accepit,* […].

257 SALRACH, MONTAGUT, *Justícia,* doc. 129: [...] innumera caterva fidelium utriusque sexus scilicet et ex palatinis copia multitudo […].

258 For its location and dimension, see: Beltrán de Heredia Bercero, Julia (2013), 'Barcino, de colònia romana a sede regia visigoda, medina islàmica i ciutat comtal: una urbs en transformació.', *Quarhis*, 9: 16–118.

259 SALRACH, MONTAGUT, *Justícia,* doc. 138: […] *coram prelibata comitissa vel ante prefato vicecomite et iudices* […]. Ibid. doc. 161: […] *intus in palatium Barchinone civitatis.* Ibid. doc. 340: *Et hoc fuit factum in palatio Barchinone coram* […]. Ibid. doc. 211: *Cum hec factum fuit hoc obligatio inquisierunt omnes viros qui erant quoadunati intus in ipso palatio comitale, intus in Barchinona civitate, sicut superius inserti sunt omnes illorum certitudines tam pro scripturis quam pro testimoniis vel per omnes voces veritatis.* […] *Cum hec professi fuerunt predicti viri, sicut superius scriptum est, et vidit se victum ad sua fallacia noluit recipere ipsos testes et abstraxit se de ipso placito.*

During the 11th century the counts of Conflent and Cerdanya held their court in *in palacio Corneliani*, today's Cornellà de Conflent,[260] while the centre of administration of the county of Besalú was situated at the homonymous city defined by contemporaries as a *castrum*.

Besalú serves as an excellent example of continuous use, from the tumultuous revolt of 957 to the death of Miró Bonfill (984) up to the assimilation of the county in 1111 to the house of Barcelona.[261] With sufficient infrastructure to host church councils[262] the fortified city Besalú maintained its position as a place of justice. The exact location where trials or assemblies took place cannot be determined for certain as the sources mostly use the term *in castro* but we know that in at least one case the oath-taking took place *in domum Sancti Ioannis iusta castro Bisulduno*,[263] making it feasible to assume that the court was held some place in Besalú that was commonly known and needed no further explanation.

The strict tie between city and county is clearly expressed for the count of Empúries, who outside of his county could even be described as *comitem urbe Impurias.*[264] However, it was most probably Hug II of Empúries that changed their main residence from today's Sant Martí d'Empúries to Castelló d'Empúries, which became,

260 SALRACH, MONTAGUT, *Justícia,* doc. 297: *Notum sit omnibus presentibus atque futuris qualiter fuit domnus Raimundus, gracia Dei comes, in palacio Corneliani, et ante eum congregatam universam suam cohortem, id est,* […]. Ibid. doc. 341: *Quapropter in Corneliano elegit predictus comes Raimundus iudices inter se et vicecomite qui hoc iuste iudicassent, id sunt* […].

261 SALRACH, MONTAGUT, *Justícia,* doc. 76: *Anno Trabeationis [Christi] DCCCCº Lº VIIº, anno tertio regnante Lothario rege, dum sederemego Wifredus comis in castro Bisulduno, II nonas augusti, venerunt ante me monachi Sancte Marie Riopollensis per iussionem Arnulphi episcopi vel abbatis, et reclamaverunt alodem quod donavit Wifredus quondam ad domum Sancte Marie Riopollensis*. Ibid. doc. 91: *In istorum supradictorum iudicio in castro Bisulduno,* […]. Ibid. doc. 146: *Quare ego Sonifredus iudex et Willelmus et Senderedus iudices imperante Bernardo gratia Dei comite scripturæ notitia statuimus qualiter modo venit Odo episcopus sedis Sanctæ Mariae Gerundensis ecclesiæ una cum suorum caterva clericorum in castrum Bisullunum ante suprascriptum comitem ante suosque regni proceres,* […]. Ibid. doc. 149: *In istorum namque supra dictorum presencia veniens Oddo, episcopus Sanctæ sedis Mariæ Gerundensis aeclesiae, cum suis clericis in kastro Bisulduno, ante predicto comite vel iudices supra scriptos. Inter multas alias querelas querelavit se de parrohechias de Torteliano et de Argelagario et de ipsas aeclesias qui in iam dictas villas sunt fundatas in honore Sanctæ Mariae.* Ibid. doc. 175: *Quod a domnico debet servire suprascriptas terras cum iamdicta vinea, et dederunt exinde fideiussores in castro Bisulduno ante Bernardo comite, quid ipsi dominici probassent suprascriptas terras pro domnico, et si hoc non poterant probare, recepissent ipsa testimonia, quod profert suprascriptus Sendret et Guadamir.* Ibid. doc. 326: *Pateat omnes tam presentis quam futuris quali[bet] venit Guilielmus comes in Bisilduno ante suos homines*, […].

262 SALRACH, MONTAGUT, *Justícia,* doc. 416: *Ideoque concilium quod Gifredus archiepiscopus dictus turbavit Gerunde suscepi VIII idus decembris in castrum meum Bisundunum ut ibi predictus legatus libera voce preciperet et precipiendo excommunicaret quod secundum canones excommunicandum erat.*

263 SALRACH, MONTAGUT, *Justícia,* doc. 90: *Et invenimus in eos mendacium et falcitatem, et iamdictum Suniarium noluit venire ad consultum iudicium in castro Bisilduno et sic se substraxit fraudulenter de iamdicto placito pro iamdicto filio suo.* […] *in domum Sancti Ioannis iusta castro Bisulduno* […].

264 SALRACH, MONTAGUT, *Justícia,* doc. 211: […] *in presencia domno Ugonem, comitem urbe Impurias* […].

so to speak, the new capital. In both places the churches, Sant Martí d'Empúries[265] and Santa Maria de Castelló[266] respectively, played a central role as places of justice.

While the long-lasting tradition of comital courts seems logical for Catalonia if compared with other regions in Europe, it becomes clear that this is not an imperative development. The charter material from northern Italy, for example, also allows one to pinpoint the places of assembly and trials, and if one compares the two regions it becomes clear that fundamental changes of places of justice could indeed have occurred, as in Italy at the end of the 10th Century legal assemblies could happen within houses of local powerful aristocrats and justice was, from time to time, even administered at the homes of judges.[267] Catalan judges were mobile but one rarely sees them act in private homes.[268] As far as I am aware even judicial decisions that would be coined extrajudicial today happened in the public sphere, meaning at churches or other places where justice was traditionally administered.

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265 The first notion of the importance of the church of Sant Martí are the *condiciones sacramentorum* and consequently the oath-taking took place inside of the church, nevertheless, as the counts resided *in civitate Impurias* the specific assembly place is not clear. SALRACH, MONTAGUT, *Justícia,* doc. 6: [...] *et per reliquias sancti Martini confessoris cuius basilica sita esse dignoscitur infra muros Empurias civitate* […]. Ibid. doc. 7: *Sedebant enim in Impurias civitate, in mallo publico, pro multorum causis ad audiendum et rectis et iustis iudiciis diffiniendum* […]. Ibid. doc. 77: *Dum resideret Gauzfredus, gratia Dei comes, in civitate Impurias, pariter cum Ennegone vicecomite*, […].

266 For certain a trial with the presence of the court took place in *villam Castilionis* in 1080 but the wording *placitum* […] *constitutum apud ecclesiam* of a trial dating to the year 1092, with the general notion of trials in front of churches in mind, makes it probable that the square in front of the church in Castelló d'Empúries was the place designated for trials. SALRACH, MONTAGUT, *Justícia,* doc. 429: *Presentibus sit notum et futuris non fiat incognitum qualiter venit homo nomine Elisiarius coram domino Ugoni comiti in villam Castilionis coram plurimis magnatibus atque iudicibus subterius scripti,* […]. Ibid.: 501: *Hoc quidem placitum fuit XV dies constitutum apud ecclesiam Santae Mariae villae Castilionis, praesentibus scilicet Berengario,* […].

267 Keller, H. (1969), 'Der Gerichtsort in oberitalienischen und toskanischen Städten. Untersuchungen zur Stellung der Stadt im Herrschaftssystem des Regnum Italicum vom 9. bis 11. Jahrhundert', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 49: 1–72.

268 The exceptions I am aware of are three. A short charter dating in the year 1066 was drafted in the house of Heribald, next to the belltower in Vic in which the levite Miró, together with a certain Bernat and Pere declared that they saw and heard that a document had been read aloud and was signed by Folc in court, in which he ceded to Guillem Oliba the rights that he had possessed over an allod in the parish of Sant Pere de Savassona. SALRACH, MONTAGUT, *Justícia,* doc. 370: [...] *et hoc fuit factum in mansione Heriballi ad clocharium Vici.* The second is a charter in which Ponç Bernat defines and evacuates some rights to Arnau Seniofred in his house. Ibid.: 524: *Et hoc fuit factum intus in domo Arnalli in presencia Raimundi Guiberti et Petri caput scole et Berengarii de Artes et Fulco Guielmi et Ermonguodi Seniofredi et Petri Bonefilii et aliorum multorum, V°X die kalendas iuni, in anno XXXVII regni Philipi.* On the 24th of April 1131 after a trial at the farmhouse Coll the archdeacon of Besalú, Gausfred, pronounced a sentence in favour of Sant Cebrià de Pujarnol. CONSTANS, *Diplomatari*, II, doc. 134: *[...] diffinitionis atque evacuationis que est facta inter aecclesiam Sancti Cipriani de Podio Arnulfo et aecclesiam Sancti Martini de Biert et milites de [...] Berengarium [...] decimis ipsius mansi de Colls quem inhabitat Adalbertus Vives ex quibus magna erat contentio inter predictas aecclesias et milites prefatos qui per vocem parochie aecclesie de Biert [...] ideoque convenere in locum vocatum videlicet collum Gaucefredus bisuldunensis archelevita et Berengarius Rotballi de Roca Curva et filius eius Berengarius et Adalbertus Vives [...] ab [...] parte [...] audite raciones.*

As mentioned above, any place could become a place of assembly but traditions in Catalonia were strong and centres of administration of justice were very stable. It was the construction of a new, more representative building close to the old one that dominated the picture rather than a complete change of the *mis-en-scène*.

However, there was space for innovation as the increased construction of castles and their status as administrative centres is reflected in the fact that more castles became places of legal activities and eventually trials. It can be seen as a slow but steady development that starts in the middle of the 11th Century, becoming more visible during the end of the century and finally becomes quite common in the 12th Century.[269]

In the first half of the 11th Century castles served as places to meet while the actual judicial assemblies still took place at the nearby churches. So when on all Saints' Day in 1024 Ermengol of Urgell appeared to claim from Duran, abbot of Santa Cecília d'Elins, the church of Cortiuda and the tithes and first fruits (*primicias*) of Castellbò, the gathered people explicitly resided in the castle Ponts while the actual judicial act took place at the nearby church of Sant Pere de Ponts.[270]

Like in the case of Besalú some fortifications received the term *castrum.* In a trial presided by Guillem de Balsareny, bishop of Vic, and Guislabert I, bishop of Barcelona, in which both were presiding over the tribunal as equals, judging a litigation between count Ramon Berenguer I of Barcelona and Artau Guadall regarding the possession of

269 The term *Incastellamento* coined by Pierre Toubert in studying central Italy (the region around Lazio), was adapted for Catalonia to describe the process of erecting and fortifying castles as centres of administration especially in the process of conquering new territory. Comp.: Marazzi, Federico (1995): El «Incastellamento» veinte años después: Observaciones de la generación post-toubertiana. In: *Studia historica. Historia medieval.* 13, S. 187–198. Sabaté i Curull, Flocel (1998), 'La castralització de l'espai en l'estructuració d'un territori conquerit (Urgell, Pla d'Urgell, Garrigues i Segriá)', *Urtx: revista cultural de l'Urgell*, 11: 7–40. Ferrer i Mallol, Maria Teresa (2001), 'La organización militar en Cataluña en la edad media', *Revista de historia militar*, Extra 1: 119–222. Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 33-40. Robert Fossier used a more distinguished approach, using the term *Encellulement* to describe the phenomena. Fossier, R. (1989), *Enfance de l'Europe*: *Xe-XIIe siècles : aspects économiques et sociaux* (Nouvelle Clio, 17; 2e éd, Paris: Presses Universitaires de France).

270 SALRACH, MONTAGUT, *Justícia,* doc. 207: [...] *residente multitudine coetu ex equitum quam et aliorum hominum in castro scilicet Pontibus comitatu Orgellitano. Quorum quidem audientiam adiens religiosissimus Ermengaudus Urgellitanus episcopus, per Seniofreddum, presbiterum sacriscriniarium sue ecclesie predicte atque assertorem suum, scriptis legalibus institutum, in ecclesia Beati Petri Apostoli petivit Durandum, quendam abbatem Sancte Cecilie cenobii Elinsitensis, eo quod iniuste tenebat per ius sue ecclesie ipsam ecclesiam de Curticita cum ipsa parroechia et ipsas decimas et primicias de Castellono.*

the castle of Begur, the trial took place at the *castro gerundela*, a fortification today known as Torre Gironella which is right behind the cathedral of Girona.[271]

However, the first court resolution taking place at a castle as a separated, lone-standing fortification must have happened sometime between 1081 and 1090[272] at the castle of Enviny, where Count Artau II of Pallars Sobirà, together with his brother Ot, his uncle Ramon Guillem and his mother, Countess Llúcia, in the presence of good men resolved a local dispute about vineyards.[273]

In the beginning of the 12th century castles became centres of legal activities to the point where the provost of Santa Maria de Solsona, Ramon Guitart, travelled to castles promulgating inheritance claims[274] or to file complaints,[275] while evacuation charters were signed[276] and peace agreements were also reached at castles.[277]

Eventually trials would also take place in castles,[278] however the necessity for swearing oaths *super altari* may be seen as the main reason that, even when more and

271 SALRACH, MONTAGUT, *Justícia,* doc. 310: *Nos Guilelmus, Ausonensis episcopus, et Guilabertus, Barchinonensis episcopus, pariter iudicavimus in castro Gerundela ut si verum esset quod Artallus Guadalli sic iurasset a destrun Remundo comiti, sicut comes dicebat, sicut postea verum esse vidimus et audivimus.* […] *Huic iuditio et placito interfuerunt in predicto castro de Gerundela, coram predicto comite* […].

272 The resolution must have taken place somewhere between the beginning of the government of Count Artau II (1081) and the will of the Countess Llúcia (1090), who disappears from the documentation after dictating her will, see: PUIG, *El monestir de Gerri*, doc. 43

273 SALRACH, MONTAGUT, *Justícia,* doc. 487 *In iudicio Artalli comiti seu et Otone frater eius, et Regemundo Guillelmi avunculus eius, seu et Lucia comitissa mater eius, et aliorum bonorum hominum qui ibidem aderant in castro Envecinio* […] *Et propter hoc supra scriptum, ego Ademar et uxor mea Orovida, in presentia de prefato comite et fratre suo Otone et matre sua Lucia et aliorum militum et rusticorum qui in prefatum castrum aderant, rogavimus istum scriptum facere, ut teneamus tantum prescriptas vineas* […].

274 Castell d'Ivorra, BACH, *Diplomatari*, doc. 187: *Sic venit Raimundus, prepositus Sancte Marie Celsone, cum aliis canonicis in castrum Ivorre clamantes hereditatem sive omnia alaudia quod dimisit Ermeniardis Sancte Marie de Ivorra.*

275 Castell de Guissona, BACH, *Diplomatari*, doc. 169: *Ego Raimundus Guitardi, prepositus Celsonensis ecclesie, et Carbo et Babot simul abuimus querimonias de alodiis qui fuerunt homine nomine Guilelmus Reimundi, ante conspectu itaque Urgellensis comite Ermengaudi pariter fuimus in chastrum Gessone*.

276 Castell d'Ossera, BARAUT, «Els documents», IX, doc. 1333: *Facta est hec evacuacio in castro quod vocatur Horsera.*

277 Castell de Sales, MARQUÈS, *Cartoral de Carlemany*, doc. 249: *[H]ec est pacificationis et concordacionis scriptura que facta est inter Berengarium, Gerundensem episcopum, et Gaucerandum de Salis et Bernardum de Salis et Bernardum Iohannis, fratrem eius, intus in ipso castro de Salis*, […].

278 In 1126, at the castle of Navès BACH, *Diplomatari*, doc. 202: *In presencia Bernardi Guifredi castellani et Berengarii sacerdotis et Girberti baiuli et Raimundi Adalberti et Guilelmi Mironis, venerabilis prepositus Sancte Marie Celsone, cum aliis canonicis eiusdem loci, in kastrum de Navaedes, et tenuerunt placitum cum Raimundo Mironi.* The romanic predecessor of Santa Margarida de Navès was probably already available. In 1138, at the castle or fortified town of Salàs de Pallars. PUIG, *El monestir de Gerri*, doc. 126: *In placito ubi residebat domnus Artaldus, comes Paliarensis, et in presentia Geraldi archidiachoni sedis Urgellensis, et Benedicti abbatis Sancti Saturnini, et Mironis Guerrata de Bellaria, et Guilelmi Raimundo de castro Gallinarii, et Arnalldi Petri de Malomercato, et Girberti Olivarii, et Raimundi Mironis de Bellaria, et Amati de Pezonada, et aliorum militum atque nobilium virorum, XII° kalendas marci in castro Salass.*

more local trials actually were held at castles, if a church was nearby or even available within the premise of the castle[279] all records indicate that it was still the preferred location for trials to be held.[280]

In general, the development from open places to enclosures and courtrooms with a roof becomes clear; trials moved inwards into chapters, churches and palaces. The establishing of centres for the administration of justice allowed it to assume a more stable environment, and also explains why more and more people directly headed toward the magnates to try to get legal issues solved there. However trials still had to be dynamic, certain issues still had to be solved *in situ* and the establishment of local administrators of justice consequently came hand in hand with these changes.

Modern conceptions of courtrooms are not applicable to most assemblies from Catalonia where the *gloriosissimo palatio*[281] of the counts of Barcelona was the exception rather than the rule, as most meetings took place under the open sky, in front of churches, cloisters and the like. Even if an argument can be made that many churches were indeed small and that it would have been hard to fit in a crowd, especially if the legal confrontation involved two magnates and their entourage plus the locals, the evidence suggests that there was more to it than just a question of space.

The selection of a place and date were conscious decisions with meanings attached to them. A document defined as a *Notitia* dating on Tuesday the 18th of December 993 defining the limits of a property for the abbot of Santa Maria of Arles shows that they were also practical. As plenty of time was needed the community met at daybreak (*diluculum*), *in situ*, in front of the Church of Sant Martí de Forques to have

279 So at the castle of Calaf in 1093. SALRACH, MONTAGUT, *Justícia,* doc. 505: *Propter hoc diu placitantes et altercantes venerunt in castrum Calaph* […]. *«Iuramus nos iamdicti testes super altari Sancti Petri Apostoli ecclesia cernitur constructa in castro de villa Calaph, quod vidimus et audivimus kastrum de Eligno cum suis terminis et mansum de Cotugno cum suis pertinentiis, tenere et habere Sancto Vincentio Cardone et suis hominibus ad suum proprium alaudium per testationem Olivarii et donationem Maiassendis femine»*

280 Sanaüja, BACH, *Diplomatari*, doc. 145: Unde *domnus Oto episcopus et Celsonenses clerici, videlicet Raimundus Guitardi.* […] *statuentes placitum cum supra dicto Petro et suis fratribus in locum quod ante castrum Sanaugie vocant Sancta Maria ad Planum* […]. Sant Pau de Claret (els Plans de Sió) BARAUT, «Els documents», IX, doc. 1416: *Et hoc placitum fuit factum in castro Claret ad hostium ecclesie Sancti Pauli in manu Bernardi Poncii prepositi, in conspectu Poncii archidiaconi et Bernardi Gauzberti et aliorum multorum hominum qui ibi aderant, tam militum quam rusticorum.*

281 SALRACH, MONTAGUT, *Justícia,* doc. 112: [...] *in cuius gloriosissimo palatio, intus in civitate Barchinnona, residebant* […].

the whole day to conduct the delimitation of property and the swearing of the oath of the witnesses.[282]

For the most part we don't know the exact time of the day when judicial assemblies or legal activities started, but in most cases it was in the early morning hours.[283] The image of the rising sun, the entryway to heaven[284] showing up in the dawning hour of the day right before trial as a metaphor of salvation must have had an impact; the question is if this was emphasised by the deliberate choice of time.[285]

As important as the place was, the date and the time for a trial are also crucial, and the following chapter therefore examines the impact of time on the decision-making process of the judges, under which criteria they selected specific days for the assemblies, and when they took place.

282 SALRACH, MONTAGUT, *Justícia,* doc. 123: *Et fuerunt summo diluculo congregati ante ecclesiam Sancti Martini, qui situs esse videtur in sepe iamdicto alode Tordarias.*

283 SALRACH, MONTAGUT, *Justícia,* doc. 220 […] *pro hoc in ira non elevatus mutavit ei placitum usque in crastinum* […]. Ibid. doc. 228: *Et circa oram terciam predicto die sabbati exhibuit prefatus antistes testes predictos per subditos suos coram iudice prefato Bernardo.*

284 BARNEY, *Etymologies*, III.40: The doorways of heaven (De ianuis caeli). Heaven has two doorways, the eastern and the western. The sun issues from one portal, and the other portal receives it.

285 Luke 1:78-79: By the tender mercy of our God, the dawn from on high will break upon us, to give light to those who sit in darkness and in the shadow of death, to guide our feet into the way of peace. Isaiah 40-66 Isa., 60:1-3: Arise, shine; for your light has come, and the glory of the LORD has risen upon you. For darkness shall cover the earth, and thick darkness the peoples; but the LORD will arise upon you, and his glory will appear over you. Nations shall come to your light, and kings to the brightness of your dawn.

IV.1.12. Selecting the Date

But, if it is shown by clear evidence that one has been prevented from presenting himself be it through a disease, alteration in the weather, an overflowing river, snowfall, or some inevitable damage, he shall not be considered guilty of disobedience of the king's order nor will he have to suffer the penalties it entails, as it is evident that the delay was the result of manifest necessity.[286]

The dimension of time in trials, like setting dates, convoking all participating members of the tribunal and the litigants, finding witnesses, and so on, must have been affected by many factors not visible to us today. Illnesses or weather conditions may have hindered participants from arriving on time or arriving at all, a sudden thunderstorm may have interrupted proceedings thus causing adjournments – the list of unforeseen difficulties that could have occurred is long. The conditions of weather can explain the fact that many legal activities, surely not only the ones related to conflict resolution, were less frequent throughout December and January.

In general, dates had to be selected with care, minimising risks and allowing everybody to arrive in good time. For this a pronounced awareness of time is required by the various parties participating in a trial to guarantee the functioning of the jurisdiction. The announcement of a court date was required to guarantee that all parties involved were aware that they must be present at a certain date at a certain place. Travel and accommodation on a local level surely was not particularly complicated, but in trans-regional cases organisational skills were certainly required to ensure every person's safe sojourn.

The Visigothic law was well aware of the difficulties people could face travelling to court and also how these could serve as excuses for parties to avoid going there. The law sets a solid middle-ground between accepting the human condition and the necessity to provide reasonable excuses or proof for one's absence.[287] Other factors that contemporaries surely had in mind but are difficult to discern today are numerous as well. For example, judges theoretically chose the dates of trials, however,

286 LV II.1.33: *Quod si eventus egritudinis, commotio tempestatis, inundatio fluminis, consparsio nivis, vel si quid inevitabile noxie rei obviasse veris patuerit indiciis, non erit reus regie iussionis aut dampnis indictis, qui obvia fuit causa manifesta necessitatis.*

287 Especially: LV II,1,33; II,2,4.

it is hard to believe that they were not also subject to the whims of the powerful, their calendars, obligations and desires.

While *iudicium* could describe the judgement as well as the trial, the word *placitum* was not only used in the sense of a public judicial assembly or plea but also for smaller private meetings; essentially any date on which a judge convoked people together on a certain date.[288] While sometimes still referred to as *mallo publico*[289] in the 9th Century the word *placitum* was used synonymously and judges could already give several court dates as *placita.*[290] *Curia* and *cors* only found extended use in the 1140s onwards,[291] while the sources prefer the wording *in audientia* and similar expressions if a higher authority was present or generally in front of the judges as a court hearing.

The judges constituted days (*ad placitum constitutum*)[292] as sessions as well as deadlines, which meant that word could mean a time period up to a day as well as a concrete day and therefore people waited for debts to be paid *ultra placitum,*[293] while an assembly could meet and constitute a court session between two litigants (*actum*

288 To avoid repetition in the following paragraph only a few examples are given to show the variety of meanings attached to the word.

289 As far as I am aware the *scabini* as Carolingian judgement finders are completely absent from Catalonia. The recent article by Hicklin is enlightening, as it takes the historiographical debates into account: Hicklin, A. (2020), 'The scabini in historiographical perspective', *History Compass*, 18/10. For Burgundy, see: Viaut, L. (2017), 'In mallo publica… Le scabinat et l'exercice de la justice dans la Bourgogne carolingienne (IXe siècle)', 89/2: 7–18. SALRACH, MONTAGUT, *Justícia,* doc. 21: *In mallo publico ante iudices in villa Tagnane, territorio Elenense, id est, Albarus, Wittericus, Ranoaldo, Ermenisclo, Fauvane, iudicum, vel plures bonis hominibus, id est, Iba, Aucta et Feudelecus, Francone, Fulcrerano presbytero, Andilane, Simproniano, Haschariclа, vel plures bonis hominibus, anno trigesimo sexto regnante Karulo rege et primo imperante, sexto idus ianuarias.* Later preambles use placitum instead. SALRACH, MONTAGUT, *Justícia,* doc. 398: *Hoc est placitum quod habuit Guillelmus, episcopus Urgellensis, cum Ugone Dalmacii ante dominum Guillelmum comitem Cerdaniensem* […].

290 For the 9th century, two examples shall serve. Three sessions were given to a certain Domènec to deliver evidence. SALRACH, MONTAGUT, *Justícia,* doc. 22: *Et dederunt mihi ipsi iudices unum et alium et tercium placitum, si potuissem ego Domenicus ad partibus meis adprobare* […]. Ibid. doc. 34: *Et ego Ermenardus sic me evaguo in omnibus de ipsa cellula superius scripta Sancti Stephani, et de suis appendiciis, quod non hodie nec ullo tempore neque in istum placitum, neque in alium, nullam scripturam inde praesentare nec habere non possum, nec per testes, nec per ullum documentum indicium veritatis ego probare non possum quod ipsa cellula Sancti Stephani nec suum appenditium ego tenere debeam in meam potestatem, sed plus debet esse de monasterio Sancti Hilarii seu ad Recamundo abbate vel ad ipsos monachos.*

291 Some exceptions: SALRACH, MONTAGUT, *Justícia,* doc. 462. Cort PAPELL, *Diplomatari*, doc. 38. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 450. Also used in the *Usatges* to describe the court.

292 SALRACH, MONTAGUT, *Justícia,* doc. 107: […] *et non persolsit mihi predictum debitum ad placitum constitutum, quia non potuit propter intericionem Barchinona civitate* […]. Ibid. 143: *Tunc prenotati iudices interrogaverunt eum: «Potest hoc ad probare ita esse ut asseris?» Et ille: «Utique possum, date mihi placitum et probabo hoc esse per legitimam probacionem».*

293 SALRACH, MONTAGUT, *Justícia,* doc. 109: *Qui mihi advenit per voce impignorationis que mihi fecit Bonamoza femina pro mancusos XXII, quos debuerat mihi rendere ad placitum constitutum, id est festivitatem Sancti Iohannis Baptiste, et minime fecit. Unde ego ammonui eam plures vices ut mihi rendidisset illud debitum, et nichil convalui, insuper et expectavi ultra placitum mense uno.*

est placitum inter).[294] When one side benefited from a sentence and sold, donated or gave away what they had received it could be clarified that it *advenit nobis per placitum*[295] and people appealed to court (*placitare*)[296] for what they considered rightfully theirs.

The liturgical year, with its influence on people's lives, was also no exception in legal matters. Ad hoc courts were sometimes held but most of the court dates were fixed and therefore a concrete day had to be arranged. It is worthwhile to have a look at how dates influenced the decision of the judges when fixing dates for trials and which holy days were chosen to serve for the administration of justice and which were avoided.

Setting dates and deadlines, however, was not limited only to the liturgical calendar but was also subject to simple units of time measurement like days or months, and it is constructive for a detailed analysis of the cases to have a look at which time spans were the most common, as this allows for contrasting the regular with the irregular.

294 SALRACH, MONTAGUT, *Justícia,* doc. 309: […] *qualiter actum est placitum inter domnum Guilelmum Urgellitanum episcopum et Adaleizem* […].

295 SALRACH, MONTAGUT, *Justícia,* doc. 219: *Advenit nobis per placitum vel per emendacionem et iusticiam que fecimus de omicidium que fecit Galindo, filium Donatdei sacer, sive per ullasque voces.*

296 SALRACH, MONTAGUT, *Justícia,* doc. 394: […] *cognoscimus quia noluisti nobis hoc placitare per voces et aucthoritates quas inde habebas et per quas totum hoc retinebas et directum inde facere.*

IV.1.1.2.1. Justice and the liturgical year

Concerning feast days and festivals, during which no legal business shall be carried out.[297]

It is convenient to first look at the solemnities as the most important dates of the liturgical calendar, and then proceed to examine more specific local saint days and their connection to the administration of justice.[298] Gothic law has clearly formulated specifications in regards to solemnities and dates for trials.[299] These include that no one should be obliged to have to appear at a trial on Sundays as well as that no one should demand debts to be paid on the Lord's Day. As Isidor of Seville would put it, "Festival days are those on which a religious service takes place and people must abstain from lawsuits."[300]

The same legislation is applied for some holy days specifically mentioned in the Liber, which include the period of Easter – fifteen days in total, seven before and seven after *Pascha* – Christmas, the Feast of the Circumcision, the Feast of the Ascension of Christ, Epiphany and Pentecost.

297 LV II.1.12: *De diebus festis et feriatis, in quibus non sunt negotia exequenda.*

298 Comp.: ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 236-248.

299 LV II.1.12: *Die dominice neminem liceat executione constringi, quia omnes causas religio debet excludere; in quo nullus ad causam dicendam nec propter aliquod debitum fortasse solvendum quemquam inquietare presumat. Diebus etiam Paschalibus nulla patimur quemlibet executione teneri, id est per quindecim dies, septem, qui Pascalem solempnitatem praecedunt, et septem alios, qui secuntur. Nativitatis quoque Domini, Circumcisionis, Epyphanie, Ascensionis et Pentecostes singuli dies simili reverentia venerentur. Necnon et pro messivis feriis a quintodecimo kalendas iulii usque in quintodecimo kalendas augusti. In Cartaginensi vero provincia propter locuistarum vastationem aasiduam a quintodecimo kalendas iulii usque in kalendas augusti messivas ferias praecipimus observandas et propter vindemias colligendas a XV. kalendas octobris usque ad XV kalendas novembris.*

300 KENDALL, WALLIS, *On the Nature of Things*, 1.4: Court [fasti] days are those on which judgement is spoken [fatur], that is, pronounced, just as non-court days are those on which it is not. Festival days are those on which a religious service takes place and people must abstain from lawsuits. Working days are the opposite of festival days, that is, they are without religious ceremony; festival days are similarly given over completely to rest and religious duty. Unlucky days are those that are also called common. […] There are thirty consecutive 'just' days. See also: BARNEY, *Etymologies*, V.30.12: Weekdays (feria) were named from 'speaking' (fari), because on those days we have a time for speech, that is, to speak in the divine office or in human business. Of these there are festival days, instituted on behalf of humans, and holy days, for divine rites. The glossator of the *Liber Iudicium Popularis* added in a clear reference to Isidor of Seville, see ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 737: *Ferie dicuntur proprie a fando, i. loquedno, quasi feri e quando pro diebus ponuntur, quia in his fatus est Deus, i. dixit primum in formatione creaturarum per successione operum sungulorum sex dierum, ut fierent ea que voluit esse, sicut in libro Geneseo legitur: «Et dixit Deus», sicut ubi repetitur in discretione operum cuiusque diei. Fari enim loqui vel dicere est, non quod Deus humanor ore vel more perstrepium aut sonum vocis locutus sit, cum ipse spiritus sit et membra corporea more nostro non habeat, sed quia procreationem et operationem creaturarum quicquid voluit fecit. Ipsius enim dixisse, fecisse est. Ceterum in hoc loco ferie dicuntur cessationes iurgiorum et litium sive negotiorum et placitorum aut etiam operum; et feriati, i. sacri ac festi dies, in quibus nulle sunt actiones repetende.*

Nearly none of the charters listed dates on what are arguably the three main dates of the liturgical year: Christmas, Easter[301] and Pentecost. Regarding the other holy days listed in the *Lex* only some documents, concerning the legal resolution of conflicts, were issued on these central Christian holy days. One charter dates on Epiphany[302], two charters on the feast of the Ascension of Christ[303] and two on the day of Circumcision of Christ.[304] However none of these five examples are strictly speaking trials, but rather show that these dates were used to finally resolve conflicts and to put an end to some longer lasting disputes, for instance, through giving certain securities or to reintegrate the excommunicated back into the Christian community.[305] Although a number of documents provide a good overview of the dates on which legal acts were drafted, the quantity is not sufficient to make definitive statements regarding these three dates, but the general outline suggests that if charters date on these days special attention to detail can reveal additional information on why an exception was made.

However it is clear that legal activities did not cease neither within the period close to Christmas nor in the 15 days around Easter, as a strict implementation of the law would suggest.[306] The exact days of the beforementioned solemnities, Christmas, Easter and Pentecost, were respected and no trial was held but the time periods around these days were used to write charters, to hold court and to finish unsolved businesses.

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301 A *convenientia* between the bishop Oliba of Vic and the castle-holder of Gurb, Bernat Sendred is the only exception, as Easter in this case served as a date to end a long-lasting dispute. SALRACH, MONTAGUT, *Justícia*: doc. 239.

302 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 417, dating on the year 1112.

303 SALRACH, MONTAGUT, *Justícia*: doc. 353, dating on the 29th of May 1063; MARTÍ, *Oleguer, servent de les esglésies*..., doc. 63, dating on the 5th of July 1125.

304 SALRACH, MONTAGUT, *Justícia*: doc. 119, dating in the year 992; MARTÍ, *Oleguer, servent de les esglésies*..., doc. 63, in the year 1134.

305 The document dated on Epiphany is a security charter by the Count of Barcelona, Ramon Berenguer III, see: BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 417. Regarding the two charters dating on the feast day of the Ascension of Christ, the first one is also security charter, by the Bishop and one of his *miles,* see: SALRACH, MONTAGUT, *Justícia*: doc. 353. The second is a recognition of usurpation of church taxes by two brothers who were under excommunication and thus we have to assume that their ban was lifted on this holy day, see: MARTÍ, *Oleguer, servent de les esglésies...*, doc. 63. In a very similar fashion the second of the charters dating on the day of Circumcision of Christ also regards issues of taxation and excommunication but additionally the *scriptura diffinitionis* was issued by a man about to start his pilgrimage to Jerusalem, see MARTÍ, *Oleguer, servent de les esglésies...*, doc. 63. The last example dating on the 6th of January is a *reparatio* of property and it was probably the best occasion to have as many people as possible present, see: SALRACH, MONTAGUT, *Justícia*: doc. 119.

306 Nor did they in the time of harvest, also included in the law.

Additionally, charters can be dated one or two days before or after solemnity dates, be it Pentecost[307], the feast of the Ascension of Christ[308], Christmas[309] or other important dates, like Epiphany.[310] The same can be said for the period around Easter Sunday.

Either for the whole week *in albis* after Resurrection Sunday[311] or the week before, the most central date for Christianity, legal activities did continue and were not paused. From Palm Sunday to Easter Sunday[312] on Holy Wednesday,[313] Maundy Thursday[314], Good Friday[315] or Holy Saturday[316], charters were issued.

Looking at the evidence it becomes very clear that too many charter resolving disputes date one or two days before or after important dates in the liturgical calendar for it to be a sheer coincidence. It is far more plausible that legal activities ceased during the main days of the festivities but spiked before or directly after.

Reasons for this could be rather simple, as a charter from the Arxiu Capitular de Barcelona shows. Right after Christmas a certain Bernat Udalard was summoned to the chapter of the see of Barcelona on the day of Saint Innocents (*die Sanctorum Innocentii*, *28*th of December). There in front of good men of the city, clergy and laity, he was presented with a complaint.[317] He was accused of having violated a pact of

307 Legal activity directly after Pentecost. SALRACH, MONTAGUT, *Justícia*, one day after, doc. 311, 405, 459; Two days after: doc. 411; One day before: doc. 345.

308 Legal activity directly after the holy day of the Ascension of Crist. SALRACH, MONTAGUT, *Justícia*, one day after, doc. 138, 322; Two days after, doc. 142, 155, 344, 365.

309 Legal activity directly after Christmas. SALRACH, MONTAGUT, *Justícia*, one day after, doc. 430; Two days after, doc. 286. Three days after, doc. 266; Four days after, doc. 362, 424; Four days before, doc. 292. For an agreement signed on the second of advent, Ibid. doc. 326. Issues could of course be addressed on those occasions but were settled later, Ibid. doc. 226: *Omnibus non habetur incognitum sed quibusnam patefactum, qualiter venit Ermengaudus Urgellensis comes et marchio, vir clarissimus, XVIIII anno Nativitatis sue in sede Sancte Marie Vico ad diem Nativitatis Domini Nostri Ihesu Christi cum obtimatibus suis*, […].

310 Also in the case of Epiphany et al. For example the day after: SALRACH, MONTAGUT, *Justícia*, doc. 444.

311 During the whole Octave of Easter. One day after, on Easter Monday: ALTURO, *L'arxiu*, doc. 180. Two days after: SALRACH, MONTAGUT, *Justícia*, doc. 417, 500; BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 1056 (dated 1160 according to the regnal years of Louis VII of France, the younger. More likely due to historical context is to date according to the regnal years of Louis VI, the fat, so it would be the year 1131). Three days after: SALRACH, MONTAGUT, *Justícia*, doc. 79Bis, 258. Five days after: SALRACH, MONTAGUT, *Justícia*, doc. 234, 383. Seven days later: SALRACH, MONTAGUT, *Justícia*, doc. 234.

312 SALRACH, MONTAGUT, *Justícia*, doc. 161. The charter dates on the 31st of March 1013, two days after Palm Sunday.

313 SALRACH, MONTAGUT, *Justícia*, doc. 359, 376.

314 SALRACH, MONTAGUT, *Justícia*, doc. 449: *Acta sunt hæc V kalendas aprilis, scilicet die cene Domini*, […].

315 SALRACH, MONTAGUT, *Justícia*, doc. 115; BARAUT, «Els documents», IX, doc. 1229.

316 SALRACH, MONTAGUT, *Justícia*, doc. 535.

317 SALRACH, MONTAGUT, *Justícia*, doc: 424: *Notum sit omnibus hominibus, tam presentibus quam futuris, qualiter ego Bernardus Udalardi, vocatus a canonicis Sancte Crucis Sancteque Eulalie, veni*

donation of some houses located in front of the count's palace, which he had received from and held for the chapter but alienated to others, which he admitted was unjust.[318] Bernat Udalard came to terms with the canons and agreed that until next Easter he would undertake whatever means necessary to recover the houses from the hands of whoever had them.

The dynamics are clear – he was summoned in front of the congregation right after Christmas and if he had not have recovered the houses he most probably would have been summoned again to the chapter, this time right after Easter.[319]

The solemnities as well as other saints days were chosen as perfect dates for deadlines like paying a debt, settling any kind of disagreement or in case of trials to present missing evidence. The abovementioned Bernat Udalard was well aware of the approach of Easter and setting a deadline in that manner was most certainly easier than setting an abstract time span for him to fix what needed fixing. The in-compliance of agreements of any kind always had the potential to lead to legal dispute and as limits were set on holy days the probability of having a trial right afterwards was simply higher. However, the judges also consciously chose other dates outside of the solemnities, and the approaching feast days, as the next example shows, could also cause irregularities.

Before the Judges Vives and Bonfill, and in the presence of a long list of *viri magna*, the brothers Bonfill and Guifard, sons of Enric, filed a complaint against Gombau of Besora of unjustly and unlawfully withholding an allod of paternal

ad capitulum eorum die Sanctorum Innocentii et, presentibus boni viris Barchinone urbis, clericis ac laicis, audivi querimoniam quam prephati canonici habebant de me, de domibus videlicet quas mihi dederant, que sunt site ante Portam Palacii comitis Barchinonensis.

318 Ibid.: *Querebantur etenim valde de me dicentes me alienasse prephatas domos multis modis et terras tulisse eas in iura aliorum non mei similium, quod satis eis iniustum videbatur, ideoque dicebant me fregisse pactum carte donationis quam mihi fecerant.*

319 Ibid.: *Quapropter ego, prephatus Bernardus Udalardi, facio hanc convenientie cartulam pretitulantis canonicis, ut a prelibato die usque ad primum Pascha veniens abstraham prescriptas domos de potestate omnium hominum, ut ita sint solide ac libere, sicut resonat in carta donationis quam prenominati canonici mihi exinde fecerunt, ita ut numquam amplius sit mihi licitum aliud de predictis domibus facere nisi quemadmodum resonat in carta sepe dicte donationis. Quod ut firmum et verissimum habeatur, mitto prephatam donationis cartulam in potestatem Arnalli Gontarii, ut si ita, sicut superius dixi, non adimplevero usque ad prephatum Pascha, sit licitum predicto Arnallo reddere et donare iam dictam cartam donationis predictis canonicis, ut faciant ex eadem carta et ex eisdem domibus et cum universis ad se pertinentibus quidquid voluerint, ita ut ego aut uxor mea nullam vocem queramus amplius ibi aut aliquis utriusque sexus per nos.*

inheritance.[320] As Gombau did not know how he came into its possession,[321] the judges sentenced that Gombau should provide written or oral evidence by the feast day of Saint Felix (1st of August) to show that he had a better claim on the property than the brothers.[322] The decision of the judges specified that if he was not able to deliver testimony he would have to relinquish the possession. Without specifically mentioning the Visigothic law code, the judges acted in accordance to it and included a guarantee that if one side did not appear in court then a payment of a hundred solidi would be due.[323] However, 10 days before the deadline expired (*ante placitum terminatum*) the defendant delivered the allod *in potestate* of Bonfill and Guifard, requesting to have more time, roughly a month, until Saint Michaels (29th of September). In the meantime the brothers had certain rights over the property, so the judge Vives guaranteed them the full claim *sicut constitutum est in lege gotica.*[324] The charter dates on the 22nd of July so it was either drafted immediately after the possession was handed over or, less likely, gives the retrospective date of transaction. The charter was designed for a double purpose, reminding the brothers of the expiring deadline as well as guaranteeing them the possession of the allod. It is most probably preserved because Gombau felt that his claim was too weak and did not present the witnesses that were

320 SALRACH, MONTAGUT, *Justícia*, doc: 243: *Pateant cuncti, tam presentibus scilicet quam et futuri, qualiter mota fuit haccio infra domno Gondeballo Bisaurensis et Bonefilii et frater eius Guifardum, filiis qui fuerunt Henrici condam. Adsistentibus iudicibus, id sunt, Bonifilii iudici et Vivanum iudici, et in conspectum nobiliorum virorum ibidem adsistencium, id sunt, Mironum Geribertum, Alamanum Hugonem, Bernardum Borellum, Reimundum de Madrona filioque suo Heneas, Unifredi Riculfi, Mir Ollomar fratrique suo Adalbertus, Adalbertum iuvinem filioque suo Reimundo et alii quam plurimi viri, quia longum est nomina eorum intexerere, in eorum audientia isti suprascripti viri magna refferunt querimonia iam prelibati fratres, id sunt, Bonefilii et Guifardum, de successione paterna, quod iniuste et absque lege retinebat domno Gondeballo.*

321 Ibid.: *Domno Gondebalus afatus est dicens: «Nescio pro quare eam teneo aut per comparatione aut per voce parentorum meorum aut per qualicumque voce».*

322 Ibid.: *Et quidquit inter eos se nausiasent aut se altercasent in subrevitate, iam suprascripti iudices dedimus in unum sententiam, ut si prefato Gondeballo potuisset comprobare aut pro idoneos testes aut pro veras scripturas legaliter usque ad festivitatem Sancte Felicis, ista proxima veniente, quia melior erat suum directum quam de prefati petitores, voces eorum exinanita et insapita permansiset.*

323 Ibid.: *Et si comprobare non potuiset, ut iam suprascripti fratres per duobus testibus comprobasent quia quando Henrici, pater eorum, migravit de hoc seculo ille tenebat et posidebat sui alodium proprium sine ulla inquietudine, et iam meminito domno Gondeballo ut duplaset eis ipsum alodium. Et si non, aprehendiset ipsos testes ut evacuaset se de ipsum alodium. Et fuit haccio inter ambobus partibus ut quitquit se abstraxiset de isto iudicio C solidos composuiset. Et hec omnia suprascripta adimpleta fuiset.*

324 Ibid.: *Set postea decem dies ante placitum terminatum tradidit Gondeballo iam dictum alodium in potestate predicto Guifardo et Bonefilio, ut si usque ad Sancti Michahelis festivitas ista proxima veniente ullam indicionem legaliter potuiset abere, ut fuisset sicut iam iudicatum est desuper. Et ille fideiussores non fuisent soluti set stetisent sicut de primi. Et predicti Gondeballus feciset ad ipsa kanonika sicut constitutum est in lege gotica. Et ego iam dictum Vivanum, sacerdotum et iudicem, consigno atque contrado vobis iam supratAxatum alodium, terram et vineam, ad vos prefati fratris Bonefilii et Guifardi sicut lex iubet. Et qui hoc vobis disrumpere temtaverit, componat vobis ea omnia in duplo. Et ano ista consignatione firma et stabilis permaneat modo vel ultra.*

demanded on Saint Michaels and the charter thus served as a perfect legal document of possession in its own right.

Indeed all the solemnities, being it Easter,[325] the feast of the Ascension of Christ, Pentecost[326] or Christmas,[327] are crucial dates as deadlines for all kind of agreements of payment and therefore the coincidence of trials spiking right after these crucial points in time is of no surprise.

In relationship to trials the law foresees two potential scenarios due to the possible interruption through feast days. On one hand if the case was already brought to court and was undecided the Liber establishes that under such circumstances prosecution could continue even if the next date of the trial would coincide with a holy day. This option allowed judges to continue with complicated cases and bring those in front of a broader audience if need be. Another option presented was a break in which case a person of honour may depart from court under the promise of return or if of doubtful faith had to provide securities like it was done in the above-mentioned case examined by the Judges Vives and Bonfill.[328]

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325 FELIU, SALRACH, *Els pergamins*, doc. 495, 575; RIUS, *Cartulario*, doc. 800; BOLÒS, *Diplomatari de Serrateix*, doc. 133: *Et ego Gaudalli convenio ad Sancta Maria et ad abba ut donem eis duos fides, octo dies post Pascha prima veniente, id est Raimundi Guillelmi de Muial aud Berengarii de Tord et Bernardi Iriballi, ut faciant fidem ad Sancta Maria de Lta solidis monete directe Barchinone; ad kalendas agustas XXV solidos et ad Omnium Sanctorum alios XXV solidos, in denarios Barchinone.* FELIU, SALRACH, *Els pergamins*, doc. 332: […] *in die quod erit XV dies post Pascha ista prima veniente, sic rendere faciamus tibi untias sex de auro* […].

326 FELIU, SALRACH, *Els pergamins*, doc. 338: […] *et nos manibus nostris recepimus de isto die Pentechosten primo veniente usque ad alium anno espleto. Propterea inpignoramus tibi modiatas III.* […]. Pawn: RIUS, *Cartulario*, doc. 800: *Quantum in super istas afrontationes includunt, sic impignoro tibi audlodem meum proprium, totum ab integrum, cum exis vel regressis eorum, ea videlice racione ut in die, quod erit pasca Domini sic persolvo tibi uncias II prima venientem, et ad Pentecostem uncias II de auro de Barquinona monedado a peso de Barquinona* [...].

327 ALTURO, *L'arxiu*, doc. 67: *Nativitas Domini Nostri Jhesu Christi de ista proxima ad alia prima veniente festivitate Natalis Domini sic faciamus tibi reddere prefatos mancusos* […]. FELIU, SALRACH, *Els pergamins*, doc. 884: […] *per baiulia, ut de ista festivitas Natalis Domini veniente primam habeas, teneas atque possideas hoc totum superius scriptum* […]. RIUS, *Cartulario*, doc. 734: *tibi omne officium abbatis et sacerdotis a vigilia natalis Domini prima venientis inantea, donec humiliter satisfaciendo ante nostram venias presenciam.* FELIU, SALRACH, *Els pergamins*, doc. 696: *conventu hac racione ut quando fuerit terminum Nativitatem Domini ista prima veniente, sic reddamus vobis prescriptas XXIII uncias* […]. FELIU, SALRACH, *Els pergamins*, doc. 347: […] *ut donet iam dicto Miro usque ad Nativitatem Domini ista prima veniente kaficios VI de ordeo et unum de frumenti;* FELIU, SALRACH, *Els pergamins*, doc. 177: […] *et alios mille solidos predictos aut mille solidatas predictas ad festivitatem Nativitatis Domini. Et de istis quinque milia solidis aut solidatis.*

328 LV II.1.12: *Omnibus hanc constitutionem concedimus ut per haec tempora nullus ad causam dicendam venire cogatur vel sub executione aliquam deputetur; ni si forte causa, de qua compellitur, cepta iam iudicem fuisse videatur. Nam procul dubio, si incoata fuisse actio reperiatur, ad peragendum negotium absque ulla feriatorum dierum obiectione cogendus est qui pulsatur; ita ut, si persona est, cui facile credi possit, placito districtus abscedat; si certe talis sit, de cuius fide dubitetur, pro se fideiussorem adibeat, quatenus peractis temporibus supradictis ad finiendam cum petitore causam, ubi iudex elegerit, remota dilatione occurrat. Preter qui tale crimen admiserint, quos necesse sit sententia mortis puniri, qui etiam in talibus omnino diebus et conpraehendendi sunt et ardua in vinculis custodia retinendi,*

Because of these legal options there are a few exceptions where we get some insight into how specific dates for trials were selected. Notably, in complex cases when the day of the accusation that led to the trial is specified or the trial is postponed to another date, we get some insight into how the judges decided to fix new dates, either in relation to a saints day or by just choosing a weekday in the future.

To do so judges needed to have a clear understanding of time and festivities. The *Liber Iudicium Popularis* of Bonsom contained a *Martirorium* as it must have been extremely useful for a judge to have feast days at hand, not only to make sure that certain holy days were to be respected when setting a date for a trial but also to see when tithes, rents and other rights had to be paid. The samples of the documentation studied highlight certain days, but as deadlines for debts and payments that did not involve judicial intervention, as they were simply paid, they show that other dates most probably also caused trials to happen afterwards. The judges were flexible in choosing an appropriate day, nevertheless paying off a debt after harvest or after taxation was certainly a date of choice.[329]

Only few martyrologies survived and all three are unrelated in their manuscript tradition and even differ in some saints days.[330] Although this prevents generalisations, some definitive statements can be made based on the sources. First and foremost, feast and saints days worked as dates of deadlines, as did the solemnities, for example the restitution of property by the Feast of Saints Peter and Paul (29th of June)[331] or the

quousque, peracto die dominico vel feriis supradictis, debita eos subsequatur ultio iudicantis. Messivis sane vel vindemialibus feriis in criminosos et dignas morte personas legalis nullatenus censura cessabit. sed nec illum ista lex excusatum habebit qui necdum ad iudicium ante conpulsus, et tamen, sciens se esse quandoquidem compellendum, reliquis se temporibus dilatans ad hoc in predictis feriis illi, a quo pulsandus est, se indubitanter ostendit, quia putat se ad causam dicendam nulla legis sanctione posse teneri. Quem tamen aut per placitum distringi precipimus, quando cum petitore causam finire sit praestus, aut si forte talis est, de quo suspecta sit placiti fides, neque fideiussorem pro se adibere potuerit, aput iudicem, sub custodia maneat, ut, expleto tempore feriato, causa, pro qua compellitur, finem accipiat. Si quis autem contra decretum legis huius agere presumpserit et ad iudicem ex hoc querela pervenerit, L hictus flagellorum publice extensus accipiat.

329 Anscari M. Mundó planned to publish a "more extent work" on that issue. ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 236.

330 Following the designations by Anscari M. Mundó (ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 239.) the three surviving Catalan martyrologies would be the ones in the *Liber Iudicum Popularis* by Bonsom *Barc1* (Escorial Z.II.2; dating in the year 1011), together with one preserved fragmentarily in Barcelona *Barc2* (ACB, ms. 185.1; 10th – 11th- Century) and one in *Ripoll* (ACA, ms. 59 f. 195-203; 11th Century). For the edition of *Barc2*, see: Janini, J. (1978), 'Dos calendarios de Barcelona. (Siglos X y XIV)', *Revista Catalana de Teologia*, 3, p. 313-316. For the Ripoll manuscripts edition, see: Vives i Gatell, José, Fábrega i Grau, Ángel (1949), 'Calendarios hispánicos anteriores al siglo XII', *Hispania sacra. Revista española de historia eclesiástica*, 2, p. 119-146.

331 SALRACH, MONTAGUT, *Justícia*, doc. 492: *Et quoniam idem monasterium tanta libertate et exempcione prephatorum privilegiorum munitum fuit et dompnus abbas Tomeriensis Fro[tardus] neque litteras*

agreement return charters on *festam Sancti Felicis* (1st of August) show that feast days were common.[332]

Sometimes dates are not completely clear for us today, as can been seen in a case that was presented at Vic at the see of Sant Pere. In the presence of the clergyman Ermengol and many others, the Judge Guifré tranfered the ownership of a vineyard valued at three mancusos to a certain Josbert. Sunyer, called Guigilà, had deposited the property as a pledge worth the equivalent of three sesters of wheat into the hands of Guifré on account of a debt to his lord Josbert. He had agreed to return the pledge by the feast of Saint Mary (*ad festivitate Sancte Marie*), but never did.[333] As the charter dates on the 5th of March 1033, the scribe probably referred to the Feast of the Purification of the Virgin, found as the *Ypapanti Domini* in the martyrologies (2nd of February), but the nonspecific *transhacta autem iamdicta festivitate multis diebus* could also refer to another date – however that would mean that the agreement already was due in 1032.[334] The probability that the charter referred to the Feast of the Purification of the Virgin is high as judges and people demanding justice were well aware of the time overdue and deadlines lying far in the past were described as such rather than speaking of the month, days, or the last year.

For example, on the 11th of February 1021 Guilla, the wife of Guifré of Mediona, sold a property close to their castle in the territory of Riudebitlles near the church of Sant Quintí in the county of Barcelona, to Baró, son of the late Oruç. She had received

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concessionis neque speciale privilegium, quod ex Romana largicione non habuerat [protulit], a prescriptis iudicibus iuste decretum est, ut [ex] iam dicto monasterio prefatus abbas monachos suos eiciat et monachis eiusdem monasterii, propiis expulsis, idem monasterium et monachi Sancti Cucuphatis integro iure usque ad festivitatem beatorum Petri et Pauli restituat et nichil iuris aut dominacionis in eo habendum ipse vel aliquis habet requirat.

332 SALRACH, MONTAGUT, *Justícia*, doc. 390: *Convenit namque iam dictus Guillelmus predictis comiti et comitissae ut abeat ad eos, usque ad venturam primam festam Sancti Felicis, totas illas cartas quas Berengarius, pater predicti comitis, et mater eius fecerunt ad patrem et ad matrem predicti Guillelmi de castris Gurb et Salent per alodium* […].

333 SALRACH, MONTAGUT, *Justícia*, doc. 245: […] *conse[ntit i]n inducias usque ad festivitate Sancte Marie prima ventura, tali conventu ut sit ad ipsa iamdicto debi[to r]edere distuliset iamdicta vinea propria fuiset prefati Iociberti, et sic profitendo reliqui eum in potestate [iam]dicto Merlet in prehencia iamdicto iudice. Transhacta autem iamdicta festivitate multis diebus moniti a prefato iudice contemserunt redere iamdicto frumento.*

334 Other feast days related to Maria mentioned are: *Sollempnitas sancte Marie (*18th of December) *Annunciatio dominica* (25th of March) *Dormitio sancte Marie* (15th of August) or *Nativitas Genitricis* (8th of September). Comp. ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 241. For a charter surely referring to the feast of the *Nativitas Genitricis*, see: Feliu, Salrach, Els pergamins, doc. 505: c*omiti per Ermessindem comitissam ut predicta Ermessindis diceret Reimundo comiti prima die iovis que fuit post festivitatem [Sancte Marie de] septembris hoc non facet eadem die iovis, tunc sequenti die dominica prima predicta Ermessindis vicecomitissa, cum castello Malavela, sicut tenebat et abebat*

the property through a pawn made to her by Sabida and her son Bonuç for a loan of six ounces of gold. After the deadline expired, Guilla demanded in front of witnesses the return of the loan, but in vain. She waited more than six months, until through the insistence of the judge and in accordance with the law[335] she sold the property for sixteen mancusos, a price fixed by some estimators.[336] The sale was made in the presence of the judge and the members of the corresponding commission. Calculating back, the first deadline could easily coincide with the feast of the Nativity of Saint John the Baptist, a typical date for payments. The two charters show that not only the judges but also the holders of pawns were well aware of deadlines and payments and had a clear consciousness of time. Besides Saint Felix of Girona (1st of August), which is also very dominant as a day of taxation and as a deadline for payments,[337] three

335 With a direct citation of the corresponding law (LV.V.6.3). SALRACH, MONTAGUT, *Justícia*, doc. 189: *Idcircho insistente iudice, sicuti lex nostra edocet que continetur libro V to titulo VI, ubi decem dies prestolari iubet suum quis debitor [...] rios ius indigavi omnis qui debet inquiens debitum si reformare dissimulaverit, «tunc creditor iudici vel preposito civitatis pignus ostendet ut quantum iudicio eius et trium honestorum virorum fuerit extimatum sit licencia distraendi et postmodum de precio venditi pigneris creditor quantum eis debebant [sibi evidentius] tollet et reliquium ille recipiat qui pignus deposuerat».*

336 SALRACH, MONTAGUT, *Justícia*, doc. 189: *Et est predicta omnia in comitatum Barchinonense, infra termine de castro Midione, in locum que nucupant Riobirlas, prope ecclesie Sancti Quintini et illos mihi reddere debuerant uncias VI ad placitum constitutum et minime fecerunt sed ego admonui eos exinde plures vices coram idoneis viris ut ipsum debitum quod ego eis per illorum pignus depositum credidi mihi reddidissent, insuper et expectavi eos menses VI et amplius.*

337 Most of the time, so as not to be mixed up with other saints named Felix, clarified as *sancti Felicis Gerunda* (FELIU, SALRACH, *Els pergamins*, doc. 395: […] *in diae quod erit festa sancti Felicis Gerunda ista prima veniente, sic rendeam aut rendere faciam tibi migeras V de ordeo* […]) or the term *in kalendas augusti* could be added (FELIU, SALRACH, *Els pergamins*, doc. 158: […] ad festivitatem Sancti Felicis, qui est in kalendas augusti, prima veniente, […]). ALTURO, *L'arxiu*, doc. 61: *Et in die quod erit festa Sancti Felicis Ierunda ista prima ueniente isto anno reuolente* […]. The use of formularies becomes very clear if one compares the wording: FELIU, SALRACH, *Els pergamins*, doc. 390: […] *mea vult me sequi, stetero cum ea in Tamarit de veniente festa sancti Felicis in antea assidue* […]; FELIU, SALRACH, *Els pergamins*, doc. 409: […] *in die quod erit festa sancti Felicis Gerunda ista prima veniente, sic rendeam aut rendere facia tibi kaficios III et sestarios* […]. FELIU, SALRACH, *Els pergamins*, doc. 423: […] *in die quod erit festa sancti Felix Ierunda ista prima veniente, sic reddeam tibi aut retdere faciam caficios III de ordio* […]. FELIU, SALRACH, *Els pergamins*, doc. 565: […] i*n die quod erit festa Sancti Felix Ierunda ista I veniente, sic nos reddamus tibi aut reddere faciamus sestarios V* […]. FELIU, SALRACH, *Els pergamins*, doc. 601: […] *et in die quod erit festa Sancti Felicis Ierunda ista prima veniente, sic faciamus tibi redere iam dictum debitum et* […]. FELIU, SALRACH, *Els pergamins*, doc. 755: […] *et in die quod erit festu Sancti Felicis Gerunda ista prima veniente, ista proxima ventura, sic rendamus vobis prefatum debitum* […]. RIUS, *Cartulario*, doc. 102. *Quantum istas affrontaciones includunt, sic inpignoramus vobis ipsa nostra terra, in tale videlicet ratione, ut ea die quoderit festa sancti Felicis ista proxima ventura, sic vobis reddere faciamus ipsa annona placibile, et vos reddere nobis faciatis ista scriptura. Et si ad ipsa festa sancti Felicis minime reterimus et ipsa annona vobis non reddiderimus, tunc habeatis plena potestatem de ipsa terra apprehendere, vindere, tenere, vel omnia quecumque facere volueritis maneat vobis firma potestas, cum exio et regressiosuo.* RIUS, *Cartulario*, doc. 693: *Tali videlicet tenore ut de prefatum alodium donemus tibi vel dare faciamus ipsum esplet qui inde exierit fideliter tam de pane quam de vino usque ad festa sancti Felicis.* Compare with fixing a date for paying the census: RIUS, *Cartulario*, doc. 860: *Accepi autem a vobis morabetinum unum pro hac donatione, et annuatim in festivitate sancti Felicis migerra I ordei pro hac donacione, cum per totum annum voluerit molendinum vel quantum de anno*.

dates are mentioned more frequently in the documentation related to the administration of justice. The beforementioned Nativity of Saint John the Baptist (24th of June), the Assumption of Mary (15th of August) and All Saints' Day (1st of November) are prominent deadlines used by the judges. These dates together with the Feast of the Nativity and the movable feasts related to Easter – as well as the addition of some more important local saint or feast day – allowed the judges a certain flexibility in arranging deadlines, for example, for payments of debts or the return of property et cetera, thus covering the whole year.[338]

The importance of the feast day of the Nativity of Saint John the Baptist can be seen in deadlines for returning church property under the threat of excommunication until *sancti Iohannis Babtiste primam festivitatem*[339] or to pay back a pawn until *missa sancti Ioannis ista proxima veniente* with Palm Sunday as an Alternative (*de ista festa Ramis Palmarum*),[340] while regular payment could be agreed upon *de unam festam Sancti Ioahnis ad aliam.*[341]

Another clear regular date within the documentation is All Saints' Day (1st of November), used not only as a reference to set a trial 15 days before[342] but also as a deadline used in threats of excommunication,[343] or by which to pay back pawns or

338 Expressed clearly in regular payments. For a case see, SALRACH, MONTAGUT, *Justícia*, doc. 536: *Fuit constitutum et laudatum illi habitatores Sancti Felicis qui omne tempore ibi steterint vadat aud transmitad de famulis suis quinque vicibus in anno cum oblacione ad supradicta ecclesia Sancti Michaelis, id est, a Natale Domini et Pascha et Pentecost et Sancto Michaele et Omnibus Sanctis, et vigilia una in anno. Et una vice in anno veniat clericum Sancti Michaelis ad ecclesiam Sancti Felicis et cantet ibi missam et det penitenciam ad ipsos homines et feminas qui ibi abitent.*

339 SALRACH, MONTAGUT, *Justícia*, doc. 201: *Ammonemus igitur vos per Patris et Filii et Spiritus Sancti sempiternam unamque deitatem et per beati apostoli Petri, cuius vicem inmeriti tenemus auctoritatem, et vos dirigitis facultatem et per omnium nostrum nobis ligandi et solvendi a Deo traditam potestatem, ut reminiscentes mali quod facitis dum Dei iustum iniuste tenetis, usque ad superventuram sancti Iohannis Babtiste primam festivitatem reddatis Deo ecclesie que matri quod perdidit, ut Deus vobis vestra custodiat que concessit*

340 SALRACH, MONTAGUT, *Justícia*, doc. 114: *In ea videlicet racione ut nos redimere faciamus ista omnia suprascripta usque ad missa sancti Ioannis ista proxima veniente si nos finitum abemus ipsum marrimentum quod abemus apud seniores nostros, et si non de ista festa Ramis Palmarum proxima veniente usque ad annos II redimere faciamus ipsum nostrum alaudem suprascriptum et si non facimus tunc abeas potestatem ipsum alaudem adprehendere, tenere, vindere, donare, comutare, facere quod volueris liberam in Dei nomine abeas potestatem.*

341 FELIU, SALRACH, *Els pergamins*, doc. 725: […] *octingentos Va manchusos monete Barchinone de unam festam Sancti Ioahnis ad aliam* […].

342 SALRACH, MONTAGUT, *Justícia*, doc. 220: *Pro hac vero meditatione ampliaverunt placitum episcopus et Renardus et mutaverunt eum in loco cenobium Sancta Dei Genitrice Maria Riopullo, terminato et constituto die feria IIII[a], XV die a Sanctorum Omnium festa.*

343 SALRACH, MONTAGUT, *Justícia*, doc. 282: *Quocirca mee voluntatis atque iniurie meis examen aeque precamen litterulis tibi limpidissima antistitum gemma atque mee mentis pupilla venialiter allego veluti Umbertum Odonis qui violenter ac yperyphaniose quatuor aecclesias, quas sancte sedis Barchinone Canonice contuli, aufert et iniuria possidet absque ullo auctore et iure, quibus ullum nequit declamare ad stipulatorem nisi Nebrot cum suis ministris [et] pontificum princeps et omnes isti antistites, tua*

regular payments,[344] as well as a day for a trial itself.[345] Several renunciations and evacuations also date on All Saints' Day.[346]

A further cornerstone in the legal calendar was the day of the Assumption of Mary.[347] Judges, for example, decided to give time to present proof through witnesses at *mediante augusto depost ipsa festa de Sancta Maria.*[348] Also, in the complicated struggle between Oliba, bishop of Vic, and Hug de Cervelló, together with his nephew Bernat Sendred, over the limits separating the Castle of Sant Martí de Tous and the Castell de Roqueta, where a total of three trials were held, we are informed that the first day of trial happened before the Assumption of Mary on Friday the 15th of August[349] , then the trial continued a week after on Saturday the 23rd of August 1029.

Knowing that the Assumption of Mary was a typical date for deadlines, especially for repaying debts, also allows one to look at cases where this is not explicitly mentioned in the charter but where the document dates accordingly. The spouses Ricard Guillem and Ermessenda had lent two hundred silver solidi to Ermengarda, Ermessenda's mother, to pay for the redemption of her imprisoned husband Bernat

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propalatione atque precatu detesteris et anatematizes et ab omni sancte Dei Aeclesie contubernio sequestres, utpote diremptus habetur a me et ab omnibus meis suffraganeis, ni resipuerit et totum ab integro mihi restituerit quoadusque Omnium Sanctorum festivitatem. See also: RIUS, *Cartulario*, doc. 838.

344 MARQUÈS, *Cartoral de Carlemany*, doc. 201: [...] *sed non sit nobis licitum redimendi hoc pignus a festivitate Omnium Sanctorum usque ad Septuagesimam, quo habeatis collectum ipsum censum.* RIUS, *Cartulario*, doc. 554: *Quantum infra istas affrontaciones includunt,sic impignoro tibi supra scripta omnia, in ea videlicet racione, ut ego Illiardis teneam per tuum beneficium, et in die quod erit festa omnium sanctorum ista proxima ventura, si ego Illiardis redidero tibi Mironi X uncias auri tu mihi reddere facias ista scriptura sine mora.* See also RIUS, *Cartulario*, doc. 765, 915; BOLÒS, *Diplomatari de Serrateix*, doc. 133. FELIU, SALRACH, *Els pergamins*, doc. 313: […] *ut per unumquemque annum, per festivitatem Omnium Sanctorum, donent ad illum sexs uncias auri de Ispania* […].

345 SALRACH, MONTAGUT, *Justícia*, doc. 207: *Actum est hoc die kalendarum novembrium nota festivitate omnium sanctorum, anno qui supra insertus est.*

346 SALRACH, MONTAGUT, *Justícia*, doc. 140, 423, 521.

347 FELIU, SALRACH, Els pergamins, doc. 347: […] *kaficios IIII de ordeo et unum de frumenti; et ad festivitatem sancte Marie mediante mense augusto donet kaficios XX et V [...] de frumento. Et hoc faciat isto primo anno. Et de festivitatem sancti Mikaelis qui venit in antea donet* […] FELIU, SALRACH, *Els pergamins*, doc. 448: […] *barchinonensis monetae a mancusos Adals, a pes de Barchinona, in festivitate sanctae Mariae mediante augusto aut quarto die post istam festivitatem*, […]. FELIU, SALRACH, Els pergamins, doc. 454: […] *quod si usque in festivitatem Sancte Marie prima veniente, que erit mediante augusto, redderet predictus in castrum Salass et fecerit adhuc usque in iam dictam festivitatem Sancte Marie aut usque ad diem alium antea quod eum Barchinona, ad supradicto Remundo. Et si usque in iam dictam estivitatem non reddideret prefatus comes Remundus castrum Salass ad comite Artallo, cum iam dicta Arsendis.*

348 SALRACH, MONTAGUT, *Justícia*, doc. 339: […] *sic fuit probaciones verissimas adprobatas mediante augusto depost ipsa festa de Sancta Maria de ipsa aqua, de condamina et de ipsa incisa quod Bernardus Guilelmi, filio de Guilelm vicescomite, […] quod fuit placita ipsa aqua et gaurivit Onofret ipsa aqua cum posterita sua usque ad finem seculi.*

349 SALRACH, MONTAGUT, *Justícia*, doc. 228: *Et quia facultas vel locum finiendi placiti tunc non fuit, mutati sunt placitum post festivitatem Assuptionis Sancte Marie in Vico.*

Ramon. Because the couple often asked for their money back and this caused disputes and trials, good men intervened with their advice so that Ermengarda together with her son finally compensated the debt by giving out an allod in the territory of Barcelona, located at Genestar.[350] Surely several deadlines had passed, causing the quarrels the charter mentions. The last deadline was probably the day of the Assumption of Mary in 1114, which would correspond with the date on which the charter was drafted. In addition, the notion of public and private is a difficult one to apply regarding the time period, nevertheless this would fit into the general idea of pressuring one side into finally giving way and compensating for what is owed by bringing the issue in front of a broader audience. A feast day provides this necessity and allows long-lasting disputes to be settled through communal intervention, in this case through the *interveniente bonorum virorum consilio*.

But feast days were rather dates for deadlines of payment than the actual day of payment. Deadlines were constituted during trials and were set for important dates like the 24th of June the *festivitatem Sancti Iohannis Baptiste* (*Natale sancti precursoris Domini / Vigilia sancti Iohannis babtiste*), such as a sale dating to the 7th of August due to an unpaid debt.[351] Trials were also usually arranged before or after feast days as many times witnesses had to be called in, for example, *post festivitatem sancti Petri.*[352] Also threats of excommunication that included a deadline like Easter for the return of property made it clear that the consequences were to be expected *ultra paschalem.*[353]

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350 Baiges, Feliu i Salrach, *Els pergamins*, doc. 461: *Cognitioni cunctorum palam facere volumus qualiter ego Ricardus cum coniuge mea Ermessendi acomodaverim socrui mee Ermengardi CC solidos argenti ad redemptionem viri sui Bernardi cum condam captus a comitibus teneretur. Cumque multociens idem debitum repetissemus et eadem socrus mea se id habere non posse causaretur, habitis iurgiis et placitis quampluribus, tandem interveniente bonorum virorum consilio dedit vel emendavit predicta Ermengardis mihi Ricardo prefato et uxori mee de proprio alodio suo, pro prefato debito, sicut hec pagina inferius continet.*

351 Salrach, Montagut, *Justícia*, doc. 109: *Qui mihi advenit per voce impignorationis que mihi fecit Bonamoza femina pro mancusos XXII, quos debuerat mihi rendere ad placitum constitutum, id est festivitatem Sancti Iohannis Baptiste, et minime fecit. Unde ego ammonui eam plures vices ut mihi rendidisset illud debitum, et nichil convalui, insuper et expectavi ultra placitum mense uno.*

352 Salrach, Montagut, *Justícia*, doc. 143: *Et dato placito ita ut convenissent pariter in comitatu Ausona die V^{a} feria post festivitatem sancti Petri et ibidem exhibuisset sua testimonia qui legitime testificassent illi hoc quod asserebat. Et ita actum est transacta V^{a} feria, alio scilicet die quod est VI^{o} nonas iulii, adgregati sunt prenominati iudices in supradicto comitatu Ausone in sede Vico.*

353 Salrach, Montagut, *Justícia*, doc. 229: *Quapropter quamvis plures sint qui intra episcopatum Barchinonensis ecclesie, contra iusticiam facientes ecclesiasticas res male retinendo canonice excomunioni subiaceant, speciale tamen hoc comminitorium Guitardo Arnalli direxerunt, ut ipsum alodium quod retinet de iure Canonice domus Sancte Crucis, sine mora canonicis prefate ecclesie reddat. Verumptamen si, quod absit, ultra paschalem primam venturam sollempnitatem prenotatum alodium quod est in Lupariis retinere presumpserit, a liminibus sancte Dei Ecclesie sequestraverunt, ita ut nullus clericorum sit qui audeat ei ministerium facere intra ecclesiam aut extra ecclesiam.*

Numerous other saints days, which also served as deadlines and therefore had the potential to feature as cornerstones in the legal calendar, figure prominently in the region but are not specifically mentioned in the sources related to trials, like the feast of Sant Andrews[354] (30 November) that shows up in resolutions as an agreed deadline for payments but not as a date for trials.[355] The same goes for feast days related to the Apostle Peter like the Feast of the Chair of Peter[356] (22nd of February) or the Feast of Saints Peter and Paul (29th of June).[357] One would expect the feast of Saint Cucuphas to be a prominent deadline for the homonymous monastery of Sant Cugat, and indeed on occasion the 25th of July was used as a deadline, but far less so than other saints.[358] For instance the day of Saint Michael (29 September) was one of the preferred dates for the monks of Sant Cugat as a deadline for paying back pawns and debts[359] right *post vindemias*, after the harvest of the wine grape,[360] but also as a deadline for the

354 Feliu, Salrach, *Els pergamins*, doc. 527: […] *tibi reddere faciamus sestarios VIII, et alium quod remanet ad festivitatem sancti Andreae ista prima veniente* […]. Marquès, *Cartoral de Carlemany*, doc. 195: *Quantum inter has affrontationes includitur, sic donamus uobis predicta domo cum curtili sicut terminatum est ex oriente de uxo usque ad biual de ipsa porta totum ab integro, et donetis nobis uel nostri per unumquemque annum omni tempore ad festa Sancti Andree solidum I plate propter censum. Et propter hoc accipio de uobis modo solidum I plate. Item si uendiderit uel alienare uolueritis predicta omnia, nos uel nostri amoneatis XXX diebus et postea licentiam habeatis facere quibus uolueritis cum nostro consilio.*

355 Feliu, Salrach, *Els pergamins*, doc. 239: *Dedit quoque idem Bernardus mihi propter hoc viginti uncias auri. Promisit etiam quod propter Dei amorem et propter remedium et absolutionem anime patris sui matrisque sue procuraret aberi unam lampadam semper ardentem ante altare beatissimi Petri, et quod omnibus annis propter hoc ipsum daret unam optimam reffectionem Cannonice in festivitate Sancti Andree; promisit quoque quod si aliquid ex prediis Sancti Andree ut prefatarum ecclesiarum iniuste teneret, legaliter inquireret et, si cognovisset, legaliter se inde exvaccuaret.* Feliu, Salrach, *Els pergamins*, doc. 426: E*t interea ego Bernardus Guilelmi pro recognitione convenio et confirmo ut ab hodierno die et deinceps inluminem unam lampadam ante altare Sancti Petri in Vico iugiter die hac nocte de meo oleo dum vixero et per singulos annos in festivitate Sancti Andree semper dabo unam refectionem omnibus canonicis, videlicet unum sextarium obtimi frumenti ad mensuram canonice et quartam vini boni et quatuor porcos bonos et tres quarters de vacca.*

356 Marquès, *Cartoral de Carlemany*, doc. 206: […] *primam festivitatem quod est Cathedra Sancti Petri* […].

357 Feliu, Salrach, *Els pergamins*, doc. 787: […] *ad festa sancti Petri prima de mense iuni, si hes [non] hei corporal, sine engan.*

358 Rius, *Cartulario*, doc. 571: […] *eius et preterea donet per unumquemque annum mancusum unum per festam sancti Cucuphatis in ipso cenobio* […]. Feliu, Salrach, *Els pergamins*, doc. 202: […] *in die quod erit festa Sancti Cucufati martir ista proxima veniente, sic rendere faciamus tibi uncias XXti de auro cocto* […].

359 Rius, *Cartulario*, doc. 880: *Ego Petrus Othoni et uxor mea Adalendis, impignoratores sumus tibi Arbert Bernardi quartam partem de ipsa terra de Malananges per vi m[orab. qui] michi prestastis in auro legitimos et teneatis ipsam quartam partem de una festivitate sancti Michaelis ad aliam que celebratur III kal. octobris usque dum ego red[dam dictos] moabetinos in auro bene pensatos.*

360 Rius, *Cartulario*, doc. 827: *Et explectemus illum et abeamus ipsum fructum quod inde exierit et vobis contingere debet usque vos reddatis nobis predictum debitum ad festam sancti Michaelis post vindemias. Et si potestis abere ad ista prima veniente, reddite nobis predictum debitum totum insimul, sine ulla diminutione.* Rius, *Cartulario,* doc. 882: *Hec esse definicio quam facimus nos Guillelmus Donucii et Guilia uxor mea et filii nostri Bernardus atque Berengarius Domino Deo et Sancti Cucuphati ac Rodlando eiusdem loci abbati et monachis eius de vinea quam plantavimus in alaudio Sancti*

payment for castle tenure.[361] The day of Saint Michael also figures prominently in the rest of the documentation,[362] however was only once used as a deadline in a trial.[363]

For the territory of Barcelona the feast days related to Saint Eulalia[364] as well as the feasts related to the holy cross[365] were respected and no trials were held during those days. Most of the important local saint days seemed to have been respected regarding dates of trials[366] and only in a few exceptions were charters regarding the resolution of conflicts issued.[367]

Cucuphatis, in territorio Barch. Definimus nos atque evacuamus ipsam terram et ipsam plantam supradicto martiri eiusque habitantibus, sine omni enganno et sine ullo retentu, de hac festivitate Sancti Michaelis prima veniente que celebratur III kalendas octobris in antea, ita ut nos neque aliquis per nos requiramus, aut requirant ipsam terram et plantam, sed solide et libere revertatur supradicta omnia in iure et dominio Sancti Cucuphatis, transacta supradicta festivitate Sancti Michaelis, et insuper convenimus sine omni enganno predicto abbati ut usque in Nativitate Domini prima veniente solutam habeamus ipsam terram et ipsam plantam.

361 Rius, *Cartulario*, doc. 730: *Et nos supradicti Berengarius atque Ermengaudus fratres convenimus vobis Poncius et Berengarius supradicti per unumquemque annum ad festam sancti Michaelis centum mancusos auri vetuli Valentie quousque valeat espletum de supradictum kastrum unum kavallarium.*

362 Feliu, Salrach, *Els pergamins*, doc. 177, 397, 401, 474, 511, 693, 761; Marquès, *Cartoral de Carlemany*, doc. 157, 161, 187; Puig, Ruiz i Soler, *Diplomatari*, doc. 102. Alturo, *L'arxiu*, doc. 213.

363 Salrach, Montagut, *Justícia*, doc. 310: *Et si Artallus et sui accepissent aliquod malum per istam rancuram de Begur, debebant illud malum deportare et finire iam dicto comiti et eis qui illud malum fecerant. Et Artallus predictus dedit predicto comiti Remundo septem fideiussores, unumquemque per mille solidos, valentes XX uncias auro, Barchinonensis monete, ut faciat hoc presens suprascriptum iuditium iam dicto comiti infra octo dies quibus predictus comes requisierit supradictum iuditium a iam dicto Artallo usque ad festivitate Sancti Michaelis primam venientem de septembri mense. Et si Artallus predictus non fecerit hoc presens supradictum iuditium iam dicto comiti intra prescriptos octo dies, sicut superius scriptum est, tunc isti septem fideiussores: Berengarius Renardi et Arlucio et Gaucbertus et Matfredus, fratres, et Guilelmus Tedi et Bonifilius Guillefredi et filius Vitalis, cito donent, sine engan de predicto comite, unusquisque per se mille solidos, valentes XX uncias auri, Barchinonensis monete, iam dicto comite. Et convenit Artallus predicto comiti ut si aliquis ex istis fideiussoribus interea mortuus fuerit aut defuerit, Artallus predictus donet alios fideiussores iam dicto comiti pro eis qui mortui fuerint aut defuerint, et hoc sit factum sine engan de predicto comite.*

364 That would be *Natale sanctae Eulalie Barchinonensis* (12th of February), *Translatio sancte Eulalie Barchinonensis* also named as *Sepulta fuit sancta Eulalia in domum sancte Crucis in Barchinona* (30th of October) and *Sancte Eulalie virginis* (10th of December). The only exception Salrach, Montagut, *Justícia*, doc. 428.

365 The *Invencio sancte Crucis* (5th of March) or the *Exaltatio sancte Crucis* (14th of September). The exception is a complicated case were the lawsuit was extended and thus could legally end on the 14th of September. Salrach, Montagut, *Justícia*, doc. 76.

366 No trials that I am aware of date on the *Dedicatio Sancti Petri in Vico* (16th of January), *Sanctorum Fructosi, Auguri et Eulogi* (21st of January), *Natale sancti Vincenti* (22nd of January), *Sanctorum Emeterii et Celedoni* (3rd of March), *Sancti Benedicti abbatis* (21st of March), *Depositio sancti Pauli episcopi* (31st of August), Sancti Aciscli (17th of November) or *Sancte Leucadie virginis* (9th of Desembre).

367 Legal activities on local feast days: *Sancti Georgii* (23rd of April): Salrach, Montagut, *Justícia*, doc. 277; Rius, *Cartulario*, doc. 812; Martí, *Oleguer, servent de les esglésies*..., doc. 35.; *Iusti et Pastoris* (8th of June): Salrach, Montagut, *Justícia*, doc. 122, 492; Baiges, Feliu i Salrach, *Els pergamins*, doc. 425, 651; Bach, *Diplomatari*, doc. 115.; *Translatio sancti Benedicti abbatis* (12th of July): Salrach, Montagut, *Justícia*, doc. 366; Rius, *Cartulario*, doc. 934.); *Sanctarum Iusta et Rufina* (17th of July): Martí, *Oleguer, servent de les esglésies*..., doc. 25.; *Sancti Felicis Gerunde* (1st of August): Salrach, Montagut, *Justícia*, doc. 367. *Translatio sanctorum Georgii et Aurelii* (20th of Octobre) Salrach, Montagut, *Justícia*, doc. 200, 391; *Dedicacio Marie Menresa* (15th of Desembre): Salrach, Montagut, *Justícia*, doc. 107; Martí, *Oleguer, servent de les esglésies*..., doc. 53.

In some cases a clear relationship between the legal action and a relevant local saint's day can be seen, like in the case of a donation to the Monastery of Sainte-Foy in Conques, the morning after the festivity of Saint Faith of Conques[368], or property rights being restored to the Abbey of Sainte-Marie d'Arles on the day of Saint Hilary of Arles (5th of May),[369] or simply having the help of the Abbot of Sant Cugat at the day of Saint Cucuphas (25th of July).[370]

Only few of the charters dealing with the resolution of conflicts mention holy days in regards to dates of trials but rather as dates of regular tribute or taxation. In this regard, saints days were important as deadlines for payment of debts, while days of trials were mostly set on weekdays and only on festivities in a few cases.[371]

The formulary from Ripoll, dating to the 10th Century has one formula described as *subpignoracione,* taking as an example a vineyard as a pawn, and instead of a concrete date gives a year as a time span: *Et in die quando fuerint ipsi anni completi* [...].[372] A very similar formulary was clearly used in Sant Cugat for pawning vineyards.

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368 The editors interpreted *feria V in crastinum post festivitatem Sancte Fidis* as the Thursday after the holy day, which would correspond to the 18th. If *crastinum* is interpreted as the next day, the document would date on the 15th, which was a Monday in the year 1099. Thursday was the most common day for trials though. SALRACH, MONTAGUT, *Justícia*, doc. 539: *Facta donatione ista apud Gardonam, in ecclesiam Sancti Vincentii, in presencia domni Pontii, Rotensis episcopi, atque Bonefacii, Sancte Fidis monachi, qui hoc donum adquisierunt et acceperunt coram priore et canonicis eiusdem loci, anno ab Incarnatione Domini millesimo XCmo VIIIIº regnagte Philipo, rege francorum, mense octobris, feria V, in crastinum post festivitatem Sancte Fidis.*

369 SALRACH, MONTAGUT, *Justícia*, doc. 469: *Quod si non fecerit, aut ipse aliquid iniuste amplius tulerit, si infra triginta dies non emendaverit, perdat totum quod modo ei consentimus in ipsos honores de Perdus et Felgernus et de Moledel. Et ista omnia suprascripta transmittant ipsi homines Remundo usque in festivitate Sancti Hilarii.*

370 SALRACH, MONTAGUT, *Justícia*, doc. 171.

371 Thursdays being the most popular date. SALRACH, MONTAGUT, *Justícia*, doc. 184: *Regnante in perpetuum Christo Domino salvatore nostro, anno Incarnationis ipsius millessimo nonodecimo, indictione secunda, era millesima quinquagesima octaua, VI die nonarum iulii, feria V, facta est hec dos anno vigesimo quarto regnante Roberto. Ego Geribertus, grammaticus, sperans Beati Vincentii martiris precibus adiuvari, hunc dotis ecclesie ipsius libellum anno Incarnationis Domini predicto et diebus scripsi kalendarum et feriarum.*

372 Zimmermann, M. (1982), 'Un formulaire du Xème siècle conservé à Ripoll', *Faventia*, 4/2, p. 75: *Prologus subpignoracione. In nomine Domini ego ille subpignorator sum tibi illi. Manifestum est enim quia debitor sum tibi solidos tantos quod tu mihi prestasti et ego eos manibus meis accepi et est manifestum. Propterea inpignoro tibi vinea mea propria qui mihi advenit de parentorum. Et est ipsa vinea in comitatu illo, in valle illa, infra terminos de castro illo. Et habet afrontaciones illam vel illam. Inpignoro tibi iamdicta vinea et in tuo iure eam trado in tali videlicet pacto ut eam teneas in tua potestate et exfructuare eam facias per hos tantos annos et omnem fructum quod Deus ibidem dederit opus tuum eum teneas et dispendas absque ullius blandimento. Et in die quando fuerint ipsi anni completi, sic tibi reddere faciam ipsos solidos tantos de argento bono placibile absque ulla dilacione et tu mihi reddere facias ipsa vineam sine mora. Quod si ego inpignorator minime hoc fecero et diem placiti mei non adimpleuero et tibi non persoluero ipsos solidos de argento ad diem dicti placiti, tunc abeas plenam potestatem de ipsa vinea que tibi inpignoro vendendi, donandi, comutandi vel faciendi quod uolueris liberarn in Dei nomine abeas potestatem. Facta subpignoracione sub die illo, anno illo, rege illo.*

Of course, the monks adapted the charter as it was appropriate and according to case, for example, changing a monetary for an alimentary debt. The charters were also adapted in regards to the return of borrowed assets, and instead of the time limit of a year, at least given in the formulary of Ripoll, the charters from Sant Cugat opt for feast days at the same spot.[373]

Another option judges had at their disposition when it came to giving deadlines for court resolutions or any type of quarrels was time spans.

373 Especially, RIUS, *Cartulario*, doc. 520, 554, 827; 371: *In nomine Domini. Ego Adolsinno, impinnorator sum tibi Mel, femina. Manifestum est enim quia debitor sum tibi quarta de I de ordeo quod tu mihi prestasti et ego de te accepit, est manifestum. Propterea impinnoro tibi semodiata i de v[ine]a legitima quod abeo in comitatum Barch., in terminio de ipsas Fexas; et advenit mihi de genitores meos. Et afrontad: de circii in terra de [Ar]gemir, de orient in vinea de Ozino, de meridie similiter, et de occiduo in vinea de me impinnorator. Quantum in istas IIII affrontaciones includunt, sic impinnoro tibi semoziata I de vinea, ab integrum, in tale capcione, ut ego eam teneam per tuum beneficium et in die quod erit misa Sancti Felicis Gerunda ista proxima ventura sic tibi rendere faciam quarta i de ordeo et[ea] mihi rendere facias ista scriptura sine mora,. et si ego impinnorator minimem fecero et tibi non persolsero quarta i de ordeo obtimo a mensura de porta, tunc abeas plenam potestatem ipsa vinea apreendere, vindere, donare, comutare, facere que volueris, cum exio vel regresio suo, a. proprio. Et qui ista impinnoracione inrumpere temtaverit non oc valead vindicare, set componat, aut componamus tibi ipsa ec omnia in duplo cum omnem suam inmelioracione, et ista impinnoracio firma permaneat omni que tempore. Facta impinnoracione* […].

IV.1.1.2.2. Time Spans

But if the ten days to present himself have elapsed, as has been herein before stated, and the debtor should not discharge his obligation, the creditor may bring the pledge before the judge, or the prepositus*, and shall have the right to sell it, whatever amount may be deemed equitable, in the opinion of the court or in that of three respectable men.*[374]

Time spans ranging from one feast day to another, for example from the day of Saint Michael to the feast of Saint Martin, sometimes show up in the documentation, however, time spans counted in days or months are far more common.[375] These could range from 11 days[376] or 15 days[377] up to two months[378]. The informed could arrive at the designated court meeting after a time span of three days[379] but in most cases these details were considered unnecessary information and a simple *ad diem constitutum* would serve.[380]

374 LV. V.6.3: *Ceterum si adesse usque ad decem dies, sicut supra dictum est, aut quod debet reformare dissimulaverit, tunc creditor iudici vel preposito civitatis pignus ostendat, ut quantum iudicio eius et trium honestorum virorum fuerit extimatum, sit licentia distrahendi.*

375 SALRACH, MONTAGUT, *Justícia,* doc. 367: *sub tali conventu ut iam dictus comes faciat donare per unumquemque annum ad illum suum baiolum qui tenuerit Terraça, de festa Sancti Michaelis usque ad festam Sancti Martini, L[a] porcos predicto Bernardi, valentes unusquisque II solidos monete istius Barchinone;*

376 SALRACH, MONTAGUT, *Justícia,* doc. 246: *Et ut haec: iudicii scriptura valorem perpetuum obtineat ultra placitum constitutum et supra determinatum, expectavit idem iudex supra dictum Mironem XI diebus, ut vel ad diem super adieccionis veniret ad placitum, quod si aliquid habebat quod rationabiliter accusaret vel diceret, licentiam habuisset.*

377 SALRACH, MONTAGUT, *Justícia,* doc. 501: *Hoc quidem placitum fuit XV dies constitutum apud ecclesiam Santae Mariae villae Castilionis, praesentibus scilicet Berengario* […]. SALRACH, MONTAGUT, *Justícia,* doc. 289: *Et hoc sit factum de ista Pascha veniente usque ad alia, infra ipsos XXX[a] dies quos iam dictus Reimundus et Helisabeth, aut unus ex illis, ei mandaverint vel mandaverit. Si iam dictus Udalardus es non habuerit sine occasione et ipsum es transactum, sit factum infra ipsos primos XV dies super venientes. Actio autem huius rei sunt X milia solidis.*

378 SALRACH, MONTAGUT, *Justícia,* doc. 208: […] *ut si predictus comes recuperaverit te in tua pote[st]ate predictum alodem, aut de proles tuos vel consanguineos tuos, vel viventis cuiuslibet homo utriusque sexus cui tu volueris aut relinqueris, sicut lex gotica iubet, quod sanctorum Patrum dimulgaverunt atque sanxerunt, statim infra duobus mensibus prescriptus Cherutius recuperet supra nominatum alodem sine ullo inpedimento*.

379 SALRACH, MONTAGUT, *Justícia,* doc. 481: *Post spacia vero dierum trium venit ante nos prelibatus Guilelmus in capitulo Sancte Marie quo interfuimus nos omnes clerici aliique boni laici viri, videlicet Bernardus Trasuarii et Ficapali Petrusque Uzalardi et alii nonnulli, ibiquehostendit scribturam de emptionibus que coniux illius Ermessendis fecerat cumpriori viro suo Guitardo, et insuper requirebat omnes plantaciones et cunctaedificia tam in domibus quam in molendinis quecumque apud illum fecerat et plantaverat, quia affirmabat quod prefatus Guitardus vir eius reliquid ea illisuo in testamento.*

380 SALRACH, MONTAGUT, *Justícia,* doc. 505: […] *ut facerent et acciperent directum de iamdictis rebus ad diem constitutum* […]

According to the Visigothic law, debts and pawns had to be paid within 10 days after the deadline[381] and the law was cited directly on many occasions.[382] One such application of the law was the case of a sales charter in which a priest named Aventí sold to Ermemir Ros some property situated in Barcelona close to the portal Regomir and the port. The property came into Aventí's possesion because a priest named Miró, son of Bonshom, handed it to him as a pledge for a loan of five ounces of gold and two mancusos. Miró, however, did not repay the loan within the agreed term, so Aventí waited ten days, the legally established overtime, and afterwards claimed the debt, which was never paid back – even after this he still waited for eight more months but in vain.[383] In the end, by the order of the judge Vives, five estimators did set the price of sale at four ounces of gold, which shows that the motivation of Aventí waiting to get his money back could have been purely financial, guessing that the properties are not worth the loan.

But as said above, if the deadline already had been prolonged sometimes the pressure of a public feast day was used to pay back or somehow compensate for the pending payment. The time frame of ten days is only mentioned in one other spot in the *Liber*[384] but was considered by the *Usatges* as the standard time span to be convoked to court.[385]

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381 LV. V.6.3.: *De pignere si pro debito deponatur. Pignus, quod pro debito deponitur, si per cautionem fuerit obligatum et ille, qui pignus deposuerat, ad tempus constitutum debitum reformare dissimulet, post diem cautionis exactum usque ad decem dies pignus salvum domino suo reservetur aut eidem domino, si in propinquo est, reportetur aut, ut restituat debitum, moneatur, Quod si per neglegentiam suam debitor ad diem constitum adesse neglexerit aut debitum implere distulerit, addantur usure. Ceterum si adesse usque ad decem dies, sicut supra dictum est, aut quod debet reformare dissimulaverit, tunc creditor iudici vel preposito civitatis pignus ostendat, ut quantum iudicio eius et trium honestorum virorum fuerit extimatum, sit licentia distrahendi. Et postmodum de pretio venditi pignoris creditor, quantum ei debetur, sibi aevidentius tollat et reliquum ille recipiat, qui pignus deposuerat.*

382 SALRACH, MONTAGUT, *Justícia,* doc. 95, 160, 183, 189, 194, 236, 250, 257, 408.

383 SALRACH, MONTAGUT, *Justícia,* doc. 176: *Propterea expectavi eum ultra ipso placito decem diebus legibus terminatos, adhuc autem expectavi eum postquam ipsos decem diebus, menses octo legitimos et nihil mihi profuit, sepe tamen eum commonendo et perquirendo ut ipsum debitum mihi reformasset et minime valuit.*

384 Related to the possible negligance of an attorney, giving the possiblity to select a new one after 10 days of delay, see: LV II.3.5.

385 BASTARDAS, *Usatges*, Us. 21: Let a tribunal be announced among both magnates and knights for the first time up to ten days in advance; then let it be announced eight days in advance. Indeed let a tribunal be announced among peasants on the fourth or fifth day before. Indeed his viscounts, comitores, vasvassores, and knights must attend a plea with the Count wherever he commands them within his county. But if they cannot return home on this day, let him give them a safe conduct. This must be done in the same way between viscounts, comitores, vasvassores, and other knights so that each of these must attend a plea with his liege lord from whom he holds the largest fief within the entrance of his lord's estate if the lord agrees to this. But if he does not, let each one attend pleas with him wherever in his lands he wishes. Moreover, if he cannot return on this day, let the lord give him a safe conduct.

As the 11th Century advances the time span of 30 days becomes the standardised period of time agreed and prescribed by the judges.[386] Although not considered a timespan in the Visigothic law[387] it offered the advantage as a longer deadline of roughly a month.[388] It was mostly used as a deadline to compensate and redress wrongs or paying off fines after a judicial decision, but was also used in agreements to establish that in case of a broken agreement certain measures had to be taken within that time span. That is likely how it found its way into the *Usatges* as well.[389]

386 ALTURO, *L'arxiu*, doc. 21, 140; ÁLVAREZ, *Òdena*, doc. 9, 32; BACH, *Diplomatari*, doc. 196; FELIU, SALRACH, *Els pergamins,* doc. 177, 279, 284, 289, 342, 354, 367, 426, 438, 446, 452, 469, 473, 491, 503, 530, 535, 540, 543, 588, 589, 624, 635, 637, 648, 698, 732, 736, 786, 855, 864, 878, 920, 922, 925, 948; MARQUÈS, *Col·lecció* doc. 36. PAPELL, *Diplomatari*, doc. 22, 34; PARDO, *Mensa*, doc. 9. PUIG, *El Cartoral*, doc. 33; PUIG, *El monestir de Gerri*, doc. 98; PUIG, RUIZ I SOLER, *Diplomatari*, doc. 50, 69, 81, 95; RIUS, *Cartulario*: doc. 697, 735, 801, 913; SALRACH, MONTAGUT, *Justícia,* doc. 279, 289, 354, 367, 438, 446, 354, 383, 437, 446, 452, 467 485; UDINA, *La successió testada,* doc. 26.

387 Only once but as a time span for the excommunicated, see: LV IX.1.21.

388 Thus avoiding confusion because of the difference in days between months, see: UDINA, *La successió testada*, 44: […] *et ubi dicit «ad Miro» et vacua rasura infra verso XXX et XXXI sub die et anno prefixo*.

389 Ruling that vassals have to maintain the peace and truce with the rulers for thirty days after they have broken feudal ties with them, comp.: BASTARDAS, *Usatges*, 99.

IV.1.1.2.3. Holy days as exceptional Court dates

Most charters do not refer to festivities or holy days literally, and this relative absence of feast days in most charters can not only be explained through religious respect or the law code but also through the fact that these dates were tied to deadlines. Legal breaches were thus mostly detected afterwards and the liturgical calendar thus worked indirectly as a cornerstone of the legal year. Possible deadlines vary from case to case, the most common being unpaid pawns and debts, along with excommunications, but also every kind of court resolution that was an interim decision and foresaw bringing in witnesses or scriptures to strengthen one's case. The date of trial was carefully selected and while conditions may not be visible in the charters, for example, weather conditions may change or witnesses may have died and others had to be found, selecting a feast day for a trial was nevertheless a conscious decision and could strengthen or weaken an appeal, especially in difficult cases. Therefore there is a significant use in relating the court cases to the days on which they were drafted. Having a trial on a feast day was the exception and not the rule and if a charter was drafted during an important liturgical date, then special attention to the wording of the charter can, in some cases, reveal additional information.[390] Generally, having a trial on a feast day can be seen as a sign of tension. This can especially be seen in cases where several meetings were unsuccessful; that may have caused the communities to appeal to a saint so that on his day the conflict could be finalised and peace re-established.

From sales to security charters, donations to trials, all could be done on Sundays but it was clearly not considered the best day for these activities, particularly trials that had more than one session changed from one weekday to another[391] or could be

390 Rather the exception than the rule and thus occasionally emphasised through a liturgical reference. SALRACH, MONTAGUT, *Justícia,* doc. 333: *Anno XXVIII regni Henrici regis, per eum diem dominicum quando ca[ntatur] Evangelium «Ego sum pastor bonus», […].*

391 Thursday to Thursday: SALRACH, MONTAGUT, *Justícia,* doc. 15. SALRACH, MONTAGUT, *Justícia,* doc. 76: *Et pervenit de placito in placito usque XVIII kalendas octobris; ipso die fuit feria secunda.*

arranged for the next day,[392] while in extreme cases this could range from Monday to Saturday.[393]

Sunday mass or feast days however had a big advantage as they presented an ideal background to accuse someone publicly in front of a multitude of people and the complaint was hard to ignore under these circumstances. Theoretically prohibited by the law these public accusations seemed to have been quite common.

On the Saturday of the 25th of July 996 Ramon Borrell I, count of Barcelona, Girona and Osona, accompanied by his brother, count Ermengol I of Urgell, the bishop of Barcelona Aeci and numerous nobles celebrated the Feast Day of Saint Cucuphas *cum innumera caterva fidelium* in the monastery of Sant Cugat del Vallès.[394] During the celebration the venerable widow Sesnanda appeared, complaining that the magnate Bonfill Sendred had usurped the tithes of the properties she inherited from her late husband Unifred, Son of Sal·la of Sant Benet.[395] The exact chronology is unclear but the *sub quorum presentia venit* suggests that she filed the complaint on that day or very close to it. The charter confirming *sub ordinatione iudicum* that the property is hers by four judges dates three days later on the Tuesday the 28th of July 996.[396] The judges

392 SALRACH, MONTAGUT, *Justícia,* doc. 143: *Qui dederunt fideiussorem, id est Cherucium Cerdaninesem, ut in crastinum diem videlicet sabbati agerent per condicionem sacramenti quod profitebantur, sicuti et fecerunt:* […]. Ibid.: *Date mihi inducias usque in die crastina ut si hoc possint abere vobis ostendant* […]. Ibid.: *Iudicato, autem, iusto iudicio, prescripti iudices inter eos laudaverunt pariter comes prescriptus et iam dictus vicecomes omnem eorum iudicium de predictis querimoniis et terminum acceperunt inter se usque in crastinum ad faciendum iudicium. Reversus autem predictus vicecomes in crastinum in pago Corneliani ad placitum, et rectum iudicium contempsit et facere noluit. Reversus autem predictus vicecomes in crastinum in pago Corneliani ad placitum, et rectum iudicium contempsit et facere noluit.*

393 SALRACH, MONTAGUT, *Justícia,* doc. 228: *In hac vero audientia advocatus fuit iudex Guifredus ex iamdicte sedis channonicus et ibi presens adfuit Bernardus intus in episcopali palatio, ubi prefatus episcopus promtus ad hoc placitum peragendum cum suis vel iamdictis testibus legaliter preparatus extitit per dies sex, id est, a die lune usque sabbato. Et circa oram terciam predicto die sabbati exhibuit prefatus antistes testes predictos per subditos suos coram iudice prefato Bernardo.*

394 SALRACH, MONTAGUT, *Justícia,* doc. 129: *Ego quidem Raimundus gratia Dei comes sistente in comitatu Barchinonense ad ecclesiam Sancti Cucufati martiris cenobii Octovianensis, anno videlicet Incarnationis Dominice DCCCCmo XCmo VIto, inditione VIIIva, anno Xmo Ugone rege regnante. Convenimus pariter ad festivitatem supramemorati martiris cum innumera caterva fidelium utriusque sexus scilicet et ex palatinis copia multitudo, id est, Eicius, gratia Dei epyscopus, et Ermengaus comes, frater meus, Gauthfredus Gerundensis, Domnucius Ausonensis, Amatus, Lobetus, Gondeballus, Gilelmus frater eius, item Gauthfredus Veltragenensis, Ugo, Miro, Brocardus, item Miro Bardine prolis, Ermengaus clericus, Ato, Guilelmus Amati Sobolis, Gifredus Balzariensis, Riculfus, Sunifredus frater eius, Seguinus, Ennego, Riculfus Ridagillensis, Guifredus Eroigi filius, et aliorum multorum bonorum hominum ibidem consistentium.*

395 Ibid.: *Sub quorum presentia venit quidam venerabilis femina nomine Sisenanda defferens mihi querelam qualiter domnus Bonifilius Sinderedi condam prolis sustollebat ei vel querebat illi auferri vi ipsas decimas de alaude qui est in terminio de castrum Odena, in locum vocitatum Speuto vel in castrum Odena vel in Serrayma, quem condam Unifredus vir suus dimisit ei per suum testamentum alligatum per seriem conditionum et per alias scripturas.*

396 Ibid.: *Idcirco sub ordinatione iudicum, id est, Gimara, Marco, Gifredo, Bonushomo, volo atque concedo*

inspected the documentation presented by her with care; Sesnanda knew that she would have a big audience in the monastery of Sant Cugat and surely travelled there to profit from the occasion.

The organisation of time and its relevance for the successful arrangement of court dates was crucial for the administration of justice and the liturgical year, and the collective experience of the festivities was the ideal frame that helped in scheduling those trials.

simulque firmo illi in omnibus locis alaudes illos quod condam vir suus Unifredus ei concessit et illa hodie retinet per instrumenta cartarum suarum ut habeat, teneat et possideat cum decimis et primitiis illorum in Dei nomine fatiendi quod voluerit libero potiatur arbitrio.

IV.1.2. Preparations

Leaving retrospective narration of events given in court records aside there are relatively few stand-alone documents that survived the tide of time which give insight into prearrangements before trials. To avoid repetition this short chapter deals with these singular documents. The importance of arrangements and their complexity in regards of agreeing, finding and organizing the place and time for a trial have already been emphasized. While some undated documents on the first look seemed to indicate prearrangements for a trial but should rather be seen as the result of a first trial heading into another and thus will be discussed later.[397]

In the documentation the organizational skills of ecclesiastical institutions to find suitable witnesses for trials can be seen on a case by case basis. For example, the Visigothic law under special circumstances allowed witnesses to swear an oath beforehand. The witnesses of these declarations travelled in their stead and testified in trial that they heard and saw them taking the oath. This delegation was considered valid in case of old age and sickness or simply because they were not residents of the same territory.[398]

But also private men delegated representation in court, for example, the clergyman Deodat *ignorans scribere* asked the experienced scribe Ermemir to write a document, signed by four witnesses[399] that would authorizes his cousins Guerau and Guillem to act on his behalf in court against his uncle Sunifred and all other heirs who retain rights over his mother's property and in the charters he promises to ratify and accept the outcome.[400] Stand-alone documents like this one not only show how deep

397 For example Bishop Eribau of Urgell had chosen Arnau Mir de Tost, the viscount Miró Guillem, the judge Guifré and a certain Ramon Arnau to make what looks like prearrangements for a trial between the bishop and Count Ramon IV of Pallars Jussà but this document's resemblance to other undated interim documents related to trial by combat makes a previous trial more plausible. SALRACH, MONTAGUT, *Justícia,* doc. 270.

398 LV II.4.5.

399 SALRACH, MONTAGUT, *Justícia*, doc. 237: *Sig+num Deusdedit clericus, ignorans scribere, sed hunc mandatum feci et firmavi, firmare rogavi. Sig+num Donnutio. Sig+num Dacho. Sig+num Guifre Geribert. Sig+num Remundo Isarno. Ermemirus levita scripsit et sub SSS.*

400 Ibid.: *Ego Deusdedit, filium condam Poncii et Tedelind[is], [...] Audesindi, tibi propinco meo Geraldo et Guilielmo, fratre tuo. Rogo vel mando atque iniungo vestre caritati dilectionis vel ad vicem personis mee licitum vobis sit surgere et petere avunculo meo Seniofredo et cunctos heredes vel homines qui retinent vocem materna mea, in cuiuslibet placitu potestati vel iudici iudicanti iustitiam, et quicquid legaliter vel debite exinde degeri[ti]s atque definieri[ti]s ratum et acceptum atque firmum vel in omnibus esse polliceor. Et qui hoc contenderit vel hunc mandatum infringere temptaverit predictam vocem alaudis in duplo componat et hec mandata firma persistat.*

the Catalan legal culture was rooted in the written word and the law[401] but they also bring up the question how many documents are not preserved that could have existed for the same purpose with the unrecorded real figures left open for pure speculation.

Another step according to the Visigothic law included that when a cause is about to be heard the plaintiff as well as the defendant should be required by the judges to give sureties so that they would make it to the appointed day for the trial either in person or by representatives.[402] Seldom those prearrangements are mentioned so it is hard to know how often sureties were enforced or collected. In most of the cases when property or possessions were at stake it seemed to have been unnecessary as a non appearance in court would nearly automatically result in a loss over the rights of the property in dispute. Especially between magnates beforehand agreements were necessary and sureties often were given beforehand.

To start a trial or a claim some insight and information on the ground level was needed and that ecclesiastical institutions went beyond their scriptures is attested from time to time. In a short charter eleven men swore that they will show the Bishop Berenguer Guifré of Girona all that belongs to the see in the parish of Santa Maria de la Bisbal,[403] including farmhouses, lands, vineyards *sacraria* and the census and services.[404] The charter collects the oath in first person, which meant that all of them swore the same oath before the bishop (*Et hoc iuraverunt omines*). The first two of the men, Amat and Ramon are *presbiter* of the see, while the last Ollemar works as a procurator for Girona (*procuratore et Gerones*) and this short charter could reflect a very common oath sworn by men before a episcopal visitation and thus could easily be

401 The Visigothic Law dictated that one who does not defend a cause on his own should delegate his representative in writing. As the law requires the text to be written by their own hand, this may have caused Deodat to clarify his incapacity to write the document. The necessity of witnesses can also be found in the law. LV II.3.3: *Ut qui per se causam non dicit, scriptis assertorem informet. Si quis per se causam dicere non potuerit aut forte noluerit, assertorem per scripturam sue manus vel testium signis aut suscriptionibus roboratam dare debebit* […].

402 LV II.2.4.

403 The special interest in the income from Santa Maria de la Bisbal can also explained by the link between the office of the bishop and the income form the parish. CAMPRUBÍ, *Catedral de Girona,* doc. 40, 51, 211.

404 SALRACH, MONTAGUT, *Justícia,* doc. 506: *Iuro ego tibi Berengario, episcopo Gerundensi, quia verasciter tibi ostendam, me sciente, omnes terminos Sancte Marie Episcopalis, quam vocamus Fontaned, et omnes mansos et terras et vineas cultas et eremas que sunt infra terminos parrochie Sancte Marie et omnia sacraria eiusdem Sancte Marie et omne censum et servicium quod ex his omnibus supra dictis rebus debes abere. Quicquid autem ex his omnibus que tu abere debes obcecatum est vel ablatum iniuste chomutacione aut donatione vel assensu sive ingenio alichuius ominis vel vendicione, quantum scio et scire potuero per directam fidem sine tuo inganno omnia tibi ostendam per Deum et suos sanctos. Et hoc iuraverunt omines, id est Amatus presbiter et Reimundus presbiter et Todredus et Gaucebertus et Ugo et Guilelmus et Poncius et Todalegus et Bonesmus et Ollemarus procuratore et Gerones.*

the pretext of a local trial in which these men could be called upon to swear in favour of the see. How common this procedure was is unclear but as the men did not sign the document it most probably reflects a much more common oral legal act that rarely got fixated in scripture.

Only to organise a trial alone, the coordination between authorities must have been lively. The Bishop of Barcelona Guislabert wrote in 1042 to the Archbishop of Narbonne, asking him to intervene in the conflict between the see of Barcelona and Umbert Odó. Requesting a higher authority to intervene seemed appropriate as the bishop had already asked Umbert to return four churches to the canonical see of Barcelona, which he was unjustly holding back despite the demands that had been made to him, and he hoped for excommunication linked with a deadline on all Saint's Day, already shown as a very typical date for legal deadlines, to recover the churches.[405]

However, it was not only the pressure of excommunication that could lead to extrajudicial agreements beforehand – a potential trial with a most likely negative outcome could lead to pre-judicial agreements as well. On the 8th of June 993 a certain Eldemir returned a property and paid a compensation sum of 20 solidi (*compositione vel emendatione*) for an allod he unjustly and fraudulently took away from Bonfill and his brother Gotmar.[406] In the charter he states that Bonfill made it clear he would go to court over the issue (*et voluistis me petere exinde in iuditio*), but thanks to the pacifying intervention of good men that mediated between them Eldemir agreed to pay for the peace, and with the charter now guaranteed the brothers return to the property.[407] The

405 Salrach, Montagut, *Justícia*, doc. 282: *Quocirca mee voluntatis atque iniurie meis examen aeque precamen litterulis tibi limpidissima antistitum gemma atque mee mentis pupilla venialiter allego veluti Umbertum Odonis qui violenter ac yperyphaniose quatuor aecclesias, quas sancte sedis Barchinone Canonice contuli, aufert et iniuria possidet absque ullo auctore et iure, quibus ullum nequit declamare ad stipulatorem nisi Nebrot cum suis ministris [et] pontificum princeps et omnes isti antistites, tua propalatione atque precatu detesteris et anatematizes et ab omni sancte Dei Aeclesie contubernio sequestres, utpote diremptus habetur a me et ab omnibus meis suffraganeis, ni resipuerit et totum ab integro mihi restituerit quoadusque Omnium Sanctorum festivitatem.*

406 Salrach, Montagut, *Justícia,* doc. 122: *Ego Eldemiro vobis Bonofilio, gratia Dei sacer, et fratri tuo Gotmar. Certum quidem et manifestum est enim quia venistis apud me in contentione de ipso vestro alaude qui erat prope ipso meo, quod ego vobis fraudavi iniuste et absque lege, et voluistis me petere exinde in iuditio.* [...] *Sig+num Eldemir, qui ista compositione vel emendatione feci et firmare rogavi. Sig+num Gisardo vicario. Sig+num Todevado. Sig+num Ioanne, qui litteras docuit, scribere non novit. Sig+num Bonofilio. Sig+num Ervigius presbiter, cognomento Marcho, qui et iudex. SSS.*

407 Ibid.: *Sed intermiserunt se bonisque ominibus inter me et vos ut composuissem vobis in pacificatione solidos XX, et derelinquissem vobis ipsa vestra terra quod male aprehendi. Et de ipsa mea terra quantum vos mihi in pacificatione iudicastis, vos et bonisque hominibus, trado eam in vestra potestate a proprio. Quantum vos oculis vestris vidistis et terminos mandare ibi fixistis sic trado in vestra potestate absque ulla occasione; et est manifestum.*

judge Ervigi, named Marc, signed the document which could mean that the trial was already on its way, that it was linked to an earlier decision or simply that the brothers wanted legal backup to be present. Eldermir must have considered his chances low and preferred to pay (*composuissem vobis in pacificatione solidos XX*). Compared with other security charters the payment seemed to guarantee that the complaint was put to rest and thus the two sides were appeased. This charter is an exception in regards of a clear expressed motivation to avoid going to trial; those extrajudicial reconciliations could have been more frequent at the end of the 11th Century when charters have a tendency to omit context and a pacification of conflict could have occurred before or after a trial.[408]

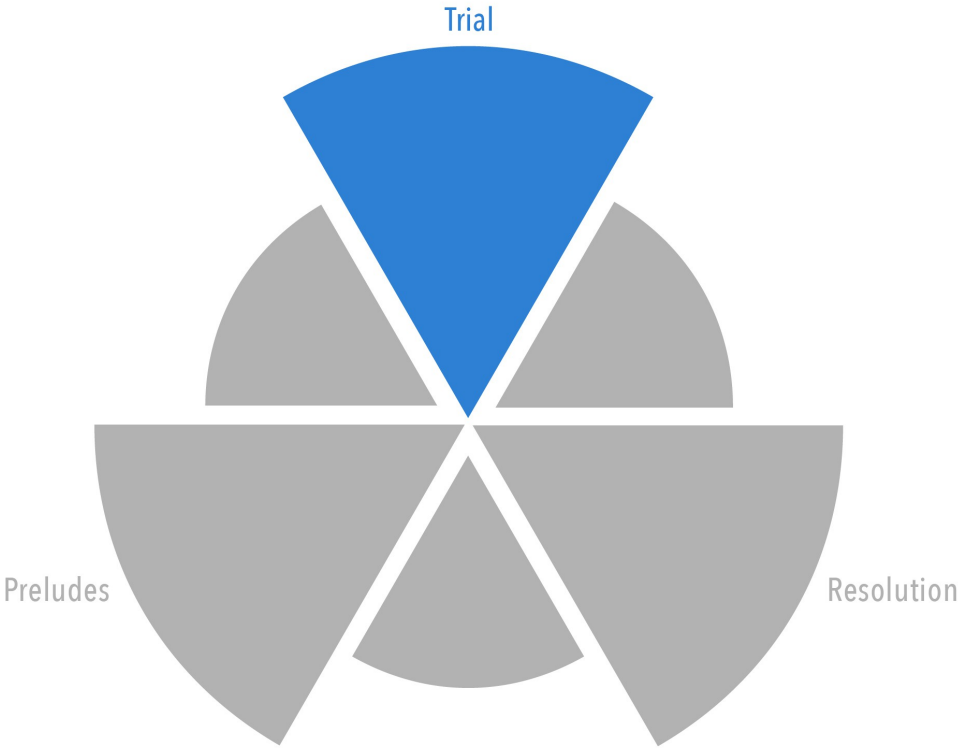
Sickness and fear of judgment day also caused men to reconsider their life decisions and to voluntarily give up claims in an ongoing conflict. Just to give one example, Bernat, son of Bernat Tegmari, a clergyman from the see of Girona besides some lands at Parlavà and Ultramort, defined and returned an allod at the parish of Santa Maria de Gualta which Ermengol Bernat of Fornells left in his will to the canons and which he (Bernat) had unjustly taken away. He does so due to being seriously ill (*ab egritudine maxima detentus*) and promises to be a faithful servant from now on.[409] Knowing that an inevitable trial lay ahead motivated many to repent when faced with the probability of death and to appeal to the saints for forgiveness. Avoiding earthly judgment by repenting and putting one's trust in the mercy of God while appealing to the saints when one had caused damage beforehand can be found in various examples. For one reason or another these had not yet arrived on the court stage but logically had already been addressed by the ecclesiastical institutions and therefore belong in what could be considered precursors to trials.

Other prearrangements become more visible when having a look at the composition of the tribunal and the attendees as well in the cases analysed one by one with more context given. However these isolated cases highlight the importance of preparations and negotiations that could have happened and most certainly did happen in many of the cases analysed in the following chapters.

408 For another example that was resolved beforehand through the intervention of good men, see: SALRACH, MONTAGUT, *Justícia,* doc. 411.

409 SALRACH, MONTAGUT, *Justícia,* doc. 345.

IV.2. Trial



IV.2.1. Composition of the Tribunal & Attendees

No one can settle a case unless he has received authority from the princes.[410]

The goal of the following chapters is to not only give an overview about who attended the trials and what kind of personae one would typically find in an judicial assembly, but also to give an outline about their role within trials. This enables one to have a clear idea of the protagonists encountered in the documentation.

The main sources that give insight into the composition of the tribunal and the attendees are accounts of proceedings – the so called *noticia* charters. If we assume that we are looking at an ideal type of a *noticia,* in the early stages one can see a certain tradition maintained: to begin with the phrase *In iuditio* [...].[411] As a clear continuation of style reaching back to the 9th century, this document type maintains a rather strict order, starting off with a list of attendees. This header of the charter introduces what for our modern understanding could be called the tribunal, opening with the person who has the authority to judge, followed by an assembly of nominated judges, and concluding with the so called *saio* and the *boni homines,* most likely local figures of importance, all of which preside over (*residere*) the assemblies.

This header is an important, and sometimes even the only, indicator that gives information about the jurisdictions.[412] One finds counts and viscounts, often accompanied by the sons, bishops, abbots and so on. Many times they are listed paired up, the combinations count and bishop, and bishop and abbot being the most frequent, but sometimes also two viscounts or one bishop and one viscount etc. The jurisdiction is clear, especially in cases in which there is only a count, bishop or abbot presiding over the trial. Sometimes the sources clarify that one is presiding over the trial while the other is only present (*in presentia*) thus giving more weight to the authority of the tribunal.

This list is followed by the judges as the real actors of the show, directing the trial. According to Visigothic law theoretically anybody could receive the authority to

410 LV II.1.15: *Quod nulli liceat dirimere causas, nisi quibus princeps aut consensio voluntatis vel informatio iudicium potestatem dederit iudicandi. Dirimere causas nulli licebit, nisi aut a principibus potestate concessa* [...]

411 SALRACH, MONTAGUT, *Justícia*, doc. 73, 74, 79, 82, 85, 93, 96, 99, 102, 106, 116, 128, 135, 138, 149, 161, 171, 190, 213, 261, 275, 286, 314, 355, 358, 487.

412 I look at Salrach, with the most coherent interpretation of the tribunal and its competences. See: Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo), p. 21-30.

judge[413] and the common line "those who are commanded to judge" must be read in that sense, meaning that the judges act under the order of a higher authority, which can only be the count, bishop or, by delegation, the viscount, etc. Legitimacy to judge thus must be understood as an abstract chain of authority reaching down from the king to the judges.

The number of judges in early charters is usually around three or four, though sometimes could even range up to eight or nine, and in extraordinary cases up to fourteen, suggesting that at important trials the parts involved brought their legal experts with them. These early lists do include those persons who, in court and extrajudicial assemblies dedicated to the resolution of conflicts, act as advisors, friendly conciliators and arbitrators, and are sometimes referred to generically as judges as well. The number decreases considerably in the 11th century when frequently a sole judge is in charge of the proceedings. It is, however, the professional judges who direct the trial, ask for testimony and witnesses, examine the evidence and finally give the verdict that is then legitimised by the authorities presiding over the trial.

In early charters the header thus always coherently follows an inherent order: first introducing the tribunal, then the *dramatis personae* in the *narratio* part, followed by the *dispositio* with the actual legal content. As early as the middle of the 11th century one finds that this header could be moved *en bloc* to other positions within the structure of the *noticia* charters.[414] Additionally, it is the *promulgatio* or notification in later examples which sums up the conflict and the legal content in dispute, sometimes even giving out the end result beforehand, for example, someone who had been accused of withholding a property unjustly but at the end gave it back had already been introduced in that manner at the beginning. To put it simply, later charters present the end result rather than the process of finding it and while one finds the occasional list of attendees these become the exception rather than the rule.

413 LV II.1.15:

414 This change can be seen in, for example, the fact that the last two charters starting with *in iuditio* both date in the second half of the 11th century, the first into the year 1063 and the second somewhere in between 1081 and 1090. SALRACH, MONTAGUT, *Justícia*, doc. 355: *In iudicio de Petro iudice et Bertran Ato seniore et Mirone vicario et Gelemundo saione seu aliorum bonorum hominum qui in ipso iudicio residebant,* […]. Ibid. doc. 487: *In iudicio Artalli comiti seu et Otone frater eius, et Regemundo Guillelmi avunculus eius, seu et Lucia comitissa mater eius, et aliorum bonorum hominum qui ibidem aderant in castro Envecinio,* […].

There was probably no restriction to public attendance, at least in most cases, as it is hard to imagine how to actively limit passive participation in a public space like in front of a church. Besides this practical consideration the assemblies clearly did consider themselves public in the early documentation.[415] The place of justice can thus give an idea on possible limitations due to access, for example the count's palace had enough space for the two parties, their entourage and so on, but at the same time surely not everybody had access to these assemblies. Again, it is a side note of the Visigothic law that considers *auditores* being present. The law established that the hearing should not be disturbed through shouts or commotions by bystanders.[416] Only those related to the case should actively participate while the judge had the right to consult with listeners if he wished to do so. Rather than an active participation of the crowd the law emphasises in a certain way the dominant role of the judge and his freedom to transgress the notion that only the involved parties of the legal issue at hand could be called upon. But the *auditores* are also found in the *eschatocol* of the charters, usually as viewers and listeners (*visores et auditores*) listed separately and sometimes even without signatures but rather as local testimony to be called upon if need be.

That most assemblies were public can be seen in the fact that the list of attendees could include men of all social strata, being it laymen and officeholders like *vicars* or *veguers*[417], *batlles* as well as church officeholders of all types next to priests, monks, deacons, archdeacons, custos and sacristans, while occasionally, but not always, the charter composition clearly separately listed lay and church men.

415 Mostly through the wording *mallo publico* et al. Comp. SALRACH, MONTAGUT, *Justícia*, doc. 7, 14, 21, 32, 34. For the *publica iudicum investigatione* and the restoration of documents in accordance with the Visigothic Law (LV VII.5.2), see. Ibid. doc. 25, 26, 27.

416 LV II.2.2: *Ut nulla audientia clamore aut tumultu turbetur. Audientia non tumultu aut clamore turbetur, sed in parte positis, qui causam non habent, illi soli in iuditio ingrediantur, quos constat interesse debere. Iudex autem si elegerit auditores alios secum esse presentes aut forte causam, quae propinitur cum eis conferre voluerit, sue sit potestati. Si certe noluerit, nullus se in audientiam ingerat, partem alterius quacumque superfluitate aut obiectu inpugnaturus, qualiter uni parti nutiri possit inpedimentum. Quod is admonitus quisquam a iudice fuerit ut in causa taceat ac prestare causando procinium non presumat, et ausus ultra fuerit parti cuiuslibet patrocinari, X auri solidus eidem iudici profuturos coactus exsolvat, ipse vero in nullo resultans contumeliose de iudicio proiectus abscedat.*

417 Flocel Sabaté suggests the distinct use of the terms depending on the time analysed. However, as vicar is used for a vast variety of offices in the English language which could cause confusion, this work still adapts the word *veguer* to designate these individuals. For more detail on the historiography and the evolution of this officeholder, see: Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 34-35; 35: Sin embargo, teniendo en cuenta la completa diferencia entre los oficiales que se acogen a esta denominación en la Alta y la Baja Edad Media […] es aceptable diferenciarlos denominando vicario al oficial de la Alta Edad Media y reservando la designación de *veguer* al de la Baja Edad Media.

Another figure which makes a regular appearance in the documentation is the *assertor* or legal representative of a party.[418] "For reasons of prestige or protection, against the erosion of the image of institutions and persons invested with authority"[419] the Visigothic Law foresaw "that lawsuits of princes and bishops should not be carried by themselves but by their subjects."[420] Bishops and counts indeed presented, in most cases which concerned themselves, what could be considered an advocate. The logic behind it is simple and is elevated by the law itself: if a person of high status wanted to make a proposal on any issue, who would dare to contradict him? So that "truth is not nullified by the magnitude of their dignity" they had to choose people who were charged with defending their lawsuits. In the case of important magnates like counts, bishops and also abbots, one finds their procurators acting as their representatives. The third title in the second book *De mandatoribus et mandatis* gives more details. The ninth chapter clarifies that nobody can entrust his cause for any reason to someone who is more powerful (*potente*) than himself, to avoid the chance that the one who is inferior to the powerful may be constrained or intimidated by his power. The poor man (*pauper*), on the other hand, if he wishes, can entrust his cause to one who is as powerful as the one against whom he has the lawsuit.[421] In legal reality this law encouraged the common men to look to the powerful for help while at the same time did not prevent the powerful from getting the best legal advice, as they could recruit experienced judges to their cause.

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418 Comp. Udina i Abelló, A. (1996), '"Mandatarius vel assertor", un aspect de l'assistance judiciaire dans la Catalogne du Haut Moyen Âge', in, *L'assistance dans la résolution des conflits* (Recueils de la Société Jean Bodin pour l'histoire comparative des institutions = Transactions of the Jean Bodin Society for Comparative Institutional History, 63-65, Bruxelles: De Boeck Université), p. 39–49.

419 Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo). p. 33.

420 LV II.3.1: *Quod principum et episcoporum negotia non per eos, sed per subditos suos sint agenda. Maiorum culminum excellentia, quanto negociis rerum dare iudicium decet, tantum negotiorum molestiis sese implicare non debet. Si ergo principem vel episcipum cum aliquibus constiterit habere negotium, ipsi pro suis personis eligant, quibus negotia sua dicenda committant quia tantis culminibus videri poterit contumelia inrogari, si contra eos vilior persona in contradictione causae videatur adsistere. Ceterum et si rex voluerit de re qualibet propositionem adsummere, quis erit, qui ei audeat ullatenus resultare. Itaque ne magnitudo culminis eius evacuet veritatem, non per se, sed per subditos agat negotium accionis.* Most clearly expressed in a case a bit outside of the times scope this work is concerned with. SALRACH, MONTAGUT, *Justícia*, doc. 64: *Testificant testes prolati quos profert Autatus, qui iudex est subditus vel assertor de supradicto episcopo* […].

421 LV II.3.9: *Qualibus personis potentes et qualibus pauperes prosequendas actiones iniugant. Nulli liceat potentiori quam ipse est, qui committit, causam suam ulla ratione committere, ut non cum equali sibi eius posit potentia obprimi vel terreri. Nam etiam si potens cum paupere causam habuerit et per se asserere noluerit, non aliter quam equali pauperi aut fortasse inferiori a potente poterit causa committi. Pauper vero, si voluerit, tam potenti suam causam debeat committere quam potens ille est, cum quo negotium videtur habere.*

By law women could only represent themselves and consequently never show up as an *assertor* or acting on someone's behalf within the documentation, except when liaising for the rights of their offspring.[422] For example Adelaida, widow of Berenguer Bonfill is obliged to act as guardian of her minor daughters in a case celebrated at Sanaüja on the 7th of December 1052, in which she argued that her late husband gave the disputed property to their daughters and that she is not obliged to answer on her daughters' behalf until they are of full legal age to act on their own. The Bishop of Urgell, who was the claimant of the property, urged the judge Guillem to act and he invoked the corresponding law,[423] stating first that Adelaida is obliged to act for her daughters (*debeat parare responsum*) and second that her offspring can appeal to the court in the future when they come of full legal age.[424]

The vocabulary used for the legal representative was largely in accordance with the Visigothic law code, the *mandatarius* o *assertor,* but other wording can also be found (*advocatus*[425]*, agens vicem*[426] et al.) within the consulted documentation to describe individuals who act in the stead of another on a legal behalf. The Visigothic Law also dictates that anyone who defends a case not by himself but through a third party must delegate his representative (*assertor*) in writing, another prerequisite that is hard to imagine being an available option for the common man and thus fosters the requirement for institutional help.[427]

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422 LV II.3.6: *Ne causam suscipiat feminam per mandatum, liceat vero ei ut propria exequatur negotia.*

423 SALRACH, MONTAGUT, *Justícia*, doc. 309: *Lex igitur iubet «ut si alique contra minorum personas adverse accesserint acciones, his intencionibus tutor, si elegerit, debeat parare responsum. Certe si neglexerit, repetenti quod postulat a iudice restituatur». Ideoque ego prelibatus iudex legaliter supradictum alodium in potestate domni Guilelmi pontificis restituo et mitto sub ea lege, ut «dum adoleverint iste filie ad integrum reformetur» suorum negocium secundum modum in illa lege que de pupillis et tutoribus loquitur est comprehensum.*

424 LV IV.3.3: *Qualiter pupillorum tutela suscipiatur vel de rebus eorum quae pars tutoribus detur. […] Statuentes etiam ut si quae contra minorum personas adverse accesserint acciones, his intentionibus tutor, si elegerit, debeat parare responsum.Certe si neglexerit, repetenti quod postulat a iudice restituatur, salvo tamen minorum negotio, dum adoleverint, ad integrim reformando. Ille vero, qui ad presens rem ipsam petere ceperat, si in iudicio, dum ipse minor adoleverit, ab eo fuerit victus, id, quae acceperat cum retroactorum temporum fructibus sive servitiis ipse minori aut parentibus eius seu ad quem ipse facultas iuste transierit vel cui conlata fuerit, indubitanter restituat.*

425 SALRACH, MONTAGUT, *Justícia*, doc. 200, 288, 413.

426 SALRACH, MONTAGUT, *Justícia*, doc. 166, 169, 171, 337.

427 LV II.3.3: *Ut qui per se causam non dicit, scriptis assertorem informet. Si quis per se causam dicere non potuerit aut forte noluerit, assertorem per scripturam sue manus vel testium signis aut suscriptionibus roboratam dare debebit, ita ut, si hisdem assertor aliquod conludium fecerit, qualiter ab adversario suo possit in iudicio superari aliut tantum de facultate sua mandatori restituat quantum de rebus eius perdidit aut evertit, vel etiam que ipse mandator obtinere seu adquirere debuit. Servo tamen non licebit per mandatum causas quorumlibet suspicere, nisi tantum domini vel domine sue, eclesiarum quoque vel pauperum sive etiam negotiorum fiscalium.*

The following pages will take a closer look on the role of the judges. the mentality behind their decision and how they used the written law. After a short digression looking at school headmasters, who sometimes act as judges, attention will be focused on a group that is generically named as the *boni homines* in the sources only to lastly analyse the role the law official called *saio* played in society.

IV.2.1.1. Judges and the Law

The omnipotent Lord and sole creator of the world, providing for the benefits of human salvation, conveniently ordered the inhabitants of the earth that they should learn justice by the means of the sacred precepts of sacred law. And, since by the order of the one and so immense divinity these things are imprinted in the hearts of men, it is fitting that all terrestrial beings, of however exalted rank, should submit their necks and minds to Him to whom even the dignity of the heavenly militia obeys. Therefore, if one wants to obey God, one must love justice; for if it is loved, it will urgently be necessary to act in accordance with it, as every one loves more truthfully and more ardently when, by the judgment of an indivisible equity, he units himself to his neighbour.[428]

As this work is mainly concerned with legal procedure and its changes over time, the relationship between judge and law code needs to be addressed. Judges heard and decided all cases presented to them, providing that they were subject to the law in accordance with the *Liber* "that judges should not hear any case that is not contained in the law".[429] The massive amount of citations and references to the Visigothic law code is indication enough of the use of the law in all aspects. As mentioned before, judges in Catalonia can be rightfully called professionals and they kept their title for life.[430] The distinction between men that are professional judges and who sign as judges, and the adjudicators, who in documents from the 10th and 11th century are frequently referred to generically as "judges," is important and can be seen in the fact that the latter do usually not sign as judges.

An initial overview of these professional judges is already possible in that time frame and shows a wide diversity of roughly 300 judges being active in cases of

428 LV II.1.2: *Omnipotens rerum dominus et conditor unus, providens commoda humane saluti, discere iustitiam habitatores terre, sacre legis sacris decenter imperavit oraculis. Sed quia solius tam inmense divinitatis imperiis haec cordibus imprimuntur humanis, convenit omnium terrenorum quamvis excellentissimas potestates illi colla submittere mentis, cui etiam militi e celestis famulatur dignitas servituti. Quapropter si obediendum est Deo, diligenda est iustitia; quae si fuerit dilecta, erit instanter operandum in illa, quam quisque tunc verius et ardentius diligit cum unius aequitatis sententia cum proximo semedipsum adstringit.*

429 LV II.1.13: *Ut nulla causa a iudicibus audiatur quae legibus non continetur. Nullus iudex causam audire praesumat que in legibus non continetur, sed comes civitatis vel iudex aut per se aut per executorem suum conspectui principis utrasque partes praesentare procuret, quo facilius res finem accipiat et potestatis regie discrectione traccetur qualiter exortum negotium legibus inseratur.*

430 Collins, R. (1986), 'Wisigothic law and regional custom in disputes in early medieval Spain', in W. Davies and P. Fouracre (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge), p. 86: These judges may be called 'professional', although nothing is known of their training, in that when their periods of activity are traceable they are found to extend over several years […].

conflict resolution up to the end of the 11th century.[431] Some of these judges, all of them very prominent in the documentation, have received more attention than others – Bonsom[432] as the compiler and elaborator of the *Liber iudicum popularis*, and also Oruç, Ervigi Marc and Ponç Bonfill Marc in what has been designated as the legal school of Barcelona around the year 1000.[433]

Fernández argued reasonably that the reduction in the number of judges within the tribunals is due to the professionalisation of the judges during the second half of the 10th Century,[434] which would culminate in sometimes only having a sole judge present in the beginning of the 11th Century. There are, however, certain problems that must be addressed. First of all it is probable that not all judges present in the early tribunals acted as judges in the sense of directing the trial, and the impression is given that at the beginning of the 11th century sometimes only the judge that directs the trial is mentioned.

Things get more complicated with the addition of other layers of fact, like place, time, type of charter and so on. For example, the prominent judge Guillem, active at least from 987 up to the year 1024, even with his rather common name can be easily identified through his signature style.[435] In many of these cases he is listed together with other judges in the header of the document but is often the only one signing as a judge. One can see him present at a trial with Sunifred but it is the latter who travels to resolve the case alone, and it is said Sunifred who signs the document at the end,[436] while next to prominent legal experts our Guillem is one of many.[437] It is not the goal of this study to analyse all the judges, but a complete prosopography of these professional judges would without a doubt reveal a lot of surprises. The question of

431 Josep M. Salrach, Tomàs Montagut (dir.), Justícia i resolució de conflictes a la Catalunya medieval. Col·lecció diplomàtica. Segles IX-XI. Textos Jurídics Catalans, 37. Barcelona 2018, p. 882-886.

432 Mundó, A. M. (2003), 'El jutge Bonsom', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 101–18.

433 Font i Rius, Josep Maria (2003), 'L'escola jurídica de Barcelona', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 69–100.

434 Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10: p. 21-27; p. 25: La diferència en el nombre de jutges en els tribunals de justícia pot trobar una explicació raonable en les noves circumstàncies jurídiques i culturals arrelades a Catalunya a partir de la segona meitat del segle X.

435 Salrach, Montagut, *Justícia*, doc. 99, 123, 132, 140, 146, 158, 171, 178. I found him the last time in 1024, see: Udina, *La successió*, doc. 134. With variations always: *Ego Guillermus, iudex, huius edictionis tactu necessitate occulorum signoque impressionis corroboro* +.

436 Salrach, Montagut, *Justícia*, doc. 123

437 Ibid. *Justícia*, doc. 171.

how many judges were actually laymen – and there were quite a few – is hard without a complete overview at hand.

Helpful for this endeavour is that judges usually stayed with a case until it was considered settled. This is already indirectly hinted at in the Visigothic law, for example in the chapter dealing with those who seek to falsify documents and precepts of the king it is written that the judges of neighbouring territories should only take over cases if the judges and the *auditores* in charge of said cases should die.[438] This simple fact is especially relevant in regards to the documentation that can be considered extrajudicial, where one also finds the judges but with no clear necessity of their presence. Without a doubt "the use that judges and notaries made of the Visigothic code was so frequent that no demonstrations are needed to deduce that in those centuries people lived immersed in the ancient legal tradition"[439] and the massive amount of citations from the *Liber* are clear proof of this, though some questions regarding this matter are not completely clear and deserve to be addressed.

438 LV VII.5.1: *De his qui regias auctoritates et preceptiones falsare presumpserint.* [...] *Quod si contingat illos auditores vel iudices mori, ad quos audientia vel iussio destinata fuerat aut aepiscopo loci aut alii aepiscopo vel iudicibus vicinis territorii illius, ubi iussum fuerat negotium terminare, liceat et datam preceptionem offerre et eisdem iudicibus negotium legaliter ac iustissime ordinare.*

439 Mundó, Anscari M. (2003): Els manuscrits del "liber iudicorum" de les comarques gironines. In: M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (Hg.): El feudalisme comptat i debatut. Formació i expansió del feudalisme català. Barcelona, 7 i 8 de febrer de 2002. Valencia, p. 78: L'ús que els jutges i notaris feren del codi visigot fou tan sovintejat que no calen demostracions per a deduir que en aquells segles la gent vivia immersa en l'antiga tradició jurídica.

IV.2.1.1.1. Citing the Law

That no one is permitted to be ignorant of the laws. All correct knowledge is ordered to drive away the abominable ignorance. […] Let no one, therefore, think that he is allowed to do anything unlawful because he is known to be ignorant of the decrees and sanctions of the laws, for the pretext of ignorance will not make innocent the one whom guilt has subjected to the penalties of the criminal.[440]

It is widely known that the Visigothic Law is cited frequently in different types of charters in Catalonia up to the 12th Century.[441] Several reasons can be considered for this fact the most obvious being to give legitimacy to the decisions, and this is especially clear if the citation is relevant to the case. The importance of the Visigothic law code can be emphasised in regards to other cited legislation; in contrast, in the time period this work is concerned with church councils were only actually cited in a judicial argument on two occasions.[442] While Carolingian precepts and papal bulls were shown as proof of someone's rights, when presented they were rarely cited.

Of these citations and references, Zimmermann counted a total of 730 in from 9th to the 12th century,[443] in many occasions even precisely naming the corresponding book, title and chapter within the law code while other times simply referring to the law by quoting from the *Liber Visigotorum*. If the document is related to a court case, citations

440 LV II.1.3: *Quod nulli leges nescire liceat. Omnis scientia sana ordinabiliter vitat ignorantiam execrandam*. […] *Nullus ergo idcirco sibi extimet inlicitum faciendi licere quodlibet, quia se novit legum decreta sanccionesque nescire. Nam non insontem faciet ignorantie causa, quem noxiorum dampnis implicaverit culpa.*

441 For a general overview, see: Rius Serra, J. (1940), 'El derecho visigodo en Cataluña', *Gesammelte Aufsätze zur Kulturgeschichte Spaniens*, 8: 65–80. Kienast, W. (1968), 'Das Fortleben des gotischen Rechtes in Südfrankreich und Katalonien', in , *Album J. Balon* (Namur), 97–115. Zimmermann, M. (1973), 'L'usage du Droit wisigothique en Catalogne du IXe au XIIe siècle: approches d'une signification culturelle', *Mélanges de la Casa de Velázquez*, 9: 233–281. Iglesia i Ferreirós, Aquilino (1977), 'La creación del derecho en Cataluña', *Anuario de Historia del Derecho Español*, 1977: 99–423. Collins, R. (1985), ''Sicut lex Gothorum continet': Law and Charters in Ninth- and Tenth-Century León and Catalonia', *The English Historical Review*, 100/396: 489–512. Collins, R. (1986), 'Wisigothic law and regional custom in disputes in early medieval Spain', in W. Davies and P. Fouracre (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge), 85–104. Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), II, esp. p. 648-668; II, p. 922-949. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 33-55.

442 The Council of Orléans, (511) was brought forward by Ponç Bonfill Marc (SALRACH, MONTAGUT, *Justícia,* doc. 207) in 1024 and the first Council of Toledo (397-400) was cited by the Judge Guillem in 1054 (SALRACH, MONTAGUT, *Justícia,* doc. 314 bis).

443 Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), vol 2, esp. p. 648: Entre 814 et 1247, nous recensons 730 documents faisant explicitement référence à l'usage de la Loi gothique. […] IXe siècle: 29. 901-950: 26. 951-1000: 89. 1001-1050: 162. 1051-1100: 223. 1101-1150: 105. 1151-1200: 75.

are embedded in the charter's inherent narrative and the reason behind citing them are clear, while in contrast citations in donations, for instance, seem superfluous and unnecessary.

For a better analysis one can make a distinction between references and citations, and can categorise further between general references and precise references on one hand and direct citations and indirect citations on the other. These categories are artificial and just serve the purpose of helping to analyse the way in which judges and scribes used the written law.

A general reference is therefore understood as referring to the law or a law in particular but not citing it (*sicut lex gotica iubet*), while in contrast a precise reference refers to a specific law but does not cite it literally, instead indicating where it can be found within the law code by referencing the book, title or even the chapter (*continetur libro V, titulo VI*).

In the following, direct citations are understood as word by word references citing a specific part of a law while giving indications on book, title and chapter[444] (*Secundum legem gothicam que legitur in secundo libro et in tercio titulo «De maiorum culminum excellenciis»*)[445] while citations are considered indirect when passages, phrases or technical terms of the Visigothic Law code are used, sometimes without specifically mentioning the law or even modifying it to a certain degree (*Cunctis pupillis dat lex indubitanter consultum ut reddat ratione de illorum rebus securitates procurrent ab ipsis pupillis accipere*).[446]

444 Comp. Niermeyer, p. 379, *aera*: chapter or section number. In libro II, titulo I era VI [legis Visigothorum].

445 What Zimmermann described as "citations explicites". Zimmermann, M. (1973), 'L'usage du Droit wisigothique en Catalogne du IXe au XIIe siècle: approches d'une signification culturelle', *Mélanges de la Casa de Velázquez*, 9, p. 237.

446 Following the useful distinction between general and precise references and citations drawn up by: SALRACH, MONTAGUT, *Justícia,* p. 1057. Zimmermann follows a very similar distinction between *citation explicite*, *avec mention du Code*, *citation explicite*, *sans attribution ni référence* and *une allusion à la Lois, sans citation explicite ni référence*, see: Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), vol 2, esp. p. 648. Additionally, a difference between direct and indirect citations is useful for the purpose of highlighting the fact that the charters also cite the Visigothic law code on different occasions but don't give a direct reference.

Reference		Citation	
General Reference	Precise Reference	Indirect Citation	Direct Citation
Sicut lex gotica iubet.	*Lex nostra edocet, que continetur libro V, titulo VI, ubi instituti sunt decem dies expectandi ultra placitum creditori.*	*Cunctis pupillis dat lex indubitanter consultum ut reddat ratione de illorum rebus securitates procurrent ab ipsis pupillis accipere.*	*Secundum legem gothicam que legitur in secundo libro et in tercio titulo «De maiorum culminum excellenciis».*

Tab.1: Distinction between Citations and References

Citations and references to Visigothic law are omnipresent in the Catalan documentation and concern almost all books "which may also indicate something of the legal culture of the judges who applied it".[447] The most prevalent in this regard are the relatively rare but nonetheless existent precise references as they are only understandable with the law code at hand or by having it memorised to the point of knowing, not unlike a modern lawyer, what law the book, title and chapter cited actually contained.[448] For the cases analysed in this work the above mentioned divide between citations and references will be used from case to case.

While citations are numerous, the only books of the *Lex Visigothorum* that are not cited or referenced in any of the consulted documentation are the 9th Book,[449] dealing with fugitives and deserters, and the 11th Book,[450] which deals with physicians and sick persons,[451] violation of graveyards[452] and trans-maritime trade.[453] The laws in the *Lex*

447 Salrach, Montagut, *Justícia,* p. 1055: […] "les citacions recollides són molt diverses i concerneixen a tots o quasi tots els llibres de la Lex, el que també pot indicar quelcom de la cultura jurídica dels jutges que l'aplicaven."

448 Salrach, Montagut, *Justícia,* doc. 109, 111, 125.

449 LV IX: *Nonus Liber. De fugitivis et refugientibus.*

450 LV XI: *Undecimus liber. De egrotis et mortuis atque transmarinis negotiatoribus.*

451 LV XI. 1: *De egrotis et medicis.*

452 LV XI. 2: *De inquietudine sepulcorum.*

453 LV XI. 3: *De Transmarinis Negotiatoribus.* For this chapter and more literature, see: Marlasca Martínez, O. (2001), 'Quelques points de droit commercial et maritime dans la lex Visigothorum', *Revue internationale des droits de l'antiquité*, 48, p. Pour notre part, si nous tenons compte des excellentes analyses des auteurs cités, relatives justement au contenu du livre 11,3 de la LV, nous nous arrêterons sur une série de questions de caractère commercial et maritime qui se trouvent de façon éparse dans les différents passages de la Lex.

concerning physicians were designed to "provide certain safeguard both to the physician and the patient",[454] blending Roman law into the Visigothic society.[455]

In the time period this is work is concerned with physicians are mentioned scarcely in the charters.[456] While some of the gravely ill repent and donate, still hoping for God as *humani generis medicus* to recover,[457] occasionally one sees physicians being active and successful. For example in an incident when a certain Pere brought his father to Barcelona, who had been injured by a man called Balloví Ansovall, to be healed in the house of some physicians for which his father gave him some property as a thanks for the rescue, and that property later caused quarrels regarding the inheritance.[458] This insightful episode, like so many others, is only preserved because of the inheritance issue which once more shows that the main filter in the documentation is that it was mostly charters related to ownership, property rights and so on survived. I would argue that the most plausible reason to not find these two books cited in the consulted documentation is that no related cases endured the passage of time rather than that the judges did not deal with them.

Some chapters and laws clearly predominate others, as will be seen in the following chapters, and this is not only due to the conservation of manuscripts but also

454 Amundsen, D. W. (1971), 'Visigothic medical legislation', *Bulletin of the History of Medicine*, 45/6, p. 555.

455 The law finding a middle ground between protecting patients (LV XI.1.1; XI.1.6) while providing certain reinsurances to the physicians (LV XI.1.8; XI.1.4).

456 Apart from a certain Oliba signing in a court related charter (SALRACH, MONTAGUT, *Justícia,* doc. 101: *Sig+num Oliba medicus*) and for example a certain Joan in 1082 (RIUS, *Cartulario*, doc. 708.: […] *Iohannis medicus* […].) the documentation is silent about them.

457 SALRACH, MONTAGUT, *Justícia,* doc. 345: *In Christi nomine ego Bernardus filius Bernardi Tegmari, Sante Marie sedis Gerunde clericus, ab egritudine maxima detentus, ideo ut Deus parcat meis peccatis omnibus et ut idem Deus tocius humani generis medicus me meliorandum sua benignissima misericordia sua restituat sanitati quantocius, dono et reddo et definio votis mei cordis omnibus predicte Sancte Marie sedis Gerunde canonice alodium totum cum integro sui, sicut est et subsistit in suis pertinentiis omnibus quod fuit Ermengaudi Bernardi de Fornels, et quod est in comitatu Impuritano, intra terminos parrochie Sancte Marie de Agaulta, quod iniuste abstuli usque nunc a iure canonico prelibate sedis, quoniam predictus Ermengaudus idem alodium reliquit suo testamento ultimo predicte sedis canonice.*

458 SALRACH, MONTAGUT, *Justícia,* doc. 411: *Satis est manifestum quomodo Arnallus Vidalis de Orta dedit Petro clerico, filio suo, ipso alodio que dicunt ad ipsam Tonnam, in illo videlicet tempore quando Balluvinus Ansovallus in absconditoso sive subito vulneravit eum et venit prenominatus Petrus, filius suus, et duxit suo patre in Barchinona, in ipsos domos quas emit de Ermumirio Rusticio et que sunt medicos, qui curaverunt eum, et ad patrem suum et ad ipsos medicos servivit in quantum potuit et necesse fuit. Et sano facto patre suo, dedit ad iam dicto Petro, filio suo, ipso alodio de iam dictam Tonnam, ita ut iussit illum imparare et plantare ipsos arbores qui ibi sunt et ipso omine mittere et per manu sua in ipso alodio stare et in ipsa mansione. Et quando obiit ex hoc seculo, predictus Arnallus in ipso alodio quam abebat ab oram rieram Orta, contra villam de Romaned, ab ipso Montedzellus, sive in aliis locis, concessit simul in unum filiis et filiabus suis. Quod prenominatus Petrus quesivit ipsam hereditatem in iam dicto alodio, quod pater suus dimisit inter invicem fratres sive sorores. Et resonat in ipso testamento sive iuditio, sicut est corroboratum. Propter hoc et pro aliis causis venerit adlocuciones et contenciones inter invicem fratres et sorores.*

because of the circumstances of the trials that produced the charters, which created the necessity or urge to make judicial decisions intersubjectively understandable while also having a written memoir to recall the case in more detail. If one gives this a second thought it also indirectly shows that judges were aware that their decisions could be legally challenged.

However, before heading into how the law was cited in charters related to trials and conflict resolution in general it is important to keep in mind that the Visigothic law code was cited indirectly and directly on some occasions that would be considered civil law today – this includes dowers and marital agreements, wills, sales, swap contracts, consecration of churches or donations – and its legal expertise can be found in the redaction of franchise charters for towns and cities as well.[459] Within the legal practice of the judges a huge amount of their work was resolved without the need of a higher authority like a bishop or count, and was instead done by a small number of judges usually in the presence of the *boni homines* and rarely the *saio*. While these documents show the importance of the *Liber* as the fundamental basic code of legal activity for Catalonia, the presence of a judge was not needed to give some of these documents legal validation, but sometimes the presence of a judge inclined the redactor of the charter towards direct citations of the law and sometimes giving precise references, even in documents like sales charters.

Certain legal activities were directed by the judges and their presence was indispensable. These include, for example, the *reperatio* or reparation of scripture[460] or the redaction of wills and their execution, also understood as a *Iudicum* by contemporaries. Another very characteristic procedure for Catalonia has been classified as the "adveració sacramental." It consists of the last will of a dying person being written down or listened to without the presence of a judge that then had to be ratified and legally confirmed within six months through the sworn declaration of witnesses. This was done at the altar and in the presence of one or two judges and a priest, or

459 Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10, p. 82-85.

460 For this procedure, see: Salrach i Marés, Josep Maria (2009), '"Ad reparandum scripturas perditas": El valor del documento en la sociedad de los condados catalanes (siglos IX y X)', in F. J. Fernández Conde and García de Castro Valdés, César (eds.), *Symposium Internacional Poder y Simbología en Europa, siglos VIII-X* (Oviedo), 309–30. Salrach i Marés, Josep Maria (2013), 'La recreación judicial de diplomas perdidos. Sobre la escritura y el poder en los condados catalanes (siglos XI-XII)', in J. Escalona and H. Sirantoine (eds.), *Chartes et cartulaires comme instruments de pouvoir. Espagne et Occident chrétien (VIIIe-XIIe siècles)* (Méridiennes. Études Médiévales Ibériques, Madrid: Consejo Superior de Investigaciones Científicas; Toulousse : CNRS), 219–32.

sometimes a bishop.[461] Bailed property also needed to be legally handed over before it could be sold and consequently the session was also named a *Iudicium*. This allows one to consider that the best explanation of the word *Iudicium* would probably be that any activity that needed to be directed by a judge was idenitified this way by contemporaries. The documents related to these legal activities cite or reference the corresponding chapters of the code.

Just to give one example, Ramon V, count of Pallars, at "*the end of the second month in the second year of his marriage"* with Valença of Tost, "*in front of his best men*[462], *and other knights signed with his own hands through his accustomed sign"* a donation to his wife that included the castle of Mur and half of the castle of l'Areny with all their appurtenances.[463] After a common *invocatio* for donations, a simple *In nomine Domini,* the count makes sure that this donation has the authority of the *libro Legis Gotorum,* thus referring to the third book, *De ordine coniugali*[464] which stipulates that only after a year has passed does a husband have the right to give his wife whatever he wants, and Ramon does so *per meam bonam voluntatem propter amorem et dileccionem.*[465] Like in other donations the *Lex* is cited right before the *dispositio*, the description of the actual legal

461 Udina i Abelló, Antoni (1995), 'La adveración sacramental del testamento en la Cataluña altomedieval', *Medievalia*, 12: 51–64; p. 54: Así, una primera cuantíficación nos permite observar citas explícitas referidas al *Liber* en una cuarta parte de los documentos analizados, de ellas el 75 % se refieren a la cuarta forma testamentaria, la oral, y el 25 % restante a las formas escritas. Hay que observar, no obstante, que en la mayoría de casos no hay una referencia textual a la ley y, que como veremos, la mayoría de los documentos reflejan publicaciones de un testamento escrito. Taylor, N. L. (2001), 'Testamentary Publication and Proof and the Afterlife of Ancient Probate Procedure in Carolingian Septimania.', in K. Pennington, S. Chodorow, and Kendall Keith H. (eds.), *Proceedings of the tenth International Congress of Medieval Canon Law* (Vatican City), 767–80; p. 780: The local *iudices* who were so numerous in the judicial documents of the Narbonnais from the late eighth century through the early tenth century (and in Catalonia through the twelfth century) have no parallels elsewhere in the Carolingian empire – save perhaps in Lombardy – and their origins have not satisfactorily been explained.

462 Feliu, Salrach, *Els documents*, doc. 476, 477: [...] *coram meis melioribus hominibus, presentibus aliis militibus, scribere iussi, et manibus propriis per meum solitum signum firmavi et firmare rogavi.*

463 For the context, see: Fité i Llevot, F., and González i Montardit, E. (2010), *Arnau Mir de Tost*: *Un senyor de frontera al segle XI* (Col·lecció El Comtat d'Urgell, 9, Lleida: Edicions de la Universitat de Lleida), p. 177.

464 LV III.1.5.: *Certe si iam vir habens uxorem, transacto scilicet anno, pro dilectione vel merito coniugalis obsequii ei aliquid donare elegerit, licentiuam incunctanter habebit. Nam non aliter infra anni circulum maritus in uxorem se mulier in maritum, excepta dotem, ut predictum est, aliam donationem conscribere vel dare poterint, nisi gravati infirmitate per periculum sibi mortis inminere prespoxerint.*

465 Feliu, Salrach, *Els documents*, doc. 476, 477: *In nomine Domini. Ego Raimundus, comes Paliarensis, donator sum tibi uxori mee Valencie comitisse. Quia legibus est decretum et in tercio libro Legis Gotorum, videlicet in primo titulo, est scriptum ut vir iam habens uxorem, transacto, scilicet, anno, pro dileccione vel merito coniugalis obsequii si ei aliquid donare voluerit, licenciam incunctanter habebit, et aliter infra anni circulum nichil ei dare poterit quod ipsa habere possit. Idcirco, ego iam dictus comes, elapso et transacto anno, cum iam pervenimus iuxta finem secundi mensis in secundo anno postquam te accepi in coniugio, a nullo coactus neque suasus, per meam bonam voluntatem propter amorem et dileccionem quam circa te habeo, legaliter de meis rebus hoc tibi dono atque concedo. Dono, namque, tibi per hanc mee donacionis scripturam*

process. In the recognition line the priest and judge Guillem confirms the document, surely the one responsible for the direct citation of the law.[466]

But the vast majority of sales charters that are not the result of an unpaid debt, for example, do well without any citation of the law and were considered legitimate documents by contemporaries. With the huge amount of charter material in mind, one could even make the opposite statement that only few examples cite or refer to the Visigothic law, especially in the case of sales charters, which raises the central question for this chapter: why scribes bothered to include citations or references at all. Within the diversity of the documentation of sales charters that either cite or reference the Visigothic Law, for our purpose here only some examples will suffice.

General reference can be found in *sanctio* lines, for instance as in a sales charter in which Bernat, son of Juan, together with his wife Ermentruda and his brother Ramon sold an allod that the brothers had inherited from their parents, located in the municipality of Castellet, next to Sant Esteve de Castellet, to the abbot of Sant Cugat for four gold coins and, if anybody dared to infringe the sale, they would have to compensate quadruple in accordance with the law (*sicut Lex Gotorum continet*).[467]

While a judge is not explicitly mentioned in that example, in some cases he does appear; within the presence of the judge Ermengol a certain Bonfill Bernat and his wife Ermengarda sold to the spouses Mozó and Ermengarda five *mujadas* of one allod and the third part of another, measured according to the *destre* as thirteen legitimate palms, located in the county of Barcelona, in the parish of Sant Genís d'Agudells, for the price of twenty ounces of Valencian gold.[468] Bonfill Bernat possessed these lands through inheritance (*que fuerunt meorum parentum*) while Ermengarda held it as part of her dower which she had received when she married Bonfill. One couple now sold their

466 FELIU, SALRACH, *Els documents*, doc. 476, 477: *Guilelmus, sacerdos et iudex, qui hec confirmat.*

467 The charter dates on the 23rd of April 1065. RIUS, *Cartulario*, doc. 641: *Quod si nos venditores, aut aliquis homo utriusque sexus, venerit, aut venerimus pro inrumpendum, non hoc valeamus, aut valeat vendicare, set componat, aut componamus vobis predicta terra in quadruplum, sicut Lex Gotorum continet, et in antea ista carta firma permaneat modo et omni tempore.*

468 The charter dates on the 20th of May 1090. ALTURO, *Santa Anna*, doc. 128: *Accepimus quoque predictum alaudem quod vobis prefatis emptoribus vendimus propter quintam partem que mihi Bonefilius predictus contigit vel contingere debet de ipsis alaudibus que fuerunt meorum parentum ad faciendum quod voluero taliter sicuti resonat in Goticorum libro, et ad me Ermeniardis predicta venditriz advenit per decimum predicto coniuncti mei Bonefilii sive quibuslibet aliis vocibus.* […] *Si vero nos venditores aut aliquis utriusque sexus homo qui contra hanc scripturam vendicionis venerimus aut venerit pro inrumpendo nil valeat sed per iudicium conponamus et precium reddamus aut componat vobis in triplum.* […] *Sig+num Ermengaudi Raimundi, iudicis.*

property off and so the other is free to do with it what they will, as stipulated within the book of the Goths (*ad faciendum quod voluero taliter sicuti resonat in Goticorum libro*).

Both examples do not need these references to be valid documents. With the enormous amount of quarrels about inheritance and how often the documentation lacks context in mind, the possibility of a relationship with former judicial decisions or the motivation behind receiving the legal reassurance of a judge should at least be contemplated.

Sometimes the historical context is clearly reflected in sales charters, for instance in August 1023 the count Berenguer had just turned 18 and was exiting the tutelage of his mother Ermessenda.[469] Together with his wife Sança he sold to Guillem, son of Amat, the castle of Castellví de la Marca and its appurtenances for the rather cheap price of three good horses worth sixty ounces of gold. The count does so with the assistance of "our" judge and it is reinforced through the law (*Obtineat auctoritate nostrorum iudicum et nostrarum legum muniri eam fecimus*). The judge Ponç Bonfill Marc cites four laws from two books to assure the sales validity.[470] In his personal fashion, he starts first with the second book, citing the first two laws, and then continues with the fifth, citing the latter two from there (*Et in eodem libro et titulo alia lex ita dicit:*).

First he assured the sale to be legitimate as the count was at the sufficient age to have *absolutamque licentiam* to effectuate the sale.[471] Its legal validity is confirmed through the signatures and the day and year *habuerint evidenter expressum.*[472] In a rather redundant manner, from the book regarding sales he again enforced the same notion that a sale made through a scripture has full validity.[473] Probably crucial was the mention

469 Baiges, Feliu, Salrach, *Els pergamins*, doc. 199.

470 Papell, *Diplomatari,* doc. 8: *Et omni tempore hec venditio firma permaneat ut tu et omnis posteritas tua faciatis et nunc et in antea ex omniubs suprascriptis rebus quodcumque volueris ad vestrum plenissimum proprium sane et aut hec venditio omnibus modis maius firmitatem obtineat auctoritate nostrorum iudicum et nostrarum legum muniri eam fecimus.*

471 Ibid.: *Id est auctoritate legis que continetur libro II·titulo V. capitulo VIIII. et ita dicit ut: priusquam siqui venerint usque ad plenum·XIIII annum aetatis in omnibus iudicandi de rebus suis liberam habeant absolutamque licentiam.* Listed as the 9th chapter by Ponç. LV II.5.11: *Quae scripturae valere poterint, si ab his facto fuerint qui sunt in annis minoribus constituti. […] usque ad plenum quartum decimum annum in omnibus iudicandi de rebus suis liberam habeant absolutamque licensiam.*

472 Ibid.: *Et lex que eodem libro et titulo, capitulo I·posita estita dicit: scripture que diem habuerint evidentur etiam annum expressum atque secundeum legis ordinem conscripte noscuntur seu conditoris vel testium fuerunt siguis aut sub scriptionibus roborate omni habeantur stabiles firmitate.* LV II.5.1: *Quales debeant scripture valere. Scripture, que diem et annum habuerint evidenter expressum atque secundum legis hordinem conscriptae noscuntur, seu conditoris vel testium fuerint signus aut subscriptionibus roborate, omnino habeatur stabili firmate.*

473 Ibid.: *Et lex que continetur libro V·titulo·III·capitulo·III ita dicit: venditio per scripturam facta plenam habeat firmitatem.* Listed as the third title by Ponç. LV V.4.3: *Venditio per scripturam facta plenam habeat firmatem.*

of the law that forbids anyone from undoing the validity of a sale by stating that a sale was done at a too low price.[474] The first and the last law are most probably targeted towards the mother of the count, as having had the regency for so long she could dispute the rather cheap sale that was meant to establish a political bond between the count and Guillem.[475]

Jeffrey Bowman, to name one, already addressed coerced transactions[476] but the motivation behind citing the law is not clear as it was only done on rare occasions. For example, to explicitly state that the donation was not exacted through force and intimidation (LV V.2.1.)[477] and that a donation that had already been delivered is not claimed in any way by the donor (LV V.2.6)[478] is a combination that can be found in the charters.

The widow of a certain Bonfill, called Sicardis, donated an allod to the monastery that she owned in the Maresma, in the parish of Santa María de Mataró that she held because of an exchange and as a dower from her late husband.[479] Both laws are cited directly.[480] In the same fashion when Arsenda donated to Santa Maria de l'Estany an allod consisting of a farmhouse situated in Sant Fruitós de Ginebreda, it is emphasised that

474 Ibid.: *Et in eodem libro et titulo alia lex ita dicit: venditionis hec forma servetur ut seu res alique vel terras sive mancipia vel quodlibet animalium genus venditur nemo propterea firmitatem venditionis inrupat eo quod dicat rem suam vili precio ve[n]didisset.* LV V.4.7: *Si dicat quis rem suam vili pretio vendidisse. Venditionis haec forma servetur, ut seu res aliquae vel terrae sive mancipia vel quodlibet animalium genus venditur, nemo propterea firmitatem venditionis inrumpat, eo quod dicat rem suam vili pretio vendidisse.*

475 Ermessenda is absent in the signature, the charter was drafted by Ponç himself. Ibid.: […] *Sig+num Bernardi Gifredi. Sig+num Raimundi Gifredi. Sig+num Aianrrici, fratris istorum. Sig+num Seniofredi de Sancta Perpetua. Sig+num Mironis Giriberti. S+ Vitas, sacer que et iudex. S+ Riamballus Bonucii filius. S+ Mironis Sindaredi. S+ Seniofredi Flavii.·SS Odolardus, vices comes. Sig+num Itardi, Odolardi filii.S+ Guitardus levita que et iudex (signe). S+ Bonefillius. S+Ermengaudus (signe). S+ Poncii, cognomento Bonifilii Dei et iudicis, qui hoc scripsi et SSS die et anno quo supra (signe).*

476 LV II.5.9 (Zeumer: II.5.8), V.2.1, V.4.1, V.4.3. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press). p. 38: The final version of the *Visigothic Code* included four different rules which invalidated coerced transactions. Each dealt with a different type of transaction: *definitio*, *donatio*, *commutatio* and *venditio*. While the distinctions between contracts, gifts, exchanges, and sales were serious matters for the Visigothic legislators, they were less important when the rules were used in tenth and eleventh centuries. Later scribes and judges seized on the idea that transactions undertaken through force or fear should be prohibited, but they paid little attention to the carefully drawn distinction among different types of transactions. The phrase *per vim et metum extorta* ("exacted through force and intimidation") became a fragment of popular law and was frequently invoked by judges.

477 LV V.2.1: *Donacio, que per vim et metum fuerit extorta, nullam habeat firmitatem.*

478 LV V.2.6: *Res donate si in presenti tradite sunt, nullo modo repetantur a donatore.*

479 Rius, *Cartulario*, doc. 681: *Advenit michi iam dicta omnia per escamiacionem et per decimum qui mihi advenit per vocem viri mei Bonefilii, dudum defuncti vel per ullasque voces.*

480 Ibid.: *Lex privilega de donacionibus legibus constituta que continetur in libro V, titulo II, capitulo I, precepit ut donacio que per vim et metum non fuerit extorta plenam abeat firmitatem. Item in eodem libro eodemque titulo capitulo VI res donate in presenti tradite fuerit nullatenus post modum a donatore repetantur. Propterea in nomine Domini. Ego Sicardis, femina, donatrice Domino Deo* […].

she did so *mea propria voluntate absque ullius minis, vi, metu vel sugestione.*[481] This can be contrasted with a donation by a certain Dispòsia, together with her sons Guadall and Berenguer, of a piece of land situated at Sant Feliu de Terrassola, also to Santa Maria de l'Estany using the same wording as in the previous charter but this time the scribe does not deem it necessary to state the absence of coercion.[482] The same is the case in other charters: for example Arnau Arbert and Ramon Arbert give a farmhouse situated at Pineda to Adelaida and Ermessenda,[483] and the count of Urgell, Ermengol VI, gave a tower close to the castle of Balaguer that previously had been held by Berenguer Bec to Arnau Bernat.[484] The absence of coercion is only emphasised in the cases regarding single women.

Whatever the motivation behind these citations, they are the exception from the rule, and to conclude one must be careful in assuming that all these citations were just tropes and a showcase of an understanding of the law.[485] As the professional judges stayed with cases, citations and references to the Visigothic law code as well as the presence of judges themselves are strong indicators of some judicial intervention that had happened at a certain moment in time, even when the judges are seemingly not fulfilling any judicial functions.[486]

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481 BAIGES, FELIU, SALRACH, *Els pergamins,* doc. 268: *Quoniam legibus nostris constat esse decretum ut res donate, si in presenti sunt tradite, nullo modo repetantur a donatore. Ideoque ego, Arssen, per anc scripturam donacionis mee volo ad noticiam deducere quod elegero de rebus meis mea propria voluntate absque ullius minis, vi, metu vel sugestione.* [...] *Et insuper ec voluntaria et legalis donacio firma et stabilis maneat omni tempore.*

482 BAIGES, FELIU, SALRACH, *Els pergamins,* doc. 150: *Quoniam legibus nostris constat esse decretum ut res donate, si in presenti sunt tradite, nullo modo repetantur a donatore. Ideoque ego, Disposia, femina, una cum filiis meis Guadallus scilicet atque Berengarius, nos simul in unum donatores sumus domino Deo et Sancte Marie de Stagno.*

483 BAIGES, FELIU, SALRACH, *Els pergamins,* doc. 322: *Res donate si in presenti sunt tradite nullomodo postmodum repetantur a donatore. Quapropter, in Dei sempiterni regis nomine, ego Arnallus Arberti et Reimundus Arberti, tali legis auctoritate suffultu, de bona volunptate et gratis animis, donatores sumus vobis Adalaidis femine et Ermessindis femine.*

484 BACH, *Diplomatari*, doc. 237: *Scriptum est in libro quinto Iudice quia res donata si in presencia fuerit tradita, nullo modo reppentatur ad donatore. Igitur in Dei nomine. Ego domnus Ermengaudus, gracia Dei comes Urgelli, qui facio kartula donacionis ad te Arnal Bernard, per hanc scriptura donacionis mee dono tibi una torre, ipsa qui fuit de Berenger Bech, qui mihi advenit de parentorum vel per qualique voces.* [...] *Bernardus sacer rogatus scripsit et die et anno quod (signe)* supra. LV. V.2.6.: *De rebus traditis vel per scripturam donatis. Res donate si in presenti traditi sunt, nullo modo repetantur a donatore.*

485 Jeffrey Bowman gives a series of examples on how omitting certain parts of a citation achieves other goals, see: Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 33-55.

486 Collins, R. (1986), 'Visigothic law and regional custom in disputes in early medieval Spain', in W. Davies and P. Fouracre (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge), p. 86: These judges may be called 'professional', although nothing is known of their training, in that when their periods of activity are traceable they are found to extend over several years, and furthermore when detected in other documents, such as deeds of gift or sale, in which they are fulfilling no judicial function, they are still characterised by the title of *iudex;* they were office holders and not merely local *potentes* occasionally

Individuals that sold, donated or on the other hand acquired properties were careful that the property was actually rightfully in the hands of the owner. It is therefore reasonable that charters proving ownership were showcased and the validity of such a transaction was occasionally reaffirmed by the judges. In some cases at least, a clear relationship between a former judicial decision that caused the change of property can be seen, and explains the presence of judges as well as citations taken out of the charter that confirmed the judicial resolution coherently.

called upon to act as judgement finders.

IV.2.1.1.2. Mentality

For the law was given by Moses, a righteous man.
But grace and truth came through Jesus Christ.[487]

Historians are bound to study the mentality of the judges through the narratives within the documentation at hand. Deviations from the ideal are to be expected as they form part of the human condition, however there are three recurrent motifs within the narration of justice that have been found to be central within the charter documentation. These are, first and foremost, truth, and justice as a vehicle to find it, secondly, fear of judgment either temporal or eternal and lastly the mercy of God through redemption and the merciful application of the laws by the ones directing justice on earth.[488]

In the prologue of the *Liber iudicum popularis* by Bonsom the key concepts of how an ideal judge should act are laid out. After his personal introduction Bonsom not only added from the Sentences of Isidor of Seville but also in his original contribution relied heavily on the church father.[489] Judges justified their decisions, probably even

487 Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 297: *Lex a proto Moyse, viro iusto, data est. Gratia autem et veritas per Iesum Christum facta est.* Comp. John 1:17.

488 This chapter can only focus on these three. The literature found the most helpful, which also includes relevant references to older work: Loschiavo, L. (2019), 'Isidore of Seville', in P. L. Reynolds (ed.), *Great Christian Jurists and legal collections in the first millennium* (Law and Christianity, Cambridge: Cambridge University Press), 381–96. Reynolds, P. L. (2018), 'Isidore of Seville', in R. Domingo and J. Martínez-Torrón (eds.), *Great Christian jurists in Spanish history* (Law and Christianity, Cambridge: Cambridge University Press), p. 41-43. López Bravo, C. (2002), 'El Legado Iusfilosófico de San Isidoro de Sevilla. Ley y Derecho en el Libro V de las Etimologías', *Isidorianum*, 12: 9–44. Lemosse, M. (2001), 'Technique juridique et culture romaine selon Isidore de Séville', *Revue historique de droit français et étranger (1922-)*, 79/2: 139–152. Álvarez Cora, E. (1996), 'Qualis erit lex: la naturaleza jurídica de la ley visigótica.', *Anuario de Historia del Derecho Español*, 1996: 11–118. Churruca Arellano, J. de (1973), 'Presupuestos para el estudio de las fuentes jurídicas de Isidoro de Sevilla', *Anuario de Historia del Derecho Español*, 43: 429–444. See also published recently: Castro, D. (2020), 'The Bishop and the Word: Isidore of Seville and the Production of Meaning', in E. Dell' Elicine and C. Martin (eds.), *Framing Power in Visigothic Society. Discourses, Devices, and Artifacts* (Late Antique and Early Medieval Iberia, Amsterdam: Amsterdam University Press), 51–74.

489 From Isidors *Sententiae* (LII 1-16, LIII 1-2, LIV 1-3, LV 4-5, LIV 4-7). Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 297-300. See: Mundó, A. M. (2003), 'La introducció de Bonsom i les seves fonts', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 223–30. Bonsom is not alone in this regard as Isidor is omnipresent in the glosses of law books all over Europe. In addition his two most important contributions to European legal culture before the rise of Roman Law, book V of the *Etymologiae* and the parts of the *Sententiae* in regards of judges, were added next in various compilations, comp.: Loschiavo, L. (2016), 'Isidore of Seville and the construction of a common legal culture in early medieval Europe', *Clio@Thémis*, 10, p. 12-20.

more so when skeptical, through this lens. For example Bonsom's introduction combines Isidor's notion that the first law was given by Moses with the Gospel according to John, while referring smoothly to the qualities needed for a judge to be a just man (*viro iusto*), and at the same time emphasises that Christian society needed to be governed by two laws simultaneously, both potentially universal; on one hand the law of God and on the other human law.[490]

No work better sums up the relationship between justice, mercy and fear of judgment day than the metaphor of the scale used by Isidor in his sentences. According to this image, someone who would judge rightly would carry a scale in his hands with justice and mercy on each plate. Through justice the person would give a sentence in accordance to the sin committed, while by mercy he tempers the penalty of the one who has failed, so that by weighing the just he would correct some things with justice and would forgive others through mercy.[491] Isidor continues by saying that whomever has God's judgment before his eyes in every dispute, always with fear and scruple, is afraid of failing to be good by deviating from the path of justice and being condemned precisely because he cannot justify himself.[492]

Bonsom in his prologue thus warns that while the one who acts properly and judges correctly deserves the greatest blessing, the one who acts inappropriately and judges unjustly is worthy of the greatest condemnation. While this formidable curse would also affect the just judge it would condemn the unjust forever.[493] He concludes with the famous *Diligite iustitiam qui iudicatis terram*[494] and one is inclined to add that "All the ways of the Lord are mercy and truth."[495]

490 Loschiavo, L. (2019), 'Isidore of Seville', in P. L. Reynolds (ed.), *Great Christian Jurists and legal collections in the first millennium* (Law and Christianity, Cambridge: Cambridge University Press), 387.

491 Isidor, *Sententiae,* III, LII, 4: *Omnis qui recte iudicat, stateram in manu gestat, in utroque penso iustitiam et misericordiam portat; sed per iustitiam reddet peccati sententiam, per misericordiam peccati temperat poenam, ut isto libramine quaedam per aequitatem corrigat, quaedam vero per miserationem indulgeat.*

492 Isidor, *Sententiae,* III, LII, 5: *Qui Dei iudicia oculis suis proponit, semper timens tremensque, in omni negotio refomidat ne de iustitiae tramite devians cadat, et unde non iustificatur inde potius condemnetur.*

493 Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 297: *Igitur bene utenti recteque iudicanti summa est benedictio. Male vero utenti et deterius iudicanti suma est condempnatio et terribilis maledictio, a quo maledictio iustus iudex saluabitur et iniustus perpetualiter condempnabitur. O homo, qui iudex esse velis et legem habere cupis, audi prius et disce qua ingredieris via, nempe lex via est. Qualis via? Interroga prophetam Ysayam et dicet tibi: "Haec via ambulate per eam et non declinabitis neque ad dexteram neque ad sinistram". In ipsa namque via invenimus scriptum: "Diligite iustitiam qui iudicatis terram".*

494 Wisdom 1:1.

495 Psalm 24:10.

A well-balanced sentence was thus not necessarily a strict application of the law but one that was counterbalanced by mercy, clearly reflected in the Visigothic Law code itself as princes as well as judges were meant "to be diligent in investigating the truth of facts in all cases, and in examining the disputes of all lawsuits," but at the same time ought "to temper somewhat the severity of the law in regard to the defeated, and especially those who are oppressed by poverty. For, if the rigour of judgement is to be fully applied, there is no doubt that the clemency of mercy would be left out."[496]

Biblical references or citations in the charter documentation regarding justice are extremely rare in comparison to the various forms in which the Visigothic law code was cited and referenced. To stay with the example of the just mentioned chapter of the code for a moment; in the spring of 980 Miró II Bonfill, count of Besalú and bishop of Girona, recognises certain rights for the inhabitants of the town of Palau de Santa Eulàlia *ob amorem Dei et mercedem* even after they had presented false scripture. Without going into detail the preamble of the document indirectly cites from the mentioned chapter, introducing it as the sentences of the preceding fathers (*precedentium patrum sententiis*).[497] The authority of the law was used frequently in the preambles that allowed more flexibility to cite from the code indirectly substituting, in a certain way, the *invocatio*.

Within the narrative of the charters one finds the metaphor applied when sentences were reduced if the side losing the case pleaded for mercy as individuals fearing God's judgment. The application of the law according to Christian principles leaving one side terrified by justice could easily be understood as oppressive by the modern reader, but has to be taken with a grain of salt as this part of the narration was not added with this intention in mind but rather to reflect repentance from one side

496 LV XII.1.1: *De commonitione principis, qua iubetur, ut iuditium temperent iudices. Qui necessariam culpis hominum severitatem disponimus, convenit ut Domino placita remedia miseris impendamus. Obtestamur itaque iudices omnes cuntosque, quibus iudicandi concessa potestas est et teste virtutum omnipotente Domino commonemus ad investigandam rei veritatem in causis omnibus solerter existere et absque personarum acceptione negotiorum omnium contentiones examinare, circa victas tamen personas aut presertim paupertate depressas severitatem legis aliquantulum temperare. Nam si in totum iudicii proprietas adtendatur, misericordiae procul dubio mansuetudo deseritur.*

497 SALRACH, MONTAGUT, *Justícia*, doc. 89: *[A]ntiquitus sancitum est et in precedentium patrum sententiis reperimus scriptum ut circa victas personas ac presertim paupertate depressas et severitatem legis aliquantulum debeamus temperare, quia sicut ipsa lex fertur si in toto proprietas iuditii adtenditur, procul dubio mansuetudo deseritur.* LV XII.1.1: […], *circa victas tamen personas aut presertum paupertate depressas severitatem legis aliquantulum temperar. Nam si in totum iudicii proprietas adtendatur, misericordiae procul dubio mansuetudo deseritur.* Comp. for more examples: Zimmermann, M. (1973), 'L'usage du Droit wisigothique en Catalogne du IXe au XIIe siècle: approches d'une signification culturelle', *Mélanges de la Casa de Velázquez*, 9, p. 267.

and that therefore the guilty deserved mercy. It is hard to know how much social code and customary behaviour is mixed up within the layers of narration that we are presented with today, as individuals are shadowy figures behind the need for salvation.

The foremost goal of the investigation of the judges, and in a certain way for the whole trial itself, was to establish and find truth. The Visigothic code condemns everything that hinders the search for truth. Therefore holding back information is considered adjacent to perjury and to bear false witness is seen as an offence against truth and thus against God. It is perjury "which kills the soul" and if the judge discovered for certainty that false witness was given, the wrongdoer not only had to sustain corporal punishment but also had to live with infamy.[498]

Truth can only be found through the inspection of evidence and the Visigothic law condemns judges who instead of investigating such truth seek out individuals who practice divination or augury, as these judges would thus be empty of the spirit of God and instead full of the spirit of error as "All truth comes from God and the lie instead from the devil, because the devil himself is a liar from the beginning,"[499] and it is understandable to find that Isidor also describes Satan as the enemy of truth.[500] Individuals committed homicide incited by the devil (*diabolo incitante*)[501] and it would

498 LV II.4.14: *De his qui animas suas periurio necant. Si quis animam suam periurio necaverit seu quisque presumptiose periurasse detergitur aut si quislibet videns se esse inpressum, sciendo veritatem, negaverit, dum hoc certius iudex agnoverit, addicatur et centum flagella suscipiat et sic notam infamie incurrat, ut postea ei testificari non liceat. Et si potentior fuerit secundum superiorem legem, que de falsariis continetur, insistente iudice, quartam partem facultatum rerum suarum amittat illi consignandam, cui fraudem periurii molire conatus est.*

499 LV. VI.2.2: *De personis iudicum sive etiam ceterorum, qui aut divinos consulunt aut auguriis intendunt. Sicut pia veritas mendacii consercione non capitur, ita non est consequens ut latens veritas mendatio investigetur. Omnis igitur veritas ex Deo est, mendatium vero ex diabulo est, quia ipse diabolus ab initio mendax est. Cum ergo utraque res suos principes habeant, quid opus est, ut veritas cuiuscumque mandation admittatur exquiri? Quidam enim feruntur ex iudicibus, Dei spritu pleni, vacui erroris spiritu, qui acta maleficiorum dum investigari subtili perquisitione praspicatia nequent, execrabiles divinorum pronunciationes intendunt. Veritatem enim se invenire non putant, nisi divinos et aruspices consulant, et eo sibi repperiendae veritatis aditum claudunt, quo veritatem ipsam per mendacium addiscere concucupiscunt. Dum enim maleficium per divinum, maleficia per divinationes conprobare pertemptant, quasi tercio loco ipsi se diabolo servituros inlaqueant.*

500 Barney, *Etymologies*, VIII.9.19: Satan (Satanas) means "adversary," or "transgressor" in Latin. He is indeed the adversary who is the enemy of truth, and he always strives to go against the virtues of the holy. He is also the transgressor, because as a complete prevaricator, he did not continue in the truth in which he was created. See also: Garófalo, H. M. (2014), 'El diablo y los demonios en la Alta Edad Media a través de los escritos patrísticos: Agustín de Hipona, Gregorio Magno e Isidoro de Sevilla (siglos IV a VII)', *Anuario del Centro de Estudios Históricos "Prof. Carlos S. A. Segreti",*, 2014: 129–154.

501 Salrach, Montagut, *Justícia,* doc. 96: [...] *recognosco me Petro in ibi ore iudicio eo quod negare non possum qualiter diabolo incitante et meo peccato impediente sic adibui consilium iniquum et sic veni in villa Vistosa, in domum matris mee, ora nocturna, iniuste et absque lege et sine culpa occisi uxore mea.*

be the devil's suggestion (*diabolica suggestione*) to break a donation. Arnau Geribert withheld tithes against God and his soul but *timens periculum anime mee* finally returned to the see of Barcelona.[502]

The emphasis within charters found quite regularly that one side has truth while the other has none, or that one side's evidence is full of truth while the other side's is empty and so on. Therefore it is not just an understanding of the Visigothic Law code but also based in the notions put forward by the church father.

The mentality of judges, as well as theologians, was bound to the nature of God and "what is done out of obligation is just, but what is done out of compassion is merciful."[503] Compromise and agreements were often seen as acts of mercy as "a pact is what someone does willingly, but a *placitum* is what one is compelled to do even against one's will".[504]

God's mercy often was the last resort in cases of doubt, for example, in a letter dating into the year 1125 the archbishop Oleguer of Tarragona replied to Ramon, bishop of Vic, as the latter had asked him about a young man who, while playing as a child, had fractured the head of another who died after being in a serious condition for many days. As it was not possible to know whether the fracture was accidental or intentional, following the advice of Saint Augustine and other doctors, who teach that in uncertain cases, one must trust in God and his mercy, the archbishop concluded that in spite of everything the young man should be able to accede to the minor holy

502 SALRACH, MONTAGUT, *Justícia,* doc. 479: *Pateat omnibus, tam presentibus quam futuris, quod ego Arnallus Geribert contra Deum et salutem anime mee tenui decimas de alodio Berengarii Raimundi, fratris mei, quod ipse olim emerat.* […] *ego aut aliquis aliis diabolica suggestione frangere ac ullo modo corumpere ulterius presumpserit vel rapuerit, anathematis vinculo feiatur et cum Bebelzebub, princeps demoniorum, in infernum mergatur.*

503 Gillian Evans is mostly concerned with later periods but her thoughts are straight to the point. Evans, G. R. (2002), *Law and theology in the Middle Ages* (London: Routledge), p. 8: The medieval Christian theologian and the medieval Christian lawyer both have to begin from the nature of God. For such thinkers it is uncontroversial that whatever God is, he is by definition that which it is to be just and true; and more, he is substantively justice itself and truth itself. It follows that his actions will reflect his justice and mercy. So in order to define or discover where 'justice' and 'mercy' lie, we need to look at the clues to be found in the divine behaviour. Yet on the face of it, the divine behaviour is contradictory if God is not only absolute justice, but also absolute mercy. Since God cannot be at war with himself, his mercy and his justice must somehow be one. It is a paradox of this attempt to balance justice and mercy, severity and relaxation of due penalty, that justice and mercy may in fact be the same thing. It is just to help one's neighbour but it is also merciful. The difference is that what is done out of obligation is just, but what is done out of compassion is merciful.

504 BARNEY, *Etymologies*, V.24.19: "A placitum is named similarly, because it pleases (placere). Some say a pact is what someone does willingly, but a placitum is what one is compelled to do even against one's will, as for example when someone is brought into the court to answer; no one can call this a pact, but rather a placitum."

orders. When he advanced in age, following a good life by the grace of God, he should be able to accede to even the major orders.[505]

While the "medieval theologian deals in absolutes" the judges "adjusted" the categories to the matter in hand, but both were guided by divine principles.[506] In the analysed cases citations of the law, acts of mercy and the mentality behind the decision of the judges will be highlighted to show how far these are visible within the documentation, as well as to show its limits.

505 MARTÍ, *Oleguer, servent de les esglésies*..., doc. 66: *Ollegarius dei grati Tarrachonensis episcopus, venerabili fratri Raimundo ausonensi episcopo, salutem. De iuvene illo super quo me consuluistis ut vobis consulerem, qui puer puerum ludens ludentem impedivit ad casum quod caput frangeretur, hoc nobis respondendum videtur. Quoniam ille vulneratus postmodum, ut fertis convaluit, et post dies multos in languorem recidens defunctus est, rem quidem dubiam certa determinare sententia minime possumus. Ambiguum namque videtur, utrum ex occasione vulneris aut ex incuria, aut ex aliquo, ut assolet, accidenti recidivus, eum languor opresserit. Erum quoniam beati Agustini et aliorum doctorum consilia nos edocet talia incerta in meliorem semper partem interpretari debere, de confidentia Dei, cuius misericordia melior est super vitas, presumentes, hunc bone indolis iuvenem laudamus in Ecclesia Dei as minores gradus posse provehi. Si vero laudabilis vita et honesta morum conversatio cum etate proficiens, ipsum canonico tempore acceptabilem commendaverit, sacros nihilominus gradus mediante Dei gratia sortiri poterit.*

506 Evans, G. R. (2002), *Law and theology in the Middle Ages* (London: Routledge), p. 10: This recognition that the pursuit of absolute justice and the conduct of litigation are different things is a key point at which the theologian and the lawyer find themselves unable to speak the same language of expectations. The medieval theologian deals in absolutes. The lawyer adjusts his categories to the matter in hand. They are both doing so with an eye on a divine standard of justice which, while in principle absolute, is also complex in the face it presents to mankind, and especially to those, theologians and lawyers, whose professional task it is to make sense of it.

IV.2.1.2. School headmasters as judges?

So that there be schools for teaching boys to read. Psalms, notes, chants, the calculation of days, grammar in every monastery and bishop's house […][507]

Another prominent figure frequently present at trials is the headmaster of cathedral schools, the *caput scole*.[508] These headmasters were in charge of directing the education of the clergy, presiding over and inspecting the teaching, and supervising the behaviour of teachers and disciples in all matters relating to studies, while also being in charge of the choirs.[509] After the first written references of this office in the 10th Century, the distinct description in the 11th Century give a small glimpse into the organisation of knowledge of the time, showing that their involvement ranged from leading the choir to educating the children.[510]

Bonnassie gave a relevant role to these epitomes of learning in the development of the teaching of law, especially to the headmaster Ponç of the school of Barcelona.[511]

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507 Mordek, Zechiel-Eckes, Glatthaar, *Admonitio*, c. 70, p. 224: *Et ut scholae legentium puerorum fiant. Psalmos, notas, cantus, compotum, grammaticam per singula monasteria vel episcopa et libros catholicos bene emendate; quia saepe, dum bene aliqui Deum rogare cupiunt, sed per inemendatos libros male rogant. Et pueros vestros non sinite eos vel legendo vel scribendo corrumpere; et si opus est evangelium, psalterium et missale scribere, perfectae aetatis homines scribant cum omni diligentia.*

508 In the time period this work is concerned with the *caput scole* or *capitis scole* is still the headmaster of the ecclesiastical schools, in the year 1000 already contracted to one word (Salrach, Montagut, *Justícia*, doc. 140: *caputscolis.* Ibid. doc. 373: *S+ Guilelmi levite, qui et caputscole*.), it will enter the Catalan language as *cabiscol* and will later describe the office of the cantor, the head of the liturgical songs in cathedral or monastic choir. Comp. dating in the year 1154: Baraut, *Cartulari*, doc. 51: […] *Willelmo, capiscola* […]. *Sig+num Willelmi capiscole, qui hoc vidimus et audivimus et ostaticum fecimus.*

509 For a detailed analysis and more literature, see: Rodríguez-Escalona, M. P., and Fornés Pallicer, M. Antònia (2016), 'Caput scolae y expresiones equivalentes en la documentación latina de la Cataluña altomedieval', in E. Borrell Vidal, P. Gómez i Cardó, and S. E. d. E. Clásicos (eds.), *Omnia mutantur. Canvi, transformació i pervivència en la cultura clàssica, en les seves llengües i en el seu llegat* (Barcelona: Edicions de la Universitat de Barcelona), p. 205–14. A more detailed overview over teaching around the year 1000 is given in: Ollich i Castanyer, Imma (1999) (ed.), *Actes del Congrès Internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del 1r mil·leni (Vic-Ripoll, 10-13 de novembre de 1999)*, p. 575-648. See also: Alturo i Perucho, J. (1998), 'El sistema educativo en la Cataluña altomedieval', *Memoria Ecclesiae*, 12: 31–61.

510 Rodríguez-Escalona, M. P., and Fornés Pallicer, M. Antònia (2016), 'Caput scolae y expresiones equivalentes en la documentación latina de la Cataluña altomedieval', in E. Borrell Vidal, P. Gómez i Cardó, and S. E. d. E. Clásicos (eds.), *Omnia mutantur. Canvi, transformació i pervivència en la cultura clàssica, en les seves llengües i en el seu llegat* (Barcelona: Edicions de la Universitat de Barcelona), p. 212: En fin, el análisis de la documentación nos permite atestiguar el uso de diversas expresiones equivalentes a *caput scolae*: *doctor parulorum*, *primus scolae* o *primiscolae*, *choraules* o *chorizanta*. *Doctor paruulorum* hace hincapié en la labor docente desempeñada por el capiscol, *primus scolae* subraya el puesto de responsabilidad del cargo, mientras que los ampulosos *choraules* y *chorizanta* destacan su relación con el coro. Todas ellas son expresiones poco comunes que probablemente surgen, en unos casos más y en otros menos, de una voluntad consciente de distinguirse.

511 Font i Rius, Josep Maria (2003), 'L'escola jurídica de Barcelona', in Alturo i Perucho, Jesús et al. (ed.),

The few sources available that give some insight into the self-image of the judges are more concerned with the conceptualisation of an ideal judge than with the question of how one became a judge. The background from certain individuals sees them raised to that position within society, and besides first being present as scribes and slowly learning through practice and presence, the law also needed to be studied and therefore taught. As some of these schoolmasters also received the title of judge in the sources a question could be raised as to what extent these headmasters of schools were involved in legal affairs, to what degree they intervened in the proceedings and what their role was when present.

In trials or other documents related to the resolution of conflicts the role of office as headmasters of the schools is expressed in the signatures, for instance, the priest Ato, being a headmaster of school signs as *doctor infantium* in one occasion.[512] But it is their tasks related to the choir which could explain their presence at most of the trials that took place at cathedrals in front of the altars. Within the signatures they are often surrounded by the other canons, next to the judges or other figures of importance as their opinion as men of learning surely mattered in inspecting and evaluating the written evidence.

To give an idea of the environment in which one usually finds the headmasters of school within the documentation, and to stay a bit longer with the beforementioned Ato, who was very active from 1005-1015 and died in 1044, it seems fitting to have a quick look at an interesting case dating in the year 1015.

Deodat the poet and levite Sunifred, acting as *agens vicem* representing the bishop of Barcelona, claimed an allod that the late Just gave to the church of Sant Miquel but which the spouses Gilmon and Orfeta sold unjustly to the *gramaticus* Segofred. The conflict was resolved by an exchange between the bishop and the couple, which still allowed the sale to be valid. Bishop Deodat and the canons of Barcelona exchanged with Gilmon and his wife Orfeta the allod, located near the city of Barcelona at the well called Ocua at the foot of Montjuïc, for a vineyard also located in the territory of Barcelona in the place of Or Trobat, adding in the considerable sum of 12 gold mancus to the deal. After the exchange the couple revalidated the annulled

Liber iudicum popularis. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 69-71. See also, Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), vol 2, p. 870-877.

512 SALRACH, MONTAGUT, *Justícia*, doc. 138: *Ato presbitero, doctor infantium, SSS.*

sales scripture that they had made out to Segofred. As this rather complex legal solution that allowed a successful outcome for both sides happened in the presence of *the joined crowd of the canons* [...] *in aula Sedis Sancte Crucis*[513], the signatures lead with the bishop Deodat, the archlevite, Ramon, followed by the Segofred, who had bought the allod in dispute, Ermemire as levite and sacristan, finally followed by Ato, here signing as *capudscole,* and right behind him two judges, first Ponç Bonfill Marc and second the priest and judge Vivas.[514] This kind of hierarchisation of signatures usually listed the schoolmasters before the judges.

Five years later Ponç Bonfill Marc himself is described as *clericus et iudex doctorque parvulorum.* in another swap contract exchanging two allods dating into the year 1020[515], so one must assume that he took up his more typical role as a judge in the first case. The headmaster of schools stands next to the judges and this environment surely represents the intense relationship between learning, teaching and the law. It is hard to believe that they did not encourage talented pupils to follow the path of studying law when they were interested in that subject.

Their strong connection with the law must also have encouraged the headmaster to seek to solve conflicts in a legal way and preserved examples seeing them as actors in judicial conflicts tend to show them coming out as clear winners of the legal dispute. For example a *conditio sacramentalis* is the only source that informs us that in the presence of Umbert, Bishop of Barcelona, Viscount Udalard, Archbishop Bernat, Sacristan Ponç and the entire community of canons of the Barcelona see, Cabiscol Oliba Ramon presented two witnesses for the dispute he had with a certain Guillem Ramon. The witnesses, Gausbert Pedet and Falcó Pere, declared that the house that Guillem Ramon claimed to have as a fief of the bishop *excepta capitis scolia* was actually held by certain Dalmau Geribert *propter capitis scoliam*.[516]

513 SALRACH, MONTAGUT, *Justícia*, doc. 166: *In Christi regis nomine. Ego Deusdedit, Barchinonensis episcopus, cum conexa caterva canonicorum meorum servientium Christo regi redemptori in aula Sedis Sancte Crucis Sancteque Eulalie exarate, comutator sum vobis Guilmundo et uxori tue Aurofacte.*

514 Ibid.: *S+ Deusdedit, gratia Dei ac si indignus episcopus, SS +, qui istam comutacionem feci et firmare rogavi. Raimundus archilevita +. + Sigefredus levita gramaticus, qui in ista comutacione cognitus fuit. S+ Ermemirus, levita et sacriscrini. SSS Ato presbitero, qui et capudscole, SS. S+ Poncius, cognomento Bonifilii, clerici et iudicis. S+ Vivas, presbiter atque iudex. + Fulcus levita.*

515 BAUCELLS, *Diplomatari*: doc. 328: *S+ Poncius, cognomento Bonusfilius, clericus et iudex doctorque parvulorum.*

516 *SALRACH, MONTAGUT, Justícia, doc. 421: Noverit universitas hominum tam presentium quam futurorum qualiter in presentia domini Umberti, permittente Deo Barchinonensis sedis episcopi, et Udalardi vicecomitis et Bernardi archidiaconi et Poncii sacriste tociusque conventus ceterorum canonicorum, Oliba Remundi, caput scole, attulit testes Gaucebertum Pedeth et Fulconem Petri adversus Guilelmum Remundi, qui iureiurando testificati sunt quod domum ipsam quam idem Guilelmus acclamabat seorsum*

Besides Oliba Ramon, the headmasters from the chapter of Barcelona are numerous; like the before-mentioned Ponç,[517] the levite Guillem,[518] Guillem Ramon[519], Pere,[520] and Berenguer Ramon[521] are well attested in the judicial documentation as witnesses to proceedings.[522]

The concept that the heritage linked to the office as headmasters of a school could also cause friction between the canons and relatives of the *caput scole* can be seen in an evacuation charter, dating in the year 1063, that put an end to a conflict regarding some vineyards between, on the one side, Berenguer, bishop of Barcelona, and Berenguer the archdeacon of the see, and Guillem and Bernat, sons of the late Ramon Joan, headmaster of the see, on the other.[523] The property in dispute was located on the territory of the church of Sants Just i Pastor at a place called Monterols, located within the walls of Barcelona, and it was the aforementioned headmaster Ramon Joan who had planted the vineyards, but had held them for the see as a *precari scriptum* paying annual tithes together with a *tasca vineae.*[524] As both sides claimed the

per fevum episcopalem, excepta capitis scolia, videre tenere Dalmacium Guiriberti propter capitis scoliam. Facta sacramentalis conditio supra altare Sancti Petri in sede Barchinonensi, nonas iunii, anno XVIIII regni regis Philippi. Umbertus episcopus+. Udalardus vicecomes. + Bernardus ardichidiaconus. S+ Poncii sacricustus. S+ Mironis sacerdotis. S+ Riculphi levite. S+ Ermengaudi Raimundi iudicis. S+ Ardenchus levite, qui hoc scripsit die et anno quo supra.

517 Poncius, levita i cabiscol, SALRACH, MONTAGUT, *Justícia*, doc. 168: *Marcucio greco Sunifredus gramatici, Poncius caput scole SSS* […] *S+ Pontius levita ac si indigno caput scole.* Ibid. doc. 176: […] *et Poncio laevita et caput scole* […]. *S+ Pontius levita qui et caput scole SSS.* Ibid. doc. 182: *Huius rei causa Petrus et rationales, id est, Gondeballus et Adalbertus et Poncius caput scole, avunculi supra nominatae Gislae, qui erant ex parte Petri cum aliis plurimis, dixerunt:* […]. Ibid. doc. 227 (Girona / Barcelona) – Sant Cugat wahrscheinlich de Barcelona *Poncio, caput scole,* […]. *Et ideo nos ut talia vidimus, ibimus ante domna comitissa [...]s et ostendimus scripturam falsitatis in presentia domna Ermesindis comitissa et Poncio, caput scole, et Berenguer Ollomar et Iotfret Bernardus et [...] [Gui]llelmus Gischafret et Bonifilius Sunner et aliorum plurimorum nobiliorum hominum.*

518 SALRACH, MONTAGUT, *Justícia*, doc. 373: *S+ Guilelmi levite, qui et caputscole.* Ibid. doc. 402: *S+ Guilelmus levite, qui et caput scole.*

519 The property in dispute was successfully claimed for the see of Urgell by the cleric Pere Bernat. Guillem Ramon clearly belongs to Barcelona and not Urgell as he signs together with Bernat the archdeacon in other documents. SALRACH, MONTAGUT, *Justícia*, doc. 493: *Unde ego et prefatus clericus Petrus convenimus in placito coram Bernardo, Barchinonensis sedis archidiachono, et Pontio sacrista, et Guilelmo Raimundi capitiscole, et Raimundo Geriberti clerico, et Oliba, prescripte parrochie capellano presbitero, necnon et aliis plurimis viris.* Comp.: BAUCELLS, *Diplomatari*, doc. 1531: *+ Bernardi archidiaconi. S+ Remundi levite. S+ Guilaberti levite. S+ Ardentiusl levite. S+ Stephanus levite. S+m Guilelmus Ramundi. S+ Petrus Umbertus.*

520 SALRACH, MONTAGUT, *Justícia*, doc. 516. Ibid. doc. 524: *Petri, capitis scolarum* […].

521 SALRACH, MONTAGUT, *Justícia*, doc. 529: […] *et clerici Beringarius Remundi caputscole,* […].

522 For a complete list of the schoolmasters of Barcelona from 1005-1151, see: Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), vol 2, p. 872-873.

523 SALRACH, MONTAGUT, *Justícia*, doc. 354: *Hoc est [def]ini[tio]nis atque evacuationis scriptum quod factum est inter Berengarium, Sedis Sancte Crucis archidiaconum, et Guilelmum atque Bernardum, Ramundi capitiscole filios.*

524 Ibid.: *Pateat cunctis, tam presentibus quam futuris, quod Remundus Iohannis condam, predictorum*

vineyards *facta fuit inter eos magne dissensionis contencio,* it was decided through arbitrators, the intervention of good men, to divide the possession,[525] so the bishop and the archdeacon *cum assensu et consilio* of the canons evacuated half of the property to the brothers, with the exception, however, of the payment of the tithe,[526] and put certain conditions on a possible sale after 30 days had passed.[527] Another headmaster of the school, however, does not appear in the signature sealing this pact.[528] In another example, the only time when one saw the presence of the schoolmasters of Elna was on the occasion of a judicial decision when Ermella, the niece of the late headmaster of the school and levite Oriol, together with her husband claimed an allod (but did not succeed).

In Vic, due to the circumstance of one party abandoning trial, one gets a long list of attendees divided into clerical and secular persons. Right after the archdeacon and provost Adalbert, the headmaster of school Ermengol honourably signs first in the long list of the *eschatocol*, followed by Guilabert *gramaticus* and the sacristan Pere[529], honourably signs first in the long list of the eschatocol.[530] The difference in

fratrum Guillelmi et Bernardi pater, plantavit vineas in territorio Barchinone, in locum Munterols vocatum, in terra Sanctorum Iusti et Pastoris, quorum ecclesia est infra Barchinone moenia, unde accepit precari scriptum in quo continebatur per unumquemque annum dare fideliter predicte ecclesie omnium frugum predictarum vinearum tascam et decimam, alias vero partes sibi et posteris suis retinere.

525 Ibid.: *Ideoque, utrisque partibus diu conquerentibus, facta fuit inter eos magne dissensionis contencio. Set, intercurrentibus bonis hominibus, inventum est ut iam dicta ecclesia habuisset omnem ipsarum vinearum medietatem, aliam autem medietatem prefati Guilelmus et Bernardus atque posteritas illorum semper secure et libere sibi retinuissent.*

526 Ibid.: *Quod et factum est. Quapropter in Dei nomine nos Berengarius, Sancte Ecclesie Barchinonensis episcopus, et Berengarius, eiusdem sedis archidiachonus, facimus vobis Guilelmo et Bernardo prefatis hoc definitionis atque evacuationis pactum una cum assensu et consilio prefate sedis canonicorum: ut ab hodierno die et deincebs prefatam vinearum et terre medietatem vos et posteritas vestra absque ulla repeticione et inquietudine nostri aut nostrorum successorum secure et libere habeatis cum ingressibus et egressibus et eius affrontacionibus et eius pertinenciis omnibus, excepta decima ipsarum vinearum, eo tenore: ut, si voluntas aut necessitas fuerit vobis aut vestre posteritati vindere aut alienare iam dictas vineas, non sit vobis licitum nisi nobis aut nostris successoribus.*

527 Ibid. *Si autem post ammonitionem XXX dierum iuste ad pretium bonorum hominum nos noluerimus emere iam dicta terra et vineas, tunc sit vobis aut vestre posteritati licentiam vindere cuicumque volueritis. Et non sit vobis licitum aut vestre posteritati alium ibi seniorem facere.*

528 Salrach, Montagut, *Justícia*, doc. 354: *Quod si nos donatores atque evacuatores aut successores nostri aliqui hoc rumpere voluerimus aut voluerint, nil valeat, set componamus aut componant vobis aut posteritati vestre in vinculum predicta omnia in duplum cum sua melioracione. Et insuper hoc maneat firmum omne per evum. Actum est hoc III kalendas iunii, anno III regni regis Philippi. Berengarius episcopus. + Bernardus subdiaconus. + Berengarii archilevite. S+ Poncii sacriscustus. S+ Guitardi levite. S + Guifredi levite. S + Stephanus levite. S + Dalmacius sacer. S + Mironis sacerdotis. S + Guielmus subdiaconus. S+ Poncii subdiachoni, qui hoc scripsit cum litteris supra positis in linea XVIIII et in XXI, die et anno SSS quo supra.*

529 Salrach, Montagut, *Justícia*, doc. 305: *Ad hoc namque placitum convenerunt et interfuerunt nobiles ac preclari viri, dompnus videlicet Adalbertus archidiachonus simulque prepositus et Ermengaudus caput scole Guilabertusque gramaticus et Petrus sacrista et* […].

530 Ibid.: *Ermengaudus caput scole SSS. SSS. Sendredus iudex, qui hoc legaliter confirmo, SSS. Guadallus*

professional capacities is expressed, as Oliba the former headmaster,[531] does not sign as a *caput scole* but as a *cantor.*[532] The reason for that could be of a formal nature as I am not aware of any documentation that lists two schoolmasters in one document. By addressing Oliba as *cantor* his competences are specified and a double mention is avoided.[533]

Ramon Gausfred demanded an allod, situated a Pujalt, in the municipality of Cruïlles, in the county of Girona, from the headmaster of the episcopal school of Girona, also named Ponç[534] stating that the allod belonged to his father and therefore *per hanc vocem requirebat*.[535] Before the Judge Guillem and many other men, Ramon Gausfred repeated the claim (*repetitio acta fuit*) but did not provide any evidence, written or otherwise, to support his case against Ponç (*nullum aliud documentum veridicum neque probationem legitimam potuit proferre adversus iam dictum Poncium*).[536] Ponç, on the other hand, presented witnesses who stated that the last three school headmasters – Ricari, the honorable successor Falcuci and probably Ponç

levita SSS. Guilelmus sacerdos et iudex, qui ad hoc negocium presens extitit et hoc testimonium cum aliis iudicibus recepit ideoque prelibatas res ad opus Canonice Sancti Petri consignavit et, ut credatur, solitum signum inpressit SSS. Guibertus grammaticus SSS. Oliba sacer, qui et cantor, SSS. Adalbertus archidiachonus, etiam et prepositus, sub SSS. Henricus levita, monacus et iudex, qui has prefatas res ad opus prefate Canonice consignat et sub SSS. Adalbertus iudex sub SSS. Bermundus ipodiachonus et subscripcio eius SSS. Witardus levita SSS. Ermemirus, sacerdos et canonicus prelibate sedis, sub SSS. Petrus levita SSS. Petrus sacrista +. Bonefilius presbiter SSS. Benedictus, levita et canonicus, sub SSS. Heraldus sacerdos SSS. Eldemarus presbiter SSS. Tedballus canonicus SSS. Guinadus, presbiter et canonicus Sancti Petri +. Alerandus clericus. Petrus sacerdos. SSS Bonucius sacer. SSS Ermemirus sacer. SSS Reimundus presbiter.

531 Sacerdot i cabiscol de la seu de Vic, SALRACH, MONTAGUT, *Justícia*, doc. 261, 262, 305 Vic 1039 SALRACH, MONTAGUT, *Justícia*, doc. 261 / 262: Oliba sacer, qui et caput scole.

532 SALRACH, MONTAGUT, *Justícia*, doc. 305 Oliba sacer, qui et cantor, SSS.

533 For a detailed analysis of the school of Vic, see: Masnou, J. M. (1999), 'L'escola de la catedral de Vic al segle XI', in Ollich i Castanyer, Imma (ed.), *Actes del Congrès Internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del 1r mil·leni (Vic-Ripoll, 10-13 de novembre de 1999)*, 621–34.

534 Ponç dictates his last will on the 15th of February 1064 (MALLORQUÍ, *Col·lecció*, doc. 33) and it is effectuated on the 7th of May in the same year (Ibid. doc. 34.).

535 SALRACH, MONTAGUT, *Justícia*, doc. 264: *Pateat tam in presenti quam in futuro qualiter quidam homo nomine Raimundus Gaucefredi repetivit quemdam hominem Sancte Marie clericum nomine Poncium caput scole ex alodio quod iam dictus Pontius tenet per fevum Sancte Marie Gerunde sedis et eius episcopi nomine Petri.* [...] *Dicebat ergo predictus Raimundus quia hoc alodium, id est vineas et terras atque iacentem heremum pater suus tenuit et eius fuit. Per hanc vocem requirebat predictus Raimundus iam dictum alodium a iam dicto Poncio.*

536 Ibid.: *Hec autem repetitio acta fuit in presentia iudicis Guilielmi et Bernardi Tethmari et Guilaberti Guilielmi et Amati Dompnucii et Guilielmi Guiscardi et Gaucefredi Audegarii et Guilmundi de Petra Tallada et Raimundi Dalmatii et Odegarii Aganoni et Gauzberti Mironis et Girberti Aimerici et Bernardi Bernardi seu Iohannes diachonus vel Guillaberti Bernardi et aliorum plurimorum hominum, quos nominare longum est. In istorum supradictorum hominum presentia repetivit predictus Raimundus iam dictum Poncium et protulit iam dictam vocem adversus eum, scilicet quod patris sui fuit et ipse tenuit iam dictum alodium et nullum aliud documentum veridicum neque probationem legitimam potuit proferre adversus iam dictum Poncium.*

himself – held it for more than thirty years *per fevum atque beneficium* for Santa Maria de Girona. The judge Guillem replied: *I see he said, that said Ponç has the truthful testimony for the allod and provided the legal documents for it.*[537] Ramon Gaufred acknowledged this and consequently evacuated the allod,[538] together with a certain Emerut called Tota.[539]

Besides the levite and *doctor parvulorum* Falcuci[540] and his predecessors, his successors like Joan[541] or Bernat Gaufred are also all involved in legal activities as witnesses.[542]

From 1118 – 1136 Berenguer *caput scole atque iudex* of the church of Girona works actively as a judge and is also eventually involved in business concerning property related to the office of the headmaster of school, by now already defined as an institution in itself (*cabiscolia*).[543]

In a document dating on the 16th of June 1136 Humbert de Cruïlles defined, evacuated and returned the third part of the *tasca* of Santa Maria de la Bisbal, together with some possessions of the *capitiscolia* (*quem per vocem capitiscolie habet vel*

537 Ibid.: *Prenominatus autem Poncius protulit adversus iam dictum Raimundum e contra legitimos testes qui probarent quod Richarius, iam dicte sedis caput scole, et Falcucius, eius honoris successor, et Poncius, eque capud scole, tenuissent iam dictum alodium a plus quam XXX annis. Quibus testibus exhibitis et amplius quam XXX annis aptis probare quod iam dicti tres clerici tenuissent iamdictum alodem per fevum atque beneficium Sancte Marie talem fertur iam dictus iudex dedisse responsionem: «Video, dixit, quia iam dictus Poncius rectam vocem habet in hoc alodio et legale documentum profert de eo».*

538 Ibid.: *Quo autem comperto recognovit se iam dictus Raimundus iniuste repetisse iam dictum Poncium de hoc alodio et dixit se non amplius repetere illud, sed libenter se evacuare et in perpetuo iure Sancte Marie iam dicte sedis mansurum firmare eodem tenore ut nullus succedentium sibi in futuro tempore per vocem iam dicti Raimundi repetere predictas vineas atque terras Sancte Marie deditas atque heremi circumiacentias.*

539 Ibid.: *Sig+num Emerut quam vocant Tota, qui presentem scripturam evacuationis collaudavit atque firmavit et in ea predicto alodio in potestate iam dicte Sancte Marie et Poncii eius caput scole se evacuavit necnon et testibus firmare rogavit.*

540 SALRACH, MONTAGUT, *Justícia*, doc. 178: Falcucius levita, doctor parvulorum, SS. SALRACH, MONTAGUT, *Justícia*, doc. 185: *Falcutio, caput scole prefate sedis,*

541 SALRACH, MONTAGUT, *Justícia*, doc. 364: Ioannes, levita et caput scolae. Ibid. doc. 396: *+Ioannes, levita et caput scolae sedis Gerundae Sancte Mariae.*

542 Bernat Gaufred signs as the school headmaster of Girona in 1084 only as *Bernardus*. SALRACH, MONTAGUT, *Justícia*, doc. 449: *+ Bernardus caput scole.* Ibid. doc. 513: *Notum sit omnibus hominibus presentibus et futuris quia nos Bonifilius Guilelmi de Pubal et Gauzbertus Raimundi recognoscimus diu et iniuste tenuisse ipsum quartum de ipsa ecclesia Sancti Christofori de Lambillas. Unde venimus ad pacem et concordiam cum Raimundo Guilelmi sacrista, in presentia Gaucefredi Bastonis et Arnalli Amati de Pera et Bernardi Gaufredi capitis scole atque Berengarii Amati et aliorum nobilium hominum.*

543 MARQUÈS, *Col·lecció*, doc. 36: *Berengarius, caput scole atque iudex.* MONSALVATJE, *Noticias históricas*, XI, doc. 461: *B., caput Scolae Gerundensis ecclesie.* MARQUÈS, Cartoral de Carlemany, doc. 249: […] *et Berengario, Gerundensi capitiscoli,* […]. B*erengarius, caput scole atque iudex.* Ibid. doc. 264: *Berengarius, caput scole atque iudex*. MALLORQUÍ, *Col·lecció*, doc. 94, 96.

habuit) of the see of Girona to Berenguer Dalmau, bishop of Girona.[544] His father (Guerau I) had held these honours back with flawed arguments (*imperfectis rationibus*) and thus had retained them in violation of the law. To amend this, with this agreement Humbert defined the honour in favour of the see, however received them back as a fief while agreeing to take back the fief of his vassal (*feuatario*) Oliba.[545] The only judge signing the document is the school's headmaster Berenguer.[546]

Leaving Berenguer of Girona aside, there is another headmaster actively involved as a judge: a certain Bernat from Barcelona, active first as *clericus et iudex* then as *iudex et caputscole* from at least 1075 to 1094, mostly in the accreditation and redaction of wills.[547] In 1078 or 1079 a *Bernardo iudice* that may be the same judge[548] decides upon how to proceed in a trial, assisted by another judge and *caput scole*.[549]

Moving on from Ponç Bonfill Marc, that leaves one with the rather unimpressive number of only three *caput scole* being strictly active as judges, and all evidence points towards the notion that the headmasters mostly dedicated their time to education and the choir rather than legal business; however, their expertise in scripture and their social status made them ideal witnesses in court. Only late in the 11th Century did some headmasters of schools also appear as judges, but they generally preferred to act

544 MARQUÈS, Cartoral de Carlemany, doc. 264: *[S]it notum cunctis presentibus atque futuris quoniam ego Umbertus de Crudiliis hac indicant escriptura diffinio, evacuo atque derelinquo Domino Deo et tibi Berengarii, Gerundensis episcope, et successoribus tuis in perpetuum illam terciam partem thascarum Sancte Marie Episcopalis et illam convenienciam denariorum quam pro prephata tercia parte thascarum per Olivarium, feuatarium meum, unoquoque anno in termino Pentecosthen a te accipiebam propter illum honorem Sancte Marie prephate sedis, quem per vocem capitiscolie habet vel habuit in parrochia Sancti Saturnini de Saliceto vel in parrochia Sancte Eulalie de Crudiliis, in loco vocitato Saleles vel in aliis locis.*

545 Ibid.: *Prephatum autem honorem de capitiscolia pater meus habuit et tenuit quibusdam imperfectis rationibus et ex toto deliberavit Gerundensi ecclesie partem sibi et mihi in violario iure retinens, partem prephate sedi ex toto derelinquens. Que omnia ego prefatus Umbertus diffiniendo prefatas tascas cum predicta convenientia accipio a te predicte episcope per fevum et emendationem prefatarum rerum, redditurus fevum Oliuario feuatario meo.*

546 Ibid.: *Actum est hoc XVI kalendas iulii, anno XXVIII regni Lodovici, feci, regis. Sig+num Umberti de Crudiliis, qui hoc fieri iussi, firmavi firmarique rogavi. Sig+num Gauzberti Villelmi de Vulpiliaco. Sig+num Petri Alemanni. Sig+num Guilielmi Raimundi de Petriniano. Berengarius, Dei gratia Girundensis ecclesie episcopus. Berengarius, Gerundensis archidiaconus. Berengarius, Sancti Felicis abbas. Arnallus Iohannis, presbiter et sacrista, SSS. Berengarius, caput scole atque iudex. (Signe) Petrus presbiter, qui hoc rogatus scripsi die et anno quo supra.*

547 BAUCELLS, *Diplomatari*, doc. 1277: *Bernardus, clericus et iudex.* Ibid. doc. 1475: *Bernardus, iudex et caputscole***.** Ibid. doc. 1593: *S+ iudex Bernardus confirmat legibus istud.* Ibid. doc. 1611: *Bernardus, iudex et capudscole*.

548 SALRACH, MONTAGUT, *Justícia*, doc. 425: *Hoc est iudicium quod datum est a Bernardo iudice inter Bernardum Remundi et Guillam, filiam de Ega femina, de ipso alodio quod dedit Remundus et Ega filie sue Guille. Iudicavit namque prenominatus iudex* […].

549 SALRACH, MONTAGUT, *Justícia*, doc. 425: *Sig+num Remundus Seniofredi. Sig+num Rai[...] iudex et caput scole.*

as such in the execution of wills rather than trials. They did, however, not hold back when the affairs concerned the *cabiscolia,* where they could become more active. It is noteworthy that the headmasters of monastic schools in Catalonia do not seem to receive the title of *caput scole*, or at the very least, they don't show up in the documentation related to justice under that name.[550]

All this presents a clear separation of duties and emphasises the professionalisation of the Catalan judges and their status in society. The appearance of the *caput scole* as witnesses at trials should be explained as them appearing organically when trials or legal activity took place in the choir of the cathedrals when the whole *caterva* assembled, rather than their special interest in being present at trials. Their attendance therefore also serves as a strong indicator for the place of justice being the choir of the cathedrals when the sources are not specific enough.

550 For example the only headmaster that figures in the cartulary of Sant Cugat is Ponç from Barcelona RIUS, *Cartulario*, doc. 510. Also very late is the appearance of a *caputscole* in the documentation coming from Urgell. BARAUT, «Els documents», IX, doc. 1430: *Sig+num B. caputscole.* The same goes with Vic where the headmaster of the school rarely signs as such, see: Rodríguez-Escalona, M. P., and Fornés Pallicer, M. Antònia (2016), 'Caput scolae y expresiones equivalentes en la documentación latina de la Cataluña altomedieval', in E. Borrell Vidal, P. Gómez i Cardó, and S. E. d. E. Clásicos (eds.), *Omnia mutantur. Canvi, transformació i pervivència en la cultura clàssica, en les seves llengües i en el seu llegat* (Barcelona: Edicions de la Universitat de Barcelona), p. 208: Así, por ejemplo, los capiscoles de la catedral de Vic, Bernat y Guilabert a menudo aparecen en la documentación como caput scholarum.

IV.2.1.3. *Boni homines*

When I heard that these charters which my father made for you regarding the above mentioned allod are truthful, and because of the counsel of honest men I accept from you a golden mancus, and therefore I evacuate that complaint and said allod, how I do now.[551]

In nearly all regions of the former Carolingian Empire the so called *boni homines* were present at trials.[552] They are by far the most numerous and the most vague group of people within the legal documentation.

After the pioneering dissertation and overall study by Nehlsen von Stryk for the Early Middle Ages,[553] the *boni homines* enjoyed a certain popularity in the academic literature of recent years.[554] Academics with a more local focus looked at Northern

551 SALRACH, MONTAGUT, *Justícia*, doc. 293: *Et ego, ut audivi ipsas cartas veridicas esse, quod tibi fecit pater meus ex supra dicto alodio, et propter consilium honestorum virorum, accepi de te mancusum unum aureum, ut hanc querellam tibi evacuassem et ipsum iam dictum alodium, sicuti et facio*.

552 As laws of Chindasuinth and Egica mention *bonis hominibus* their appearance in the sources points towards the notion that they already existed before the Carolingian influence, most probably deriving from the Roman concept of the *arbitratus boni viri*. However, that does not mean that their function in legal affairs would not move closer to that of their Frankish neighbours. Font i Rius, Josep Maria (1946), 'Orígenes de régimen municipal de Cataluña', *Anuario de Historia del Derecho Español*, 1946, p. 335: No cabe duda de que a la vigencia en los territorios de la Marca Hispánica de gran parte de instituciones del reino franco, al que aquéllos estaban sometidos, se debe la pronta aparición de boni homines en los condados catalanes que hallamos ya en los primeros diplomas del siglo IX, con el mismo carácter que tenían en las vecinas regiones de la otra parte del Pirineo. Welti, M. (1995), *'„Vir Bonus"/„Homo Bonus"/„Preudome": Kleine Geschichte dreier nahe verwandter Begriffe', Archiv für Begriffsgeschichte, 38, p. 54: Eindeutig erwächst das Amt aus dem römischen „arbitrium boni viri" oder dem „arbitratus boni viri", aus einer Institution gewohnheitsrechtlicher Art also, die ins Corpus Iuris Civilis Eingang gefunden hatte.* For late antique sources, see also: Szabò, T. (2012), 'Zur Geschichte der boni homines', in G. Cherubini and D. Balestracci (eds.), *Uomini, paesaggi, storie*. *Studi di storia medievale per Giovanni Cherubini*, 2 vols. (Siena: Salvietti & Barabuffi), p. 315-17.

553 Especially for Catalonia, see: Nehlsen-von Stryk, K. (1981), *Die boni homines des frühen Mittelalters* (Freiburger rechtsgeschichtliche Abhandlungen, 2, Freiburg), p. 111-181. See also: Nehlsen von Stryk, K. (1983), Art. *Boni homines*, in LexMa (2). Nehlsen von Stryk, K. (2008), Art. *Boni homines*, in HRG (2). See also: Jégou, L. (2015), 'Scabini, témoins, boni homines… acteurs de la communauté judiciaire à l'époque carolingienne', in J. Péricard (ed.), *La part de l'ombre*. *Artisans du pouvoir et arbitres des rapports sociaux : VIIIe-XVe siècles* (Histoire. Trajectoires, Limoges: Pulim).

554 Ourliac, P. (1994), 'Juges et justiciables au XIe siècle: les *boni homines*', *Recueil de mémoires et travaux publiés par la Société d'histoire du droit et des institutions des anciens pays du droit écrit*, 1994: 17–33. Bourin, M. (2003), 'Les "boni homines" de l'an mil', in C. Gauvard (ed.), *La justice en l'an mil*. *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française), 53–66. Maurer, H. (2001), '"Grenznachbarn" und *boni homines*. Zur Bildung kommunikativer Gruppen im hohen Mittelalter', *Vorträge und Forschungen: Mediaevalia Augiensia*, 54: 101–123. Bourin, M. (2003), 'Les "boni homines" de l'an mil', in C. Gauvard (ed.), *La justice en l'an mil*. *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française), 53–66. Szabò, T. (2012), 'Zur Geschichte der boni homines', in G. Cherubini and D. Balestracci (eds.), *Uomini, paesaggi, storie*. *Studi di storia medievale per Giovanni Cherubini*, 2 vols. (Siena: Salvietti & Barabuffi), 301–22. Jégou, L. (2015), 'Scabini, témoins, boni homines… acteurs de la communauté judiciaire à l'époque carolingienne', in J. Péricard (ed.), *La part de l'ombre*. *Artisans du pouvoir et arbitres des rapports sociaux : VIIIe-XVe siècles* (Histoire. Trajectoires, Limoges: Pulim).

Iberia, like Wendy Davies, consciously excluding Catalonia[555] while other studies focused specifically on Catalonia itself.[556] As a collective the good men continued to be an important social category throughout the former regions of the Carolingian Empire and beyond up to the 13th Century and thus invite comparison, but also invite the risk of underestimating their local characteristics.[557] As the *boni homines* have much in common with other men who received the same label all over Europe the focus of this work is concentrated exclusively on the Catalan sources.

As the literature always uses the term *boni homines*[558], it is worthwhile to clarify that in the Catalan documentation they are usually found in the grammatical variations as *bonorum hominum*, *bonos homines*, or *bonis hominibus,* while expressions like *aliorum multorum hominum* or *ceterorum hominum* clearly also referred to the same group when appearing at the same place within the charter. They constitute the biggest group present at a trial and could range from three up to a dozen named

555 Davies, W. (2018), 'Boni homines in Northern Iberia. A Particularity that Raises some General Questions', in R. Balzaretti, J. Barrow, and P. Skinner (eds.), *Italy and early medieval Europe*. *Papers for Chris Wickham*, C. Wickham (The past and present book series; First edition, Oxford: Oxford University Press), 60–72. Davies, W. (2016), *Windows on Justice in Northern Iberia, 800-1000* (Abingdon: Routledge), p. 169-176. See also: Carlé, M. d. C. (1964), '"Boni homines" y hombres buenos', *Cuadernos de historia de España*, 39/40: 133–168; Lluis Corral, F. (2015), 'Lugares de reunión, boni homines y presbíteros en Valdevimbre y Ardón en la Alta Edad Media', *Medievalista on-line*, 18.

556 Font i Rius, Josep Maria (1946), 'Orígenes de régimen municipal de Cataluña', *Anuario de Historia del Derecho Español*, 1946, p. 327-352. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 111-13. Benito i Monclús, Pere (2013), 'Marché foncier et besoin d'expertise dans la Catalogne des Xe-XIIe siècles. Le rôle des boni homines comme estimateurs de biens.', in C. Denjean and L. Feller (eds.), *Expertise et valeur des choses au Moyen Âge* (Collection de la Casa de Velázquez, volume 139, Madrid: Casa de Velázquez), 153–65.

557 For a conceptual history of the good men see: Welti, M. (1995), '„Vir Bonus"/„Homo Bonus"/ „Preudome": Kleine Geschichte dreier nahe verwandter Begriffe', *Archiv für Begriffsgeschichte*, 38: 48–65. Szabò, T. (2012), 'Zur Geschichte der boni homines', in G. Cherubini and D. Balestracci (eds.), *Uomini, paesaggi, storie*. *Studi di storia medievale per Giovanni Cherubini*, 2 vols. (Siena: Salvietti & Barabuffi), 301–22. For Italy: Brancoli Busdraghi, P. (2014), '"Masnada" und "boni homines" als Mittel der Herrschaftsausübung der ländlichen Herrschaften in der Toscana (11.-13. Jahrhundert)', in G. Dilcher and C. Violante (eds.), *Strukturen und Wandlungen der ländlichen Herrschaftsformen vom 10. zum 13. Jahrhundert*. *Deutschland und Italien im Vergleich* (Schriften des Italienisch-Deutschen Historischen Instituts in Trient, 14; 1st edn., Berlin: Duncker & Humblot). Lefeuvre, P. (2018), 'Sicuti boni homines et masnaderii: dépendance et distinction sociale dans les seigneuries du contado florentin (XIIe-XIIIe siècles)', *Mélanges de l'École française de Rome. Moyen Âge*, 2018: 363–379. Flemish and Walloon sources: Lefebvre, J.-L. (2002), 'Prud'hommes et bonnes gens', *Le Moyen Âge*, 108/2: 253–300.

558 Only explicitly mentioned in that way in the consulted documentation two times: SALRACH, MONTAGUT, *Justícia,* doc. 218: […] *ut dicere valeant tres boni homines circummanentes et idonei quod habilis fiat ipse campus ad fruges seminandas,* […]. BARAUT, «Els documents», IX, doc. 1318: *Sig+num Berengarii Guilelmi de Bescaran et alii tanti boni homines qui hoc viderunt et audierunt.*

individuals, with the rest just mentioned to be present with the standardised phrase and its variations: *et aliorum bonorum hominum qui ibidem aderant*.[559]

The question arises whether, and if so in what way, the good men were involved in the process of establishing the final verdict. The fact that good men rarely appear except in the initial formula and in the signatures of the charters may be for the convenience or due to the inaccuracy of the scribes, who are primarily focused on the individuals who act. They are the voices one finds speaking in first person to the reader, elaborating upon their arguments while the background noise of others is blended out almost completely. There is no doubt that the judges directed the proceedings and established the verdict that was then confirmed by the authority presiding the trial, and though they sometimes appear as arbitrators, in no case the good men did pass the judgement. They resided in the assemblies, were present or participated through their attendance but were mostly silent during the proceedings. So where exactly in the proceedings could the *boni homines* intervene?

In the Visigothic law code their role is rather vague as well: they are only explicitly mentioned as *bonis hominibus* on three occasions and on all of them in regards to evaluating slaves. For instance, the judge together with the good men would estimate the value of a mutilated or killed innocent craftsman slave that died through excessive torture.[560] One finds them again in the chapter dealing with runaway slaves, where the law establishes that no slave should be sold without first conducting an investigation in the presence of the judge and the good men, who are in the place where the sale is conducted so as to ensure that said slave is sold by the rightful

559 Besides one finds formulas like […] *aliorum bonorum hominum qui in ipso iudicio residebant* […] or […] *in presentia aliorum plurimorum bonorum hominum* […] and their variations being commonly used.

560 LV VI. 1.5: *Pro quantis rebus et qualiter servus vel libertus tormenta portabunt.* […] *Verum ut de servorum meritis omnis ambiguitas cesset contentionis, non pro artificii qualitate excusatio videatur haberi, sed pro servis questionandis contropatio adibeatur aetatis et utilitatis; aut si artifex fuerit, qui debilitatus est, et huius artificii servum non habuerit qui insontem debilitavit, alterius artificii servum iuxta predictum ordinem domino cogatur exsolvere, ita ut, si artificem non habuerit servum et alium servum ille, cuius servus questioni addicitur, pro eo accipere noluerit, tantum precium eiusdem servi artificis, qui questioni subditur, eius domino persolvatur quantum ipse artifex a iudice vel bonis hominibus rationabiliter valere fuerit estimatus.*

master.[561] In addition, the price of slave children would also be estimated by good men.[562]

Their activity to estimate value within the law is thus only explicitly mentioned in the context of slavery, however, in the Catalan documentation one finds them mostly as actors in the role of evaluating property. Pledged property had to be evaluated before being sold and it is in this context where one finds the *boni homines* acting as evaluators estimating its worth. That allows us to have a look at both types of documents – the bailment as well as the judicial decision when the outstanding pledge was not paid back. Some documents clarify in the legal details that if the debt was not paid back in accordance with the law, the pledged property could be sold after an estimation of its worth by good men. Therefore it is mostly sales charters in which it is specified that the object of value is sold legally because of its owner's payment being overdue.

In most of these cases the men evaluating property are usually not named as good men but honest men (*honestorum virorum*), and the reasoning behind this is quite simple as the Visigothic law code refers to them in this manner.[563] That becomes clear when the law is cited directly[564] but also indirectly when just referring to the honest men.[565] That the honest men were the same as the good men becomes clear for contemporaries as occasionally they were used as interchangeable terms.

For example, *tribus bonis hominibus* evaluated a piece of land at Sant Pere de Reixac and we can hereby be sure that good men and honest men are interchangeable

561 LV, Zeumer, IX.1.21: *De Mancipiis fugitivis et de susceptione fugitivorum* […] *Quicumque tamen hominum infra fines Spanie commanentium vel consistentium a quibuslibet personis mancipia ab incognito accipere voluerint, non aliter ipsa venditio fiat, nisi prius coram iudice vel bonis hominibus, qui in loco illo fuerint, ubi mancipium venditur, perquiratur, utrum proprium an alienum servum vendere videatur, specialiter dicat, et hoc, quod dixerit, ipsum iurando affirmet.*

562 LV X.1.17: *De mancipiorum agnationibus dividendis atque eorum peculiis partiendis et decernendis.* […] *Post haec autem dominus ancille domino servi, cuius haec ancilla coniuncta est, precium ex medietate persolvat, quantum isdem filius a bonis hominibus valere fuerit extimatus.*

563 LV V.6.3: *De pignere si pro debito deponatur. Pignus, quod pro debito deponitur, si per cautionem fuerit obligatum et ille, qui pignus deposuerat, ad tempus constitutum debitum reformare dissimulet, post diem cautionis exactum usque ad decem dies pignus salvum domino suo reservetur aut eidem domino, si in propinquo est, reportetur aut, ut restituat debitum, moneatur, Quod si per neglegentiam suam debitor ad diem constitum adesse neglexerit aut debitum implere distulerit, addantur usure. Ceterum si adesse usque ad decem dies, sicut supra dictum est, aut quod debet reformare dissimulaverit, tunc creditor iudici vel preposito civitatis pignus ostendat, ut quantum iudicio eius et trium honestorum virorum fuerit extimatum, sit licentia distrahendi. Et postmodum de pretio venditi pignoris creditor, quantum ei debetur, sibi aevidentius tollat et reliquum ille recipiat, qui pignus deposuerat.*

564 Salrach, Montagut, *Justícia,* doc. 95, 160, 189, 194, 236, 250, 257, 408.

565 Salrach, Montagut, *Justícia,* doc. 521: *Quapropter insistente Reimundo Guitardi iudice aliorumque honestorum virorum presencia vendo* […].

terms as the Visigothic law code established that the property must have been estimated by *trium honestorum virorum.* The same charter also clarifies that they are locals coming from *predicti territorii ipsius loci*.[566] The notion behind the law is simple: three honest men together with the judge would agree on a just price[567] for the item to be sold at and this would give an simple explanation for how on a few occasions they were also called *iustis hominibus*.[568]

Perhaps the clearest expression of custom overwriting the written law is when in one case the law regarding bailment or pawns was cited but in fact slightly altered to fit in the missing *bonis hominibus,*[569] thus leaving no doubt that over time the three honest men who originally estimated the worth of a bailment before it could be legally sold were to be understood as being the good men present at trials.

Many charters regarding bailment already point towards the legal consequences and clearly specify that if the bailor would not pay back the lent money, the bailee had the right to sell the property to whomever he or she desires.[570] The sale in the case of

566 Salrach, Montagut, *Justícia,* doc. 258: *Ideoque obediendo legimus et extimato precio a tribus bonis hominibus, Bonofilio presbitero et Stratario et Odino, extimaverunt predictam peciolam terre iuste debere valere III sestarios ordei. Et sunt hi tres homines predicti territorii ipsius loci.* See also: Ibid. doc. 110: *Sed postquam evasit per nobis Dominus de manibus ismahelitarum, et veni in civitate Barchinona, et non inveni nullum hominem qui predictum debitum mihi persolvisset, set consistente iudice et honestorum virorum, vindo vobis in faciem de iudice Marcho et Gontario, Ennego, Gelmiro, Eroigio, Petrus et Recosindo et aliorum bonorum hominum, sicut illi predicaverunt ad iusticiam et definierunt ipsum precium quantum mihi debebat.* Ibid. doc. 293: *Manifestum est enim quia petivi te ante bonis hominibus ut directum mihi fecisses ex alodio que fuit patris mei, […]. Et ego, ut audivi ipsas cartas veridicas esse, quod tibi fecit pater meus ex supra dicto alodio, et propter consilium honestorum virorum, accepi de te mancusum unum aureum, […].*

567 Papell, *Diplomatari*, doc. 22: […] *ut si vos prescipti comparatores volueritis vindere prefatum alodium, ego se predictus Bernardus, donem vobis iam dictis ipsum precium quod iuste fuerit apreciatum a bonis hominibus infra triginta dies, quod vos amonueritis a predicto alodio.* Puig, *El monestir de Sant Llorenç del Munt*, doc. 131: *Idcirco insistente iudice Guistrimiro sicuti lex nostra edocet, qui continetur libro V^to^ titulo sexto, et sicut iuste bonis hominibus apreciatum est, sic tibi vindo suprataxata omnia cum sua caputaquiset suo rego cum suas tormentas et sua usebulia sicut molinus molere debet*.

568 Salrach, Montagut, *Justícia,* doc. 111: *Idcirco vindo eas tibi sicut ad iudice vel iustis hominibus preciatum fuit.* Or *veri homines* comp.: Udina, *El Archivo*, doc. 211: *Postea vendidi ego ipsum ortum sicut iudices et veri homines ad iusticiam apreciaverunt in definito media pessa de argento quod vos emptores precium mihi dedistis* […].

569 Very fitting for the case of Barcelona were it was easy to find *bonis hominibus civitati* instead of *preposito civitatis.* Salrach, Montagut, *Justícia,* doc. 95: *Idcirco, insistente iudice, sicut lex nostra edocet, qui continetur libro V titulo VI, ubi: «Decem dies institutu[m aut quod] debent dissimulaverint reformare, tunc creditor iudici vel bonis hominibus civitati pignus hostendebat, ut quantum iudicio eius e[t trium viro]rum fuerit extimatum, sit licencia distraendi»*. LV VI. 1.5: *Ceterum si adesse usque ad decem dies, sicut supra dictum est, aut quod debet reformare dissimulaverit, tunc creditor iudici vel preposito civitatis pignus ostendat, ut quantum iudicio eius et trium honestorum virorum fuerit extimatum, sit licentia distrahendi. Et postmodum de pretio venditi pignoris creditor, quantum ei debetur, sibi aevidentius tollat et reliquum ille recipiat, qui pignus deposuerat.*

570 Feliu, Salrach, *Els pergamins*, doc. 333: *Et si vos non volueritis comparare quomodo apreciatum fuerit a bonis ominibus, licenciam abeamus ad vindere qui voluerimus, sine blandimentum de nullum ominem, et [hoc] vos similiter faciatis vel posterita vestra*.

the debt not being paid back would be done according to the law[571] and after a just estimation of its worth (*iustum* [...] *apreciatum est*)[572] by the good men.[573] Timeframes are sometimes already specified in the bailment as the ten days given by the law,[574] with a given margin if the deadline was passed, and sometimes one finds the standardised time span of thirty days.[575]

Not all debts were paid back and in most of the documentation it took the bailees quite some time until they finally sold the property. For example, a certain Oliba sold to Mir Amalric and his brother Bernat an allod at Sant Vicenç de Vallarec, which he had received as a pledge for a loan consisting of a quantity of barley and four mancusos that he gave to Udalguer Civiera. The bailor did not return the loan within the agreed time, and in accordance with how it is written within the law (*in goticis legibus*), Oliba waited the set ten days and, when these passed, for a further 'long time' (*multo tempore*) for Udalguer to return the loan.[576] As Udalguer died in the meantime and thus no other deadlines could be agreed upon, Oliba finally sold the allod for a price estimated by the Judge Miró and three other men explicitly mentioned by name, together with a group of other *boni homines*.[577] In this occasion the Visigothic law code

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571 PUIG, *El monestir de Sant Llorenç del Munt*, doc. 180: *Idcirco insistente iudice Bonofilio Marco et Longobardo cannonico Sancte Crucis sedis Barchinone et Bonohomine de Sallento et Gilelmo aliisque plurimis [uiris] super ipsum alode quod deposuimus tibi pignore, et apreciatum fuit ab eis, et tu potueras secundum legis ordinem vindere hoc alode cuicumque homini tibi placeret, quoniam hoc alode in tuo iure et potestate erat et nos non tenebamus eum nisi per tuum beneficium.*

572 ALTURO, *L'arxiu*, doc. 23; SALRACH, MONTAGUT, *Justícia*, doc. 189: […], *Esmerado et Gelmiro sicut iustum ab eis apreciatum est a tibi iamdicto emptore uindo suprataxata omnia.* Ibid. doc. 194: […] *et in terra supra scripta precium extimantibus, appreciata fuit modiata una iam dicte terre valere X mancusos auri* […].

573 RIUS, *Cartulario*, doc. 693: *Et nos suprascriptos inpignoratores licitum non sit nobis minime nec modo neque in antea vindere nec alienare, nisi a predicto Aiarici, si iuste emere voluerit, sicut alii boni homines apreciaverint, et in antea hec impignoratione firma et stabilis permaneat omnique tempore*. Also specified in other types of contract, see: PUIG, *El monestir de Sant Llorenç del Munt*, doc. 481: *Si vero vos vel vestre proienie atque posteritati necesse fuerit eam vendere, ut nobis* vel *nostros successores vendatis per precium iuste et legitime fuerit apreciatum a bonis hominibus.* Ibid. doc. 493: *Si vos predictis vel vestre progenie atque posteritati necesse fuerit hoc vendere vel inalienare, non vendideritis nec vendiderint, nisi nobis nostrique successoribus sicut a bonis hominibus iuste et legitime fuerit apreciatum atque laudatum.*

574 ALTURO, *L'arxiu*, doc. 95: […] *si tu emere volueris aut proienie tue uoluerint sicut aprecitum fuerit a tribus hominibus infra decem quod tibi amouerimus*.

575 FELIU, SALRACH, *Els pergamins*, doc. 855: […] *vendere volueris predicta omnia, vendas illam ad me quomodo fiat apreciatum a bonis hominibus et habeat tibi donatum predictum precium intra XXX^{a} dies que fuerit apreciatum*.

576 SALRACH, MONTAGUT, *Justícia*, doc. 408: *Postea vero expectavi eum X diebus et multo amplius, et noluit mihi reddere prescriptum debitum sicut in goticis legibus reperitur scriptum. Post X dies transactos expectavi eum multo tempore usque dum vivus fuit et noluit reddere mihi prefatum debitum.*

577 SALRACH, MONTAGUT, *Justícia*, doc. 408: *Propterea vindo vobis prefatum alodium secundum extimationem Mironis iudicis et Dalmaci Arnalli et Remundi Olibani et Sendredi Miro et aliorum bonorum hominum extimaverunt atque apreciaverunt predictum alodium, id est, modiata I vinee et alia*

is correctly cited and the three honest men are named, however, they explicitly do the estimation together with the judge and the other *boni homines*. It is clear that this development could easily lead to the decision to just let the *boni homines* as a whole decide the price.

The most comprehensible reading would be that in that case the law seemed to have been interpreted that together with the judge or judges and the occasional *saio*[578] a minimum of three men would evaluate the property, but in most cases it effectively implied many more. Therefore on some occasions all the *honestis viris* are listed by name and altogether can total eight or more,[579] while on other occasions the numbers of the named *boni homines* could range from three to eight with *aliisque multis* present.[580]

Two related cases give an insight into the consistency of the legal system. On the 18th of February 1034 a certain Guillem, son of the late Amalric, sold to the priest

agri, VIII au[reos mo]nete Barchinone.

578 SALRACH, MONTAGUT, *Justícia*, doc. 402: *Qua de causa nos supra dicti canonici atque monachi duximus duc[ere] nobiscum domnum Raimundum iudicem atque Bonifilium saionem una cum aliis honestis viris, id est, Poncius presbiter et Seniofredum Goltredi atque Reimundum Guilelmi ac Petrum Gondemari atque aliis viris, qui omnis precio apreciati sunt prefata omnia mancusos XXXV monete Barchinone.*

579 SALRACH, MONTAGUT, *Justícia*, doc. 373: *Idcirco iudice Remundo Guitardi cum honestis viris Bernardi archilevite et Vivanus prepositus et Stephanus Adalberti et Bonifilius Petri et Donutius Mironi et Remundi Vitali et Guilelmi Geriberti et Remundi Guitardi appreciaverunt et laudaverunt hec omnia prescripta iuste precium, sicut mos est civitatis huius et lex continet. Et appreciatum est hab eis triginta et quinque mancusis monete Barchinone.* Ibid. doc. 189: *Quam ob rem ego predictus creditor in pres[...] Guimarane iudice vel ceteris nobilibus viris Miro Suniario, Bonefilio Bun[...], Miro, Gaudemar et Attaulfus presbiter et Adalesindo et Guilmundo Faber [...], Esmerado et Gelmiro sicut iustum ab eis apreciatum est a tibi iamdicto emptore vindo suprataxata omnia.*

580 Number of good men present indicated in brackets: (3) Ibid. doc. 456: *Et admonui eam plures vices et nichil mihi profuit. Idcirco, insistente atque ordinante iudice Remundi et aliis honestis viris, id est, Poncius Arnalli et Reambaldus Ansovalli levite atque Guilelmus Guitardi, vendo tibi predictam petiam terre.* (4) Ibid. doc. 236: *Quamobrem nos, predictos creditores, in presencia iudice Mironi vel ceteris nobilis viris, id sunt, Seniofredus et Fedancio levita et Gonmar Imla et Guilielmus sacer, sicut iuste ab eis adpreciatum est, a tibi iam dicto emptore vindimus suprataxata omnia.* (5) Ibid. doc. 95: *Nam et ego, insistente iudice Aurucio et Bonarigo presbitero et Riato, Wistremiro p[resbitero et] Bonucio presbitero, Vivas et aliorum bonorum hominum, et sicut ad istis vel aliis hominibus iustum fuit preciatum, sic vindo tibi in precio pes[as ...] et media.* (6) Ibid. doc. 160: *Ego predictus creditor in presentia iudice Borrello et Guadamir sa[cer] et Bernardo, qui et adfartores iudice Borrel, et ceteris nobilis viris, id est, Guilmundus presbiter et Duravulo et Guifret Didimario et Ermomir et Reimundo, sicut iustum ab eis preciatum est, ad tibi iam dicto emptore vindimus tibi suprataxata ipsa hec omnia quod superius resonat in precium mancosos IIII.* (7) Ibid. doc. 107: *Proptera vindo tibi in faciem de Marcho sacerdote vel iudice et de Auricio iudice et Vuitardo, Bonefilius sacer, Vidale presbiter, Sesenandus, Stephanus, Gontero, Petrus et Suniefredus et aliorum bonorum hominum, sicut illi preciaverunt, in aderato et definito precio. Sic accepi ego vinditrix de te emptore solidos XV.* (8) Ibid. doc. 194: *Quapropter, insistentibus iudicibus Vivano et Bonofilio Marcho et Gitardo Aurutio aliisque idoneis viris, Ermemiro Russo et Sindaredo Seniofredi filio et Seniofredo gramatico et Segfredo et Gitardo Bernardo et Geriberto Ugberti filio et Ataulfo et Leopardo aliisque multis, et in terra supra scripta precium extimantibus, appreciata fuit modiata una iam dicte terre valere X mancusos auri et non amplius. Sed ut hec venditio stabilitatem in omnibus obtineat, non per precium sed per bonum consilium Sindaredi prefati et aliquorum ex supra dictis viris, adiecti fuerunt duo mancusi super X unicuique modiate ex prefata terra.*

Sunifred a vineyard situated in the county of Barcelona at the parish of Santa Creu d'Olorda, at a place called *Duodecimo*. He had received the vineyard as a pawn from Guillem Joan and his spouse Bonadona. The sale was done a year and a half after the deadline of the payment that had been set on the *kalendas setembras* had already expired, and the price for sale was estimated by the judge Vivas and five *boni homines*.[581]

Three years later on the 16th of February a certain Arnau, son of the late Walter, sold to the very same Sunifred what appears to be the other part of the property of the spouses at *Duodecimo*. Again, the couple had not paid the debt back within three agreed deadlines, and Arnau had waited for another three years before finally selling the property off to Sunifred.[582]

In both cases it is the judge Vivas who oversees the legal proceedings, along with the same five men in charge of evaluating the vineyards, which shows that in this kind of *placitum* the judge as well as the good men stayed with a case.[583] Guillem and Bonadona most likely bailed one part of their property to Guillem, son of Amalric, and the second part to Arnau. The resemblance in wording could be explained by Sunifred bringing the first charter with him at the second occasion rather than the use of a formulary.

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581 FELIU, SALRACH, *Els pergamins*, doc. 250: *I[n nomine] Domini. Ego Wilielmi, proli condam Amalrici, vinditor sum tibi Seniofredi sacer emptore. Per hac scriptura vinditionis mee [vindo tibi] modiatas V de vineas, franchas, meas proprias, cum arboribus qui infra sunt, que abeo in comitato Barchinona, in termine Olorda, [in locum] vocitatum Duodecimo sive puio Aquilare, que mihi advenit per cartam impignorationis que mihi fecit Guilielmo Iohanne [cum uxori] sua Bonadonna propter debitum que mihi debebant mancusos VI de auro, quod ego eis prestavi et illi mihi rendere debuerant ad placitum costitutum de kalendas setembras usque ad alias venturas et minime fecerunt; set et ego amonui eos postmodum exinde plures vices quoram idoneis viris ut ipsum debitum, quod per [illam] pignus depositum credidi, ut mihi rendidissent; insuper expectavi eos ultra placitum costitutum anno I et dimidio.*

582 FELIU, SALRACH, *Els pergamins*, doc. 257: *Per hanc scriptura vinditionis mee vindo tibi alodem franchum, meum proprium, id sunt, terras et vineas, kasas et curtes, cum solos et superpositos, cum universa genera arborum qui infra sunt, quem habeo in comitato Barchinone, in termine Olorda, in locum vocitatum XII^mo^, qui mihi advenit per cartam impignorationis que mihi fecit Wilielmo cum uxori sua Bonadonna propter debitum que mihi debebant unciam auri et medio mancuso, quod ego eis prestavi et illi mihi rendere debuerant ad placitum constitutum de kalendas februarias de III et a kalendas marcias de III alios et de uno et medio ad madii et minime fecere; set et ego amonui eos postmodum exinde plures vices quoram idoneis viris ut ipsum debitum, quod per suum pignus depositum credidi, ut mihi reddissent; insuper expectavi eos ultra placitum constitutum annos III.*

583 The undecipherable *Ero[...]*, thus is most certainly the priest Ervigi. FELIU, SALRACH, *Els pergamins*, doc. 250: *Quamobrem ego, predictus Wilielmus, in presentia iudice Vivani et ceteris nobilis viris, id sunt, Borrelli sacer et Ero[...] presbiter et Bernardus Bladin, Dodatus atque Bonifilius, sicut iuste ab eis apreciatum est, ego Guilielmus a te iam dicto Seniofret [vindo] suprataxata omnia in precium mancusos III.* Ibid. doc. 257: *Quamobrem ego, predictus Arnalli, in pressentia iudice Vivani et ceteris nobilis viris, id est, Borrelli sacer et Ervigii presbiter et Bernaldus Bladin et Dodatus atque Bonifilius, sicut iuste ab eis apreciatum est, a te iam dicto Seniofret vindo suprataxata omnia in precium mancusos VII.*

That the judges and *boni homines* acted on the local level can be seen through the debts a certain Amat Eldric left behind when he died. The spouses Berenguer Arnau and Adelaida tried to recover the money from his son Ramon Miró (*baiulum*) but this effort proved to be in vain, and they finally sold the properties situated in the parish of Santa Maria de Badalona off on the 28th of December 1064 under the authority of the judge Guillem Marc and several *viris idoneis*.[584] Four years later a certain Joan Sesmon, together with his wife Aissulina, bought a property at Sant Feliu de Llobregat that a certain Oliba Sendred held as a guarantee for a loan that he had paid to the same Amat Eldric. When Amat had died the allod came into his possession but he now sold it to recover the debt (*volens meum debitum recuperare*) under the authority of the judge Ramon and some good men.[585]

Even when the debtor was the same, different places meant different cases, different judges and different locals to evaluate the sale, but if it was the same property divided into two parts the local judge worked with important members of the local community to establish the price on both occasions.

A long time passing after the deadline established for payment was quite common. For example, when a certain Bernat Guitard sold two pieces of land he had as a bailment from a couple named Bell Deudat and Adalgarda, he did so when *transacto longo tempore post terminum.*[586] It appears that unlike in other pledged property sales, the agreement between the creditor and the debtors on the transaction, and the fact that the buyer was a sacristan and judge himself, made any other judge's intervention that would authorise the sale unnecessary. But the concept that a judge other than the buyer and a group of *boni homines* would have been involved in estimating the price cannot be ruled out.[587]

584 SALRACH, MONTAGUT, *Justícia*, doc. 362: *Idcirco, insistente Guilielmo Marcho iudice ceterisque viris idoneis superius annotati, apreciatum fuit ab eis hunc pignus valere non tantum quantum fuit iam dictum debitum.*

585 SALRACH, MONTAGUT, *Justícia*, doc. 381: *Et inter tantum mortuus fuit predictus Amatus et incurrit prelocutum alaudem in mea potestate. Deinde ego, prescriptum Olibanum, volens meum debitum recuperare, idcirco, insistente iudice Reimundo et ordinante, venundavi predictum pignus ad suum iudicium et aliorum bonorum hominum, qui supterius sunt annotati.*

586 SALRACH, MONTAGUT, *Justícia*, doc. 403: *Satis verum est et multis cognitum quia Bellus Deodati et uxor eius Adalgardis miserunt mihi impignore duas pecias terre et unum ortum iuxta domum tuam propter VIII uncias auri, sicut resonat in scriptura quam inde mihi fecerunt et quia prephatum debitum mihi non reddiderunt et incurrere demiserunt transacto longo tempore post terminum cum assensu et voluntate eorum vendo tibi ipsum ortum.*

587 Ibid.: *Quantum isti termini et iste affrontationes includunt vendo tibi cum eorum assensu, sicut dixi, per precium apreciatum X mancusos auri Barchinonen[sis quos m]ihi dedistis.* That was the case in a sales charter for the usage of a mill in 1010 that a certain *Borellus sacer qui et iudex* had received *per carta inpignorationis*. He sold the rights *insistente iudice Guistrimiro* who also signs the charter. See: PUIG, *El*

The fact that the judges had the Visigothic law in mind can be seen in several cases; many when these proceedings were done under or by the request or authority of the judges. For this the construction *insistente iudice* – sometimes adding a *sicuti lex nostra edocet* – was the most common way to express the intervention of the judges in these type of bailment charters, and as far as I am aware was nearly exclusively used in these occasions.[588] While the exact wording was used in different chapters of the Visigothic law code,[589] the only place that would it make sense to use when importing this phrasing from the book to the charters we deal with here is from a chapter regarding the way in which the debts of a deceased or compensation payment due to violence committed by the deceased could still be claimed after his death.[590] The fact that this wording found its way from the *liber* to the charters in a clever combination of two separate laws is strengthened by the fact that it was in fact initially used in the case of a bailor dying while still owing debt.[591] The widespread use of the phrase in this particular judicial procedure by different judges acting in different areas over a long period of time could be most easily explained through a non-preserved formulary, or by the scribes and judges taking the wording of earlier charters which included said wording because of the presence of a deceased debtor. Later however it became a standardised phrase which was also included in cases where the debt was not paid but the bailor was still alive.

While in the earlier cases the phrase *insistente iudice, in presencia* [...] followed by the good men destined to evaluate the property was used,[592] in the second half of the 11th Century the charters could read *insistente iudice et bonis hominibus*[593] or even occasionally proceed with a sale without a judge but *insistentibus viris idoneis.*[594]

monestir de Sant Llorenç del Munt, doc. 131

588 Of course the adjective *insistente* is used on other occasions but as far as I can tell nearly exclusively in bailments one finds it as *insistente iudice.*

589 LV II.3.7, IX.1.21, X.1.16, XI.2.2, XII.3.7.

590 LV V.6.6: *Qualiter defuncti debitum aut violentia post mortem possit inquiri.* […] *Quod si tale aliquid quisque convicerit et defunctus ille, de quo agitur, filios non relinquens facultatem suam suis libertis aut quibuscumque possessoribus dinoscitur contulisse, ipsi liberti vel alii possesores, iuxta quod possident de rebus defuncti, quae defunctus debuit vel commisit insistente iudice cogantur exsolvere.*

591 Salrach, Montagut, *Justícia*, doc. 95, 108, 111.

592 Salrach, Montagut, *Justícia*, doc. 108: *Sed ego, insistente iudice, in presencia Paulo fabri et Vivas et Revello et Longovardo presbitero, Gelmiro, Sendredo et aliorum bonorum hominum qui ibidem aderant, sicut illi apud ipso iudice preciaverunt ad iusticia, sic vindo eum vobis in propter precium mancusos II de auro mero.*

593 Salrach, Montagut, *Justícia*, doc. 365: *Idcirco, insistente iudice et bonis hominibus subterius annotati, vendidi prescriptum pignus ad illorum precium quantum ab eis fuit estimatum valere, id sunt, uncias XXIIII auri puri monete Barchinone, unum ad unum pensatos ad pensum de ipsa moneda.*

594 Salrach, Montagut, *Justícia*, doc. 356: *Unde expectavimus eos ultra terminum constitutum atque*

Whether that change of phrasing actually held notable significance is doubtful, however it does fit into the wider concept of more communal decisions and the increasing influence of the *boni homines* that could have found its way into the sources through these changes in expressions.

Occasionally property gained through an unpaid loan did not need the implication of good men, as in the case of a donation the estimation of the property was unnecessary since it was handed over as a whole and the donator, in one example a certain Guisla, was doing the transaction: *placuit animis meis.*[595] The legal procedure was nevertheless still necessary but only the indispensable part of Visigothic law was cited to assure the legal sale.[596] The judges and scribes thus adapted the standardised charters of bailment with a donation, consciously leaving out all that was unnecessary, in which case included the good men as no evaluation was required.

In other areas of life, the sources are rather silent; some vaguely formulated parts of the *liber* suggest a possible estimation that was also done by the good men, while others suggest a completely different approach. To give a few examples; on the one hand if someone sets fire to a forest he should pay for the damages "according to the estimation of those who have examined it",[597] while on the other hand, safeguarded errant pigs returned to their owner would be accompanied by a compensation that would be evaluated through the presence of the judges according to the time of custody.[598] Yet the damage caused by escaped animals found within a vineyard, the

prefinitum duobus annis et amplius, atque sepe admonuimus eos ut redimerent suum illorum pignus, quod nobis per cautionem scripture deposuerant. Set quia accedere ad redemptionem pigneris noluerunt, neque admonitionibus nostris aurem prebere voluerunt, insistentibus viris idoneis inferius corroboratis, secundum quod ipsi pignus ipsum posse valere extimaverunt, vendimus tibi predictas duas pecias terre cum domibus et casalibus.

595 The adverbial proposition specified the liberty of the author's decision of the donation, consequently also ensuring the rights for the monastary of Sant Cugat. Comp. Zimmermann, M. (1982), 'Un formulaire du Xème siècle conservé à Ripoll', *Faventia*, 4/2, p. 46. Vogel, C. (2019), *Individuelle und universelle Kontinuitäten*: *Testamente und Erbverfahren auf der Iberischen Halbinsel im frühen Mittelalter (ca. 500-1000)* (Geschichte und Kultur der iberischen Welt, Band 16, Berlin: Lit), p. 437. Salrach, MONTAGUT, *Justícia*, doc. 183: *In nomine Domini. Ego Wisila, femina, donatrice sum Deo et Sancti Cucuphati Octavianensis cenobio. Manifestum est enim quia placuit animis meis, et placet, ut ad domo Sancti Cucufati cartam donationis fecissem, sicuti et facio.*

596 SALRACH, MONTAGUT, *Justícia*, doc. 183: *Propterea sic dono ipsum aulodem ad domum Sancti Cucuphati, sicut dicitur in Libro Iudicum, libro V, titulo VI, ubi dicit: «De debitis et pignoribus, ut transactis X diebus licentiam habeat creditor eum vendendi sive donandi vel faciendi suam voluntatem»*.

597 LV VIII,2,2: *Si ignis mittatur in silvam. Si quis qualemcumque silvam incenderit alienam sive piceas arbores vel caricas, hoc est, ficus aut cuiuslibet generis arbores igne cremaverit, a iudice correptus C.tum flagella suscipiat et pro dampno satisfaciat, sicut ab his, qui inspexerint, fuerit extimatum.*

598 LV VIII,5,4: *De porcis errantibus in silva preventis.* […] *Deinde si dominus porcorum non inveniatur, custodiat tamquam suos et pro glandibus decimam consequatur et, cum dominus adfuerit, mercedem custodiae, facta presentibus iudicibus racione, de temporis spatio percipiat.*

harvest or in any meadow would be estimated by the neighbours.[599] However, as far as I am aware, there are no charters preserved wherein one could see these being cited, but the intervention of *boni homines* in similar cases is indeed attested.[600] The general notion when the Visigothic law was conceptualised was that the judge would have the final word, but an active participation in evaluating damage through the community, being it neighbours or good men, is visible even in meagre affairs, many of which surely did not needed written documents to be redacted and were most probably settled there and then – or at least if these cases produced scripture it was not worth preserving as it was only of temporary importance.

If we believe the sources, the role of the good men at the assemblies was mostly passive but at the same time essential, because they acted as a link between the judicial authority and the governed.[601] Their role as observers and witnesses ought not to be underestimated, as they are a resource in establishing what exactly happened during the proceedings for future case-related inquiries, which also explains why many are explicitly mentioned by name. For example, their presence as witnesses in cases where a lost scripture had to be recovered through witness testimony was certainly crucial.[602] All evidence points towards the notion that they were locals respected in their communities and therefore fundamental for verdicts to be accepted on the ground level, while their constant presence at other legal proceedings, be it security charters, division of property and so on, only highlights their silence in court proceedings.

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599 LV VIII,3,15: *De animalibus in vinea, messe vel prato perventis.* […] *Quod si dominus paecundum mittere vel venire noluerit, dampnum a vicinis, quod factum est, estimetur ed ad satisfactionem ille, cuius pecora fuerint, iudicis executione venire cogatur et dampnum exsolvat.*

600 An agreement was reached through the intervention of good men (*per consilium bonorum hominum*) that included a compensation payment for the cutting of an oak forest, see: SALRACH, MONTAGUT, *Justícia*, doc.467.

601 Most scholars agree on that notion for Catalonia, see: Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo), p. 30: Amb la presència d'homes bons, sens dubtes, es buscava reforçar, des d'un punt de vista social, la legitimitat del tribunal. A l'audiència la seva funció era passiva: eren testimonis muts, però essencials, perquè feien d'enllaç entre la potestat judicial i els governats. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 111: The very presence of the *boni homines* is an important reflection of participation in the administration of justice by prominent members of communities.

602 SALRACH, MONTAGUT, *Justícia*, doc. 216: *Condiciones editas sub recuperacionis cartula qui fuit per incuriam et incautam custodiam perditam. Unde quidam vir nomine nobilis Wilielmus, vicarius scilicet de Castro Vetulo, profert testimoniam suam in conspectu sacerdotis Poncio, iudicum, que instancia, id est, Vivanum, presbiterum et iudicem, et Poncii, quod nomento Bonifilii, clerici similiter iudex, et in presencia Wilielmus Iotoni et Seniofredus et Lupus Sancius et Mironus et item Seniofredus de Estela, Ollofredus, Gaudemarus et aliorum multorum bonorum omnium qui ibidem adfuerunt.*

However, in a few cases in the 10th and 11th Century they did intervene, and their counsel could change the outcome of a trial considerably. They knew the local context best and one must assume that the when judges had doubts they could actively reach out to them to help solve their issues. However, their voices in the sources are for the most part taciturn as they mostly evaluated goods rather than decisions.

The *boni homines* acting as silent witnesses to the proceedings of the definition of the value of a property, be it in dispute or just for sale, is an act that is hard to imagine being done in a fashion that would not involve lively discussions. In charters one gets the agreed upon end-result and the more men there were evaluating the price most certainly meant it would be awarded the value closest to its actual worth. To find a common ground in evaluating a just price was thus a communal act, including local magnates as well as common folk.

It also needed *in situ* evaluation as properties are well defined and follow certain patterns that again depend on the environment the property is in. A riverside, doors, adjacent properties and landmarks are used to define borders, and this gives the impression that the *boni homines* actually walked around the property. For instance, our modern understanding of navigation is determined by cardinal points, and while these could rely on Orient or Occident in their description they also could rely on different patterns, like uphill or downhill rather than north and south. They allowed people to repeat the walk, finding the boundary markers or asking the neighbours, and in addition every act reaffirmed the boundary of that same property through its witnesses, and the more local people were involved the less likely were future contentions regarding its limits. Therefore one could be inclined to speak of a legal topography rather than a simple boundary description. Sometimes one even gets the impression that in the case of evaluating property it was particularly the imminent neighbours of the very property being described as the good men that took part in the process.[603]

Thus *Boni homines,* even when silent during the proceedings, must have been quite busy discussing matters afterwards, even when their contribution is not documented. If one keeps this notion in mind their increasing amount of interventions

603 SALRACH, MONTAGUT, *Justícia*, doc. 218: *Veruntamen et quotiens provenerit supra ipsam glaream aut in ipsa glarea (aut in ipsa glarea) effici campo, ut dicere valeant tres boni homines circummanentes et idonei quod habilis fiat ipse campus ad fruges seminandas, relinquant ipsum decursum aque ad fruges seminandas et iusta predictum campum sit illis licitum aut per supra dictam glaream deducere ipsam aquam tantum, ut de predicto campo nec glebas sumant nec ad diminutionem eum adducant.*

over time as mediators is not surprising. They are mostly mentioned in cases where they suggest compromises, sometimes persuading or even pressuring one party to abandon their claim, but they did so only when all the cards were on the table and both sides had stated their arguments.

Their long history fulfilling the role of evaluators of all kind of goods and properties made them the ideal candidates to finally evaluate compromises, which mostly covered compensation payments or the division of property. However, their rarely attested interventions and rather small suggestions increased considerably during the end of the 11th Century, to the point where they eventually became a strong force in court at the beginning of the 12th Century, doing a great deal of counselling, especially in convincing one side to accept their legal defeat.

The urging of the *boni homines* for compromise should not be understood as an intent or development that undermines the authority of the judges but rather as a universal desire of society to achieve a verdict that was ultimately accepted by both parties to ensure a lasting peace. To break down this shift in role into one sentence: they changed from being evaluators and became adjudicators.

IV.2.1.4. The *Saio* or *Saig*

That no one, outside of the territory entrusted to him, or to whom absolutely no power has been conferred to judge shall dare to imprison nor cause any inconvenience to anyone by his order or by means of a saio […].[604]

Throughout the 9th Century and up to the middle of the 10th Century the *saio* is an omnipresent figure in judicial documentation related to trials.[605] He consistently lists right after or right before the *boni homines* in the headers of the *notitia* charters, suggesting that his social status was not as high. His role was ensuring the appearance of the accused and witnesses, maintaining order during trial and the enforcing of sentences.

The *saio* is a figure already present in the documentation related to the kingdom of the Ostrogoths.[606] According to Herwig Wolfram[607] and Gideon Maier the Ostrogothic *saio* was a person close to the king who speaks of *nostri saiones* and a manifestation of the royal penal authority and the „*vigor regiu*". Of humble origin, they are part of the king's cortège[608] and Gideon Maier sees an evolution in their functions. Their primary function was to maintain contact with the army; Roberto Morosi describes them as *speciali agenti di polizia*, who had special tasks, like the *tuitio*, similar to the work of bodyguards for people protected by the king.[609] The final task described was an increasingly clear definition of their purpose: to bring the accused to trial and carry out the sentences. For example, their source of income was no longer a

604 LV II.1.18 (Zeumer, II.1.16): *Nullus in territorio non sibi comisso vel ille qui iudicandi potestatem nullam habet omnino comissam, quecumque presuamt per iussionem aut saionem distringere vel in aliquo molestius convexari,* […].

605 Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 108-110.

606 The main source is the *Variae (Variarum Espistolarum)*, a summary of Cassiodorus' imperial letters and decrees. From the beginning, the fact that the *saio* is the only charge in the *regnum Italiae* with a name of Gothic origin stands out. Cassiodorus speaks of the *saiones* in 28 of the letters and 19 times a proper name is mentioned, all of which proper Gothic names. See, Cassiodorus, *Variae*. Maier, G. (2005), *Amtsträger und Herrscher in der Romania Gothica*: *Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreiche* (Stuttgart: Franz Steiner Verlag), p. 169: Schon durch ihren Titel waren sie scharf herausgehoben: *Saio* ist die einzige gotische Amtsbezeichnung im ganzen *regnum Italiae* und überhaupt das einzige gotische Wort in den Varien Cassiodors.

607 Wolfram, H. (2009), *Die Goten*: *Von den Anfängen bis zur Mitte des sechsten Jahrhunderts; Entwurf einer historischen Ethnographie.* (Frühe Völker; 5th edn., München: Beck). p. 243-44.

608 Wolfram, H. (2009), *Die Goten*: *Von den Anfängen bis zur Mitte des sechsten Jahrhunderts; Entwurf einer historischen Ethnographie.* (Frühe Völker; 5th edn., München: Beck). p. 294.

609 Morosi, R. (1981), 'I saiones, speciali agenti di polizia presso i goti', *Athenaeum*, 1981: 150–165.

fixed donation given to loyal warriors, but instead was received as share, a fee so to say, for each trial.[610]

In Visigoth documentation the *saio* of the 7th century was already a judicial executive agent. Corominas identifies his etymological origin in the common Germanic derivation of *sagjan*, **sagjis* – to say, notify or inform[611] – and in that way, close to Isidor of Seville's definition, they are called *saio* because they demand things.[612] Historians who have studied the Gothic kingdoms, however, prefer two different avenues of etymology and don't consider Corominas'. One comes from Gothic *sakjan* warrior, while the most commonly accepted is the name's derivation from the Indo-European root **seq/secq* meaning to follow, therefore the *saio* would be a follower.[613] Joan Corominas based his definition on Catalan legal sources and prefers the etymological root to be 'to say' or 'to notify', so the *saio* would be a notifier. Wolfram and Maier, who analyse the sources of late antiquity, give priority to the etymological derivation of the follower, and the latter seems more reasonable considering the change in the *saio*'s function over time.[614]

In the Visigothic law code the *saio* is mentioned 26 times but only across 7 different chapters.[615] For one's modern understanding his functions are not coherently defined within the law as, very similarly to the *boni homines,* there is no separated chapter that informs the reader about their range of action. That makes it necessary to

610 Maier, G. (2005), *Amtsträger und Herrscher in der Romania Gothica*: *Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreiche* (Stuttgart: Franz Steiner Verlag), p. 177: Ist noch in VII.42 die Einnahmequelle der *saiones* das Donativ, also die Prämie des Kriegers, so geht es in X.14.4f. und XII.3.3 um andere Einkünfte: Regelrechte *commoda* oder Sporteln nämlich, die nach spätantikem Muster je nach der Bedeutung von Prozeß und Prozeßparteien gestaffelt sind.

611 Corominas, Saig, p. 596-598.: Saig, funcionari inferior de justícia, del gòtic *sagjis id., derivat del germ. Sagjan „dir", „notificar", „intimar" […]. L'ètimon germànic *sagjis o sagjon- es deriva del verb germ. comú sagjan „dir", en el sentit jurídic de „notificar, intimar".

612 Isidor, *Etymologies*, X. 263: *Saio ab exigendo dictus.* Barney takes another approach on translating *exigendo*, see: Barney, *Etymologies,* X. 263: Saio, so called from 'bringing to completion'(exigere).

613 Maier, G. (2005), *Amtsträger und Herrscher in der Romania Gothica*: *Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreiche* (Stuttgart: Franz Steiner Verlag), p. 170: Etymologisch gibt es vor allem zwei Ableitungsmöglichkeiten, die in der Diskussion immer wieder herangezogen werden: Die Ableitung von indoeuropäisch "seq/secq" (folgen) oder die von got. "sakjan", "Streiter". Sprachwissenschaftlich scheint die erste Möglichkeit leichte Vorzüge zu haben. Für die alte Ableitung "folgen" (vgl. dt. "sehen" als "mit den Augen verfolgen") lassen sich viele Parallelbelege anführen, wie lat. *sequi* und *socius* ind. "sac" bzw. vedisch "Sacya" ("einer, dem man beispringen muß") sowie altsächsisch und altnordisch "segg(r)", "Gefolgsmann". Damit wäre der *saio* ein "Folger", ein Gefolgsmann.

614 See also: Jaime Moya, J. M. (2015), 'El lèxic d'origen germànic en el llatí medieval de Catalunya' (Barcelona, Universitat de Barcelona), p. 223-226.

615 LV II.1.18: 2 times; II.1.26: 9 times; II.2.4: 7 times; II.2.10: 1 time; V.3.2: 3 times; VI.1.5: 1 time; X.2.6: 3 times.

look between multiple chapters to understand his function within the legal apparatus at the time of the law's creation. This does not mean, however, that his role was not clear within society, but rather the opposite; people must have known what it meant when they received notice by a *saio* and what his role within the legal procedures involved. As the judges read, cited and brought the law as a physical object to trials one must assume that they were aware of all the *saio*'s functions described within the law. However, customs could change over time and the vague description of his tasks within the code left enough space for the *saio* to fill possible gaps in legal daily life.

The presence of the same *saio* in several trials in the same area of jurisdiction allows us to assume that the judges were appointed by the same authority and thus were bound both to the person with the authority to judge as well as the region in which these magnates exerted their power.[616] This also arises more indirectly through the prohibition of acting outside one's own jurisdiction through the *saio*, which could be punishable by lashes for the *saio* himself (LV II.1.18).

As local agents the *saiones* must have been known figures cooperating with the judges and therefore when the law was created it tried to ensure that royal authority was maintained and tried to avoid the chance for legal abuses through the pair, which surely existed. The law established that two conflicting parties are bound by the judge or the *saio* with a commitment to present themselves so that they appear at the same time in order to proceed with the lawsuit (LV II.2.4.). Negligence on both sides, from the judge as well as the *saio,* should be avoided, and the former agreed that a potential fine for men that did not show up for the appointment would be split, giving one half to the side who did show up to the trial and the other half split between both judge and *saio*. Payments through fines is mentioned again in the same book, dealing with those who start their lawsuits in court of the prince and then try to make peace with each other outside of the court, thus coming to an extrajudicial agreement. Again, the fine for trying to avoid the court must be shared by both officials, leaving the *saio* with one third (LV II.2.10.) and the judge with two thirds. The law emphasises that care must be taken to ensure that no-one tries to torture a free man or a servant without having sworn rigorously before judge and *saio,* with the presence of the master of the

616 For example the *saio* Esteve most likely being active in the service of Bernat Tallaferro (SALRACH, MONTAGUT, *Justícia*, doc. 146, 149) and a certain Guillem for Guifré II count of Cerdanya (Ibid. doc. 215, 217).

slave or his representative, that neither by any fraud nor by deception nor by wickedness would an innocent man be tortured (LV VI.1.5).

One chapter explicitly deals with the gains and penalties of the judge and the *saio* (*De commodis atque dampnis iudicis vel saionis*, LV II.1.26.), fixing the amount a judge could earn at 20 solidi, while the *saio* would receive a maximum of 10 for his work, with both deemed liable for their own property in case of mischief. The chapter ends ensuring the *saio* the means to travel with dignity, showing that he was entitled to demand two horses in addition to his fee when he has to travel for cases of minor importance, but never more than six for his journey when the cause is related to a person of major importance.[617] In addition to being on horseback one must assume them to also be armed, as the law explicitly forbids their weapons being reclaimed from their patrons.[618]

They are rarely found holding an ecclesiastical office or any holy orders, the exception being a deacon named Rodepaldus, in a very early trial dating in the year 849 that concerned only ecclesiastical matters,[619] and a certain Deudat *qui exinde fuit sago* in 1019.[620] Clearly the *saio* was generally a layman.[621] On one occasion a certain Quirze (*Quiricus*) acted as *iudex et saio* but with this being the only example of a judge also being described as a *saio* means that the two offices were usually strictly separated.[622] This could explain why in the last example a *Sesaldo saione* also shows

617 LV II.1.26: *Idem vero saiones, cum pro causis alienis vadunt, si minor causa est et persona, duos cavallos tantum ab eo, cuius causa est, accipiat fatigandos. Si vero maior persona fuerit et causa, non amplius quam sex cavallos et pro itinere et pro dignitate debebit accipere.*

618 LV V.3.2: *De armis quae dantur saionibus in patrocinio constitutis et de adquisitionibus eorum. Arma, quae saionibus pro obsequio donantur, nula racione a donatore repetantur, sed illa, quae, dum saio est, adquisivit in patroni potestae consistant.*

619 SALRACH, MONTAGUT, *Justícia*, doc. 11: […] *et Rodepaldo diacono saioni*.

620 SALRACH, MONTAGUT, *Justícia*, doc. 185.

621 One other exception, in a trial with two Duran present, could be a certain *Durandus sacerdotes* signing as *Durando saione* or simply as *Durando*. SALRACH, MONTAGUT, *Justícia*, doc. 137.

622 SALRACH, MONTAGUT, *Justícia*, doc. 42: […] *quantum asignatas affrontationes ressonantur, simili quomodo Oddo rege fecit ad Ad[uviro ab]ba, sicut in ipsas scripturas ascripte condicciones quod condam Wilsedus adquisivit et Quiricus saio determinavit [...] Amatus iudices vel Eliacie episcopus, Osmidone vicecomite, Rafridio, Speradeo, Quiricus iudex et saio.*

up,[623] making it the only occasion in which two *saio* are mentioned as present at a trial.[624] This would also fit with the Visigothic law code addressing the saio in singular throughout.

Another irregularity is a certain Ermemir, next to the *saio* Eldemar, that is described as a *subtus saione* which leaves a lot of room for speculation. I am not aware of Eldemar showing up in any other source so his age is unclear. Is Ermemir a kind of apprentice *saio* that will replace Eldemar in some future, or does he just assist him in his tasks? Another option could be that he is the *saio* provided by the bishop or the viscount – unconventionally, as two would be one too many, but one was added in this rather odd manner.[625] But these examples were clearly the exception and rather emphasise the convention that there was only one *saio* at work even when jurisdictions overlapped.

Putting these bits of information together one has to imagine an armed man of lower rank on horseback, entrusted to deliver information related to trials, announcing them and summoning the litigants.[626] He may also have been in charge of keeping the peace at the proceedings, he took possession of the sureties, overlooked and, if need be, enforced the carrying out of the courts verdicts. The *saio* was thus an

623 SALRACH, MONTAGUT, *Justícia*, doc. 42: *[Cum in] D[ei nomine] resideret Gauzfredus comes in Gerundam civitatem, una cum Vulverado, qui est ad vicibus suis, multorum causas audiendas vel legibus definiendas, una cum iudices qui iussi sunt causas audire vel legibus definire, id est, Malagnaico, Argemundo, Baldefredo, Icario, Tinello et Trasovado, qui est mandatarius vel iudex, et Sesaldo saione, seu et in presentia bonis hominibus vel sacerdotes, id est, Addala presbitero, Honorico presbitero, Pruneto presbitero, Argebado presbitero, Wiliemundo presbitero vel in presentia Wigilane, Adalone, Senderedo, Wifredo, item Wifredo, Mirone, Elderico, Eldefredo, Adalberto, David, Celestio, Riculfo, Ademare, Witardo, Addaulfo, Adtone, Engoberto, Eldesindo, Ermemberto et item Mirone vel aliorum bonorum hominum qui in ipso mallo cum ipsis ibidem ressidebant, [...]*

624 A certain Tractimir (SALRACH, MONTAGUT, *Justícia*, doc. 25) is mentioned in reference to an earlier judicial decision in a restitution of property (reperatio) formerly held by Sant Germà de Cuixà that was lost due to a flood. But it is the *saio* Nazer that is present in every procedure related to the case between the years 879-901. Ibid. doc. 25, 26, 27, 28, 49.

625 SALRACH, MONTAGUT, *Justícia*, doc. 90: *Condicciones sacramentorum adque per ordinacione Mirone, gratia Dei comite et episcopum, et Wandalgodo vicescomite, seu et de iudice qui iussus est iudicare, id est, Ioannes, causas audire, dirimere vel legibus definire, seu et in presentia Mirone sacerdote et Olibane presbitero et Bernardo sacerdote et Ermemiro et Argovado sacerdote, necnon et laicorum presentia, id est, Oriol et Wilaberto et Olibane et Seniofredo et Ennegone et Bernardo et Wilielmo et Eldemare et Sanlane et Wiscafredo et alio Seniofredo et Durando et Eldemare sagone et Ermemiro subtus saione et aliorum multorum ominum qui cum ipsis ibi aderant.*

626 Rather the exception than the rule is probably the rise of the *saio* Guiscafred, see: Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 74: La aplicación de la sentencia es responsibilidad del sayón, oficio prestigioso, a menudo ocupado por un destacado propietario rural que puede todavía ascender mientras los oficios no se privaticen: el sayón Giscafredo, hacia 941, fue nombrado vizconde de Urgel.

all-rounder in the handing over of property, be it slaves[627] or land, who took sureties from both sides[628] and was the one in charge of executing the courts decisions.

Therefore, the communication between judge, *saio* and the involved parties, along with all other participants, was crucial for the functioning of justice. Sealed notifications in accordance with the Visigothic law (II.1.19) are indeed rarely mentioned, for example in the above case where one finds the *subtus saione* Ermemir.[629] As one party did not show up on the day of trial it was important to emphasise that they had been properly informed and as such the judge and *saio* stated that they had sent their messenger *cum epistola vel sigillum* to the other party.[630] The ideal candidate to confirm the successful delivery would be the messenger himself, and everything points toward Ermermir being the deliverer of the notification and thus his being included in that single occasion as as sub-*saio*. It is important to highlight that the specific law dealing with those who, whether notified by a letter or by the seal of the judge, disobey the order to appear in court does not mention the *saio* at all, but the general notion of the *saio* being the one responsible for this task becomes clear in the charters and consequently it can be assumed that this was one of his responsibilities in other cases as well.

A little bit of insight into how the legislator imagined this communication to function can be found in a chapter of the *liber* as well. The chapter contemplates possible disputes arising about property claimed by one side but held by the other for at least 25 years (LV X. 2.6).[631] It is recommended that the judge orders the *saio* to seal

627 On the 9th of December 953 a woman called Sabida sold her slave named Samuel to a buyer called Brunikard. She received the slave who was handed over to her in court by the hand of the *saio.* SALRACH, MONTAGUT, *Justícia*, doc. 75: *Ego Sabida femina, vinditrix sum tibi Brunikardo, emtore. Per hanc ista scriptura vindicionis me vindo tibi servo meo nomine Samuel, qui mihi fui traditi in placito per manum saionis, ordinante iudices, pro ac causa unde ego eum petivi quo illi occissi filio meo innocente nomine et firmavi exinde sua recognicione pro ac causa.* See also: Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 110.

628 In this case his Deudat's name, however, does not show up in the subscription part. SALRACH, MONTAGUT, *Justícia*, doc. 185: Deusdedit clerico qui exinde fuit sago et tollit fideiussores ex parte Sancte Marie et suis mandatariis, […].

629 Comp. Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10, p. 35-36.

630 SALRACH, MONTAGUT, *Justícia*, doc. 90: *Unde supradictus iudex vel saione misimus nostrum missum cum epistola vel sigillum ad omine nomine Suniario, qui est filius de iamdicto Atone, que se presentavit in iamdicto placito per iamdicto filio suo et inibi de placito presentabat suo testimonio.*

631 For the genesis of this chapter, see: Esders, S. (2018), 'Der Verjährungstitel des Liber iudiciorum (L. Vis. X, 2) und die politischen Implikationen des Ersitzungsgedankens im Westgotenreich', in I. Czeguhn, C. Möller, Y. M. Quesada Morillas et al. (eds.), *Wasser - Wege - Wissen auf der iberischen Halbinsel. Eine Annäherung an das Studium der Wasserkultur von der römischen Antike bis zur islamischen Zeit* (Baden-Baden), p. 57–86, esp. p.70-74.

off the property for eight days and that the judge lets the *saio* know about this procedure by means of a letter written in his own hand. Even an example letter of notification (*Exemplar epistolae informationis*) is provided.[632]

Doubts easily arise as to what the whole issue of communication between the different protagonists really looked like in legal practice. No such notification letters survived but one can at least deduce that in the middle of the 7th Century it was assumed that the *saio* was either capable of reading the letter or that he could easily find somebody to read it out aloud for him. One must resist the temptation to assume that there was much more oral communication than written, especially in cases that involve magnates and important figures.

The impressive number of 90 mentions of different *saio,* together with their names, can be found in the Catalan documentation up to the year 1145.[633] The great diversity of names and the few repetitions again point towards the idea that they were local agents, men that knew the local possessions and their delimitations, but who acted under comital authority. This point is strengthened by some indirect references, for example in the conflict between the countess of Ermessenda with Hug I, count of Empúries, regarding an allod at Ullastret in 1018. After Hug had invaded the property, witnesses testified that he held it in his possession in the same fashion as the count of Barcelona did before Hug occupied it. The witnesses testify that, besides collecting revenues: *iudicem et saionem ibi eum vidius habere, et si que res ex placitis exiebant*.[634]

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632 LV X.2.6: *Exemplar epistolae informationis. Ille iudex illi saioni. Informo te ut locum illum, quem ille petit et nunc in dominio illius esse videtur, iuxta legis ordinem coram duobus aut tribus ingenuis illi consignes octo tantum diebus possidendum, ita ut, si aliquid ibi repositionis habebtur et anulo domini sui non est signatum, propter auferendam excusationem racionabilium per illos octo dies anulo tuo maneat obsignatum; ad te vero nihil exinde aliquatenus auferatur.*

633 A *saio* appears in 80 occasions with his name in the documentation related to conflict resolution gathered by Salrach and Montagut (SALRACH, MONTAGUT, *Justícia*, p. 887). To the helpful index listing of 79 one has to add *Sesaldo saione* acting next to *Quiricus iudex et saio* (Ibid. doc. 42). These together with an additional 10 mentions in other documents like wills or sales etc. that makes 90 occasions in which a *saio* is listed with his name. UDINA, *La successió*, doc. 10 (961): […] *et Gotmarus, saione, et a [...] omnium qui ibidem aderant, testificant* […]. ABADAL, *Catalunya carolíngia, III,* doc. 188 (962): […] *et saioni Centullo* […]. UDINA, *La successió*, doc. 12 (964): *Condiciones sacramentorum a quarum presencia ubi residebat Donadeus, Sacer, et iudices Goltredus et Gotmares, et in presencia Oliba, Teudemar et Ramio, saione et aliorum bonorum hominum qui hibidem aderant* […]. RIUS, *Cartulario*, doc. 139 (981): *S + m Argimirus, saio.* BOLÒS, *Diplomatari de la Portella*, doc. 2 (997): *Sig+num Gaufredo, saione*. Ibid. doc. 6 (1007): *Sig+num Gaucefredus sagone.* FELIU, SALRACH, *Els pergamins*, doc. 108 (1013): *Et in presentia Vivane, presbitero, Galindoni, levita, Bonarici, levita, Olibani, sagoni, Mozon, Mironi, Audesindi et aliorum multorum bonorum hominum* […]. FELIU, SALRACH, *Els pergamins*, doc. 732 (1068): *S+ Bofil saio.* ALTURO, *L'arxiu,* doc. 175 (1116): *S+ Poncii Bernardi Saione*. BOLÒS, *Diplomatari de Serrateix,* doc. 139 (1145): *Sig+num Arlovini sagoni*.

634 SALRACH, MONTAGUT, *Justícia*, doc. 178: *Post hec iudices secundum legis ordinem receperunt hos testes, Gaucefredum videlicet et Bernardum Ruvirum et Seniofredum Guitardum et Geraldum fratrem Dalmatii, Audegarium de Molinellis et Seniofredum Lardalem, ita dicentes: Iuramus nos testes per*

On very rare occasions, like this case between Hug and Ermessenda, the office of the *saio* is mentioned without the *saio* himself being named.[635] The majority of *saio* are mentioned next to the *boni homines,* attending trials or in signing documents regarding court resolutions and verdicts. If one takes a closer look at the distribution of these cases through time it becomes clear that they differ substantially.

Just to express this in numbers: by setting an artificial boundary at the year 1000 this would mean that 72 of the 90 *saio* mentioned by name in charters appear before the turn of the millennium.

Years	Mentions	Years	Mentions
812–900	38	812–850	8
		850–900	30
900–950	16	900–950	16
950–1000	18	950–1000	18
1000–1050	10	1000–1025	8
		1025–1050	2
1050–1100	6	1050–1075	6
		1075–1100	0
1100–1150	2	1100–1150	2

Tab. 2: Mentions of *Saio* together with their Names within the Documentation

If one keeps in mind that the amount of court documentation preserved dating into the 11th Century is significantly higher, then this uneven distribution is even clearer. Salrach, in dealing with the charters up to the year 1000, rightfully stated that

Deum factorem omnium rerum et per altare et sacramentum Sancti Iohannis quod fundatum est in ecclesia Beate Marie Virginis que sedes Gerunde est, quia nos videndo scimus quod Raimundus comes supradictus tenuit et possedit ipsum alode de Ulastredo cum omnibus suis pertinentiis et adiacentiis, cum omnibus censibus et oblationibus que exinde ullo modo exiebant quousque mortuus fuit, potestatem talem ibi illi vidimus habere et possidere qualem aliquis homo vivens in suis rebus propriis habet; iudicem et saionem ibi eum vidius habere, et si que res ex placitis exiebant, comes Raimundus suam partem exinde habebat et habuit quousque obiit. Similiter post decessum eius vidimus Ermesendem comitissam et filium suum Berengarium habere et possidere supradictum alode de Ulastredo cum omnibus suis pertinentiis et adiacentiis et omnem supradictam potestatem vidimus eos ibi habere et possidere usque in diem quo Ugo comes invasit hec omnia et abstulit a potestate et iure illorum.

635 SALRACH, MONTAGUT, *Justícia*, doc. 75, 286, 358.

"It is almost unnecessary to document the presence of the *saio* in trials because he figures in all court records."[636] This is especially clear up to the middle of the 10th Century,[637] while the *saio* is mentioned less and less during the 11th Century, only to disappear from the documentation nearly completely after the year 1074. If one is to assume that every time a *saio* is mentioned, either in the header of a court record or in the eschatocol, he had some function before, during or after a trial that would consequently mean he would not have had any function at all at the end of the 11th Century. However, the *saio* or later in Catalan *saig,* continued to exist as a lower court official for centuries to come, so the question should rather be why he stopped signing documents or was not listed any more as a participant, and if this can be explained as simply a change of convention in redacting charters or whether it would also imply a decline in Visigothic law.

As the *saio* is only mentioned in 6 charters in the second half of the 11th Century it is worthwhile to have a look at 5 of these isolated cases, as one most likely only looks at three individuals.[638] The first being a certain Gelemon in a small scale local *iudicium in mense iulio* 1063, which was presided over by the trusted man of Ramon V of Pallars Jussà, the lord (*senior*) Bertran Ató de Montanyana. Before the judge Peter, Bertran Ató, the vicar Miró and the *saio* Gelemon and many other good men, the abbot Marquès, of the monestery of Lavaix appeared to accuse Bradilà, the son of Eliseu, of unjustly retaining the church Santa Maria de Lacera which was owned by his monastery.[639] Bradilà replied that this was not true, as his father and mother built and endowed the church, consecrated it and left it to him when they died.[640] The abbot confirmed that it was correct that they had founded the church, but added that when

636 Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo), p. 30: És quasi innecessari documentar la presència del saig en els judicis perquè figura en totes les actes.

637 Up to the year 950. SALRACH, MONTAGUT, *Justícia*, doc. 2, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25, 26, 27, 28, 29, 30, 32, 33, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 49, 50, 51, 54, 55, 57, 59, 60, 61, 62, 64, 65, 68, 70, 71, 73.

638 For the other case that most likely dates somewhere between 1040 – 1060 (SALRACH, MONTAGUT, *Justícia*, doc. 339).

639 SALRACH, MONTAGUT, *Justícia*, doc. 355: *In iudicio de Petro iudice et Bertran Ato seniore et Mirone vicario et Gelemundo saione seu aliorum bonorum hominum qui in ipso iudicio residebant, qualiter venit Marches abba de cenobio Sanctae Mariae que nuncupatur Lavadius, que est situs iusta flumen Nogaria, in presencia de istis supradictis senioribus querrellavit se de Bradrilane filio Heliseo que tenebat violenter sua ecclesia cum omnia que ad ipsa ecclesia pertinet,* [...]

640 SALRACH, MONTAGUT, *Justícia*, doc. 355: […] *et ille respondit: «Non ita est quomodo vos dicitis, quia pater meus et mater mea edificaberunt ea et consecrare eam fecerunt et dederunt ad ipsa ecclesia ad diem dedicacionis terris et vineis, libris et bestimentis vel omnia que ad servientes Deo pertinent, et pater meus et mater mea derelinquerunt eam ad me, et post obitum patris mee vel matris mee ego possedi eam usque hodie».*

Bradilà's father Eliseu died he, together with his mother and brother, handed the church over, in writing, to the monastery as an allod to the former abbot, and to prove his point he showed the court the scripture of donation.[641] Bradilà then had no choice (*Non possum hoc negare*) but to acknowledge the donation and make the corresponding evacuation, but the abbot Marquès, moved by mercy, agreed that he may hold the church for him, with the exception of a third of the tithe and the oblations (*de ipsas oblaciones que pro fidelium mortuorum animas ibi tradite fuerunt*), and on the condition that if Marquès came to the place Bradilà would serve and host him and be a faithful subject.[642] It is noted that the *saio,* together with his brother and other men from Lacera, witnessed and saw this (*visores fuerunt*).[643]

The next example occurs in the year 1066 in which, after a trial, Bellúcia and her children, with the consent of her lord Ramon Amat, evacuated an allod close to Terrassa to give it over to Bonfill Guillem and his wife Rolanda to compensate for a previous fraudulent sale. The evacuation is carried out in compliance with the court ruling and a certain *saio* named Arquimbau is listed before the other noble men present (*alii plurimi viri*),[644] and also signs in the *eschatocol*.[645]

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641 SALRACH, MONTAGUT, *Justícia*, doc. 355: *Et respondit dominus abba: «Certe ita est quomodo tu dicis, set postquam obiit pater tuus Heliseus et mater tua Englia et frater tuus Asnerus et tu ipse didistis ipsa ecclesia suprascripta cum omnia que ad eam pertinebat ad proprium alode ad cenobium Sanctae Mariae suprascriptum, et per hanc scriptura que ego Marches abba trado in manus de ipso iudice vos suprascripti cum ipsa scriptura quo rogastis facere simul cum ipsa ecclesia tradidistis in manus de ipso abbate pronominato Galindoni que in illis diebus regebat ipso monasterio supra scriptum».*

642 SALRACH, MONTAGUT, *Justícia*, doc. 355: *Et cum legeretur prefatus iudex scriptura donacionis, interrogavit Bradinane si eam iussisset scrivere vel direxisset aut mater sua vel fratri, et ille respondit: «Non possum hoc negare, quia mater mea vel frater meus et ego fecimus hec scriptura facere seu et manus nostras roborabimus et testes rogavimus que eam firmarent». Et iudicavit ipse iudex iudicium sicut scriptum est in canones et constitutum est de ecclesiasticis rebus que violenter rapiunt, et post hec evacuabit se Bradila de ipsa ecclesia et de omnia que ad eam pertinebat in manus de ipso abbate supra scripto, et tunc ipse abbas misericordiam optatus dedit ei ipsa ecclesia per suam manum tenuisset eam, excepto illa tercia parte de ipsas decimas et illa tercia parte de ipsas oblaciones que pro fidelium mortuorum animas ibi tradite fuerunt, et quando ille abba venerit ad ipsum locum Bradila serviens illi sit secundum iures quod habet tam ad abbate quam ad servientes illius et ad eos qui adveniendi sunt, et sit subditus Bradila vel proienie eius de domo Sanctae Mariae de Lavavis vel servientes eius quandium fideliter eis servire voluerint, et si hoc facere nequeverint non valeant vindichare sed extorres sint de hoc factum nostrum.*

643 SALRACH, MONTAGUT, *Justícia*, doc. 355: *Signum Gelemundo et Sanilana fratrem eius, filios Sanciverto, et alii homines de Lacera, visores fuerunt.*

644 SALRACH, MONTAGUT, *Justícia*, doc. 369: *Manifestum est enim quia petisti nobis in placito ante donna Arssendis et nobiles viri qui ibi aderant, id est, Raimundi Seniofredi et Guanalgod Mir et Artal Gilmon et Guadallus Donucii et Mironi Renardi et Archinballus sagone et alii plurimi viri,* […]

645 SALRACH, MONTAGUT, *Justícia*, doc. 369: *S+ Belucia femina, S+ Trudgards, S+ Ermessendis, S+ Arssendis, S+ Belucia, S+ Guilelmus, nos qui ista carta securitate firmamus et testes firmare rogamus. S+ Archimballus sagone. S+ Arssendis domina. S+ Artal Gilmon. S+ Guanalgod Mir. S+ Mir Renard. S+ Guadal Donucii.*

The last *saio* named Bonfill figures three times in sales charters, the first two dated in the year 1068 and the last one in the year 1074. The first is the sales charter mentioned above, in which Oliba Sendred sold an allod situated in the parish of Sant Joan Despí, in the municipality of Micià in Sant Feliu de Llobregat within the territory of Barcelona, to Joan Sesmon and his wife Aissulina.[646] Oliba came into possession of the allod as a guarantee for a loan which he had granted to Amat Eldric who did not pay it on the agreed date and eventually died with the payment still outstanding.[647] The charter is dated on the 18th of March 1068 and the involvement of Bonfill can be deduced by his signature next to that of Ramon the levite who acted as a judge, coming right before some other men that functioned as the *boni homines* evaluating the price of the allod.[648] On November the 11th in the same year Bonfill Miró and his wife Guisla sold some lands and vineyards and all the rights over the churches of Sant Pere de Romaní and Sant Feliu de Llobregat, all located in the territory of Barcelona, in the places called Tiano and Miciano within in the parishes of Sant Joan Despí and Sant Just Desvern, to Ramon Berenguer I and Almodis, counts of Barcelona, for the price of thirty ounces of gold. A certain *Bofil* signs as *saio,* which probably means we are dealing with the same individual as before, as both charters deal with property and Sant Joan Despí.[649] The last mention of a *saio* appearing in the documentation as an individual signing with his name is once again our Bonfill, in a very similar case to the first example, dating 6 years later on the 17th of March 1074. In this sales charter the Bishop of Barcelona Umbert, together with the canons of the see, and the abbot Andreu of Sant Cugat del Vallès, along with his monks, sell an allod consisting of some lands, fruit trees, vineyards and orchards in the area of Llerona – in the territory of Pi, Riera and Mugal, all of which are situated in the Vallès – to Arnau Geribert.[650] All this

646 Salrach, Montagut, *Justícia*, doc. 381: *In Dei omnipotentis nomine. Ego Olibanus Sendredi venditor sum vobis Iohannes Sesimundi et uxori tue Eiculine femine, emptores. Per hanc scripturam et istius mee vendicionis vendo vobis alaudem meum proprium, id est, fexam unam terre cum ipsas parietes antigas, qui infra sunt. Que est hec omnia in territorio Barchinonensi, in parrochia Sancti Iohannis, in terminio de Micia.*

647 Salrach, Montagut, *Justícia*, doc. 381: *Advenit mihi hanc terram per cartam pignoris, quam mihi exinde fecit Amatus Eldrici per XVI uncias auri cocti de manu Eneas, que ego ei acomodavi et ille mihi reddere debuerat ad placitum constitutum, qui resonad in ipsa scriptura pignoris, et minime fecit. Et ego amonivi eum per plures vices ut prefatum debitum mihi reddidiset, et nihil mihi profuit. Et inter tantum mortuus fuit predictus Amatus et incurrit prelocutum alaudem in mea potestate.*

648 Salrach, Montagut, *Justícia*, doc. 381: *S+ Reimundi levite, qui et iudicis. S+ Bonefilius sagoni. S+ Breimundus Miro. S+ Mironis Atoni. S+ Adalbertus Ellemari. S+ Gerbertus Miro. S+ Audegarii Gitardi. S+ Reimundo Guitardi. S+ Mironi Reemundi. S+ Geribertus Amalrici.*

649 Feliu, Salrach, *Els pergamins,* doc. 732: *S+ Bofil saio.*

650 Salrach, Montagut, *Justícia*, doc. 402: *In nomine Domini. Ego Umbertus episcopus cum cuncta*

property was held by a certain Tedball Arbert and his wife Malència as a guarantee for a loan that they gave to Amalric Ponç, his wife Alba and his daughter Ponça. They never had any of the loan paid back, and decided to donate the debt to the see of Barcelona and the monestary of Sant Cugat, leaving it to them to deal with the issue.[651] But despite requesting that the debt be paid back, the two institutions were not successful either and decided to sell the properties.[652] This led them to go to the aforementioned judge Ramon who, together with Bonfill and *aliis honestis viris,* estimated the sale price.[653] The charter, however, is signed by Ramon but not by Bonfill.[654]

Without a doubt the office of the *saio* continued to exist but, apart from another sales charter dating in the year 1116, the documentation becomes silent on the subject.[655] Looking a little beyond our time scope the next *saio* named Arloví does not appear until 1145.[656] Although this mention is clearly out of the proposed period of study it clearly shows the *saio* still being an active role. Dot, a judge from Cerdanya,

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congregatione Sancte Crucis, una cum domno Andrea, abbate cenobii Beati Cucuphatis, cunctaque monachorum caterva sibi subdita, pariter in unum, venditores sumus tibi Arnallo Geriberti, emptori. Per hanc scripturam vinditionis nostre vendimus tibi terras, cultas et eremas, et trilias et arbores et vites que intra continentur, regos et caput regos et aqua unde rigari debent, ortis, ortalibus. Que omnia supra dicta sunt in comitatu Barchinonensi, in Vallense, loco vocitato Lerona, in terminio de ipso Pino, in ipsa riera, et in terminio de Mugal.

651 SALRACH, MONTAGUT, *Justícia*, doc. 402: *Predictus namque Tedballus, cum venisset ad extremum diem obitus sui, concessit Canonice Sancte Crucis Sancteque Eulalie necnon cenobio Beati Cucuphatis illud debitum, quod prephatus Amalricus debebat una cum filia eius Poncia et uxore sua Alba ad Tedballum iam dictum, sicut resonat in carta pignorationis, quam iam dictus Amalricus similiter cum filia sua Poncia et uxore sua fecerunt ad iam dictum Tedballum. Iam dictum autem debitum tale fuit: sextarii decem ordei et migera una frumenti ad mensura de mercato, qui est de Arberto, de ordeo nitido et mancusos X de auro cocto monete Barchinone.*

652 SALRACH, MONTAGUT, *Justícia*, doc. 402: *Propterea nos supra dicti canonici atque monachi sepe fecimus amonere iam dictum Amalricum et filia sua atque uxore predicta ut redderent iam dictum debitum nobis, quod minime fecerunt.*

653 SALRACH, MONTAGUT, *Justícia*, doc. 402: *Qua de causa nos supra dicti canonici atque monachi duximus duc[ere] nobiscum domnum Raimundum iudicem atque Bonifilium saionem una cum aliis honestis viris, id est, Poncius presbiter et Seniofredum Goltredi atque Reimundum Guilelmi ac Petrum Gondemari atque aliis viris, qui omnis precio apreciati sunt prefata omnia mancusos XXXV monete Barchinone.*

654 The priest Bonfill signing is probably not the *saio* Bonfill. SALRACH, MONTAGUT, *Justícia*, doc. 402: *Umbertus episcopus +. S Vivas, levita atque prepositus. S+ Guilelmi levite. S+ Berengarii subdiachoni. Andreas abba +. Frater Dalmatius. Raimundus monachus. Remundus monachus. Gerbertus monachus. S+ Ugonis Guilelmi subdiachoni. S+ Remundi Seniofredi, et levite. S+ Stephanus levite. S+ Guilelmus levite, qui et caput scole. S+ Bonefilius sacer. S+ Reimundi levite. S+ Dalmacius sacer. S+ Oliva levite. S+ Raimundi levite, qui et iudicis. S+ Poncii sacricustos.*

655 Pere Fort and his wife Arsendis sold to the spouses Pedró Mirto and Ermengarda an allod located in different places in the territory of Barcelona – in the district of Santa Eulàlia de Provençana, in the place called La Serra – for the price of twelve golden maravedis and within the document the confrontations of the sale are delimited and one finds a certain *saio* named Ponç Bernat signing the document. ALTURO, *L'arxiu,* doc. 175: *S+ Poncii Bernardi Saione*.

656 BOLÒS, *Diplomatari de Serrateix,* doc. 139.

came to the villages of Santa Mara de Serrateix, called Soriguera and Soriguerola, located in the Cerdanya.[657] After taking possession of the banks of the river Segre and the fulling mills there,[658] he acknowledges, however, that Abbot Guillem and the monks had successfully contradicted his arguments and provided scriptures that the mills belonged to the monastery of Serrateix,[659] and therefore completely evacuates them to the abbot, his successors and the monks.[660] The document is signed by the *batlle* Pere Ribera and the *saio* Arloví.[661]

As the charters became silent, so did legislation in the *Usatges.* The *saio* is only mentioned once, in the role of the informant of a truce, articulated through the prince, to be put in effect between enemies so that no one dares to violate the protection which *the prince makes in person, through his messenger, saio, or by his seal.*[662]

A simple and straightforward explanation could be that while the *saio* continued to exist as a functionary, his duties were reduced to that of a mere messenger as his signature had already lost all its importance in the second half of the 11th Century; he is only mentioned a few times in cases close to Barcelona where the stronger tradition of the Visigothic law may have prevailed.

However, what the last appearances of the *saio* have in common is that they all happened in rather small-scale local trials that led to evacuations and sales and, rather than names, general regulations can now be found. Monetary compensation for the *saio*'s work continued to exist in the second half of the 11th Century: one example dating in the year 1064 shows that due to the intervention of good men the spouses

657 Bolòs, *Diplomatari de Serrateix,* doc. 139: *Pateat cuncti presentibus et futuris qualiter ego Dod, iudex Ceritanie, veni in villas Beate Marie de Serratexense, que apellantur Surigera et Sorigerola, in ipsa Ceritania.*

658 The verb *batre* literally means to hit, the mentioned *batedós* (Cat. *batan*) most probably refers to fulling mills at the riverside. Bolòs, *Diplomatari de Serrateix,* doc. 139: *Et enparavi las riberas y los batedós que vulgo nominantur, quas Beate Marie predicti cenobii, abbates et monachi ibidem habitantes ut postea didici secure et proprie habuerant et tenuerant ad proprium alodium.*

659 Bolòs, *Diplomatari de Serrateix,* doc. 139: *Dompnus vero abba Guillelmus et ceteri fratres hoc audientes contradixerunt mihi racionibus certis et legalibus scripturis probantes hec Beate Marie prelibati cenobii esse alodium voluntati eorum subpositum.*

660 Bolòs, *Diplomatari de Serrateix,* doc. 139: *Quapropter ego memoratus iudex, Dod, penitus evacuo ipsas riberas et ipsas batedós Beate Marie prelibate et Guillelmo, abbati, et successoribus eius, et monachis in predicto loco manentibus ut nunquam ego amplius vel aliquis post me habeat potestatem inquietare illud, sed faciat inde abba Guillelmus et successores et eius et fratres ibidem manentes quod voluerint.*

661 Bolòs, *Diplomatari de Serrateix,* doc. 139: *Sig+num Dod, qui hoc scribere et firmare rogavi. Sig+num Bernardi de Valespirans. Sig+num Ermengaudi de Bolvir. Sig+num Arlovini sagoni. Sig+num Ecla. Sig+num Petri Ribera baiuli. Sig+num Seniofredis Petri. Radulfus, monachus, scriptor huius scedule, sub die et notato + tempore.*

662 Bastardas, *Usatges,* 61 (us. 65 – 66,1): […] *princeps per se vel per suum nuncium vel per suum saionem vel per suum sigillum,* […].

Joan and Guilla agreed to evacuate a property and in return received six ounces of gold and a mancus that was distributed between them from the counts of Barcelona, who presided over the trial, the judge Guillem and the now unnamed *saio*.[663]

In some secular sanctio lines the *saio* also is mentioned as someone who could potentially claim a property that was donated. That is the case in the evacuation of a certain Mir Ricolf after a lost trial in 1043[664] but also on the 7th of March 1062, when Arnau Mir de Tost and his wife Arsenda donated all the churches of Llordà, Biscarri and the town of Musiliolo to Sant Sadurní de Llordà,[665] and in a sales charter of some vineyards dating into the year 1111.[666]

From a practical viewpoint, in many aspects the Visigothic law code does not specify who would be executing the verdicts as it must have been commonly known. Practical questions, like who would maintain the order during trials[667] or who was the one that whipped the guilty, are left open. One is inclined to believe that the *saio* was filling these gaps, as he does for centuries thereafter.[668] In 13th Century Tortosa the *saig* was working for the vicar; his role is manifold but he was clearly a low judicial

663 Joan, son of Miró, and his wife, Guilla, made peace, defined and evacuated to Ermemir Oldemar and his daughters Duluriana and Eliarda all the rights over an allod that belonged to Guilla's father Gerovard, located at the end of Ariga (Vallcarca) in the territory of Barcelona. SALRACH, MONTAGUT, *Justícia*, doc 358: *Deinde, intercurrente bonisque hominibus et consenciente predicto comite et comitisse, dedit predictus Ermemirus, per se et filias suas, sex uncias auri et uno mancuso a predicto Iohanne et uxorem eius Guilie, et inter predictum comitem et iudicem et saionem, et evacuavit predictus Iohannes et uxori sue prescriptos alodios qui fuerunt Gerovardi, qui sunt in termines de Ariga, quantique resonant in ipsas scripturas quas Ermemirus ostendit, ut ab odierno die et deincebs securus et quietus permaneat iam scriptus Ermemirus et filias suas de prelocuta peticione sive ceteris homines qui per illorum voces prelocuto alodio possederint.*

664 SALRACH, MONTAGUT, *Justícia*, doc. 286: *Ita et fecit. Idcirco ego Miro evacuo me de iam dicto alaude qui fuit de Mir Trasmon in potestate Radulfi archisacer de supra scripto alaude tam casas quam casalibus, ortis, ortalibus, terras et vineas cum illorum arboribus vel omnia qui ad prescriptum alaudem pertinet, ut deincebs nec comes nec vicharius nec saio nec tiufadus nec ego nec successoribus meis ad fevum supra scriptum alaudem pertemptent, sed teneat eum supra scriptus Radulfus et posterita sua franchum, liberum et quietum*.

665 CHESÉ, *Col·lecció,* doc. 52: *Quod, si nos, donatores, aut ullus homo uel femina, senior aut uicarius, baiulem aut saionem, qui contra hanc scripturam donacionis disrumpere uoluerit aut minime fecerit, aut aliquis ex inde tollere uoluerit aut tulerit, in quadruplum hoc componat et uindicare non ualeat; in super autem cum Iuda traditore innodatus et anatematizatus siue excomunicatus permaneat, et in antea ista scriptura maneat firma omnique tempore.*

666 BACH, *Diplomatari,* doc. 100: *Et ego Nevia in meis responsis dixit (sic), quod non possum probare per me neque per viruum meum neque per nullum ominem neque per uullam fulcionem, quia de ipsum alode nullum censum nec nullum obsequium non debet exire ad nullum seniorem neque ad nullum vicarium neque ad nullum saionem, et si est francum et legitimum, et ad me Nevia advenit mihi per patrem meum sive per parentorum sive per uullasque voces. Et ista carta firma stet modo post modo vel omnique tempore.*

667 LV II.2.2: *Ut nulla audientia clamore aut tumultu turbetur.*

668 For a very insightful article documenting the evolution from the all-rounder the *saig* to the executioner, see: Riera i Sans, J. (2014), 'Saig, morrodevaques, botxí. The executioner and his names in the Medieval Catalan-Speaking Lands', *Recerques: Història, economia i cultura*, 2014, p. 7–27.

official.[669] As Ramon Llull puts it: *We see that the saigs earn their living by taking in men, lashing men and looking for them.*[670] But Llull also deems them necessary for the prince to find and bring the accused before the court.[671]

The development from being an honourable and necessary witness by the regulations of the Visigothic law, to the predecessor of the executioner could be a possible explanation for their disappearance.[672] The last *saio* signatures are in local small-scale tribunals or sales charters. While *veguers*, *batlles* and castle-holders continued or started to be present in the signatures next to counts, bishops and other magnates, the *saio* is the first to disappear from the big scenes. Their office continued to exist, but by the 11th Century their signatures meant less and less as their status within society decreased, as they became officials acting most probably for the *batlles* or *veguers* and no longer for the counts.

The office of the *saio* is deeply linked to the Visigothic law and the later local laws and customs that defined his function as a low law official meant a distancing from the Visigothic law code, already visible and accentuated in the *Usatges* that mention him only briefly as they are more concerned with the relationships of the powerful than with the concerns of the humble, and that seemed to already include the *saio*.

The *saio,* therefore, was usually an armed person, probably of low rank, who worked as a local law enforcement executive. A territory had at least one judge and one *saio*. It was the way to establish public authority and maintain some control. It also allowed a link with the authorities; people could address him which allowed contact with the count, bishop or abbot. According to the *liber* the *saio* remained with a case, just like the judges or the *boni homines*, until its resolution. The documentation

669 MASSIP, *Costums de Tortosa*, 1.3.2*: Lo veguer o el sag, en qual que manament fassen de venir a cort, deu dir e nomenar: aytal hom se clama de vós, siatz aytal dia a la cort.* Ibid. 1.3.11: *Saigs francs e quitis de tenir lo veguer a serviï de la cort, que isen franchs e no servus qui façen totz los manamentz de la cort dins la ciutat, sens tot preu e serviï, que no·n deven aver o·ls deu él fer sens tot serviï, que hom no li n'és tengut fer. Mas si defora la ciutat negun lo volrà trametre, deu-se'n posar amb él preu covinent.* Ibid. 1.5.5: *Item si alcun serà manat, per clams d'alcun, que sia a la cort per lo veger o per lo sayg, enperò que·l sayg n'àgia manament del veger* […]. See also: Ibid. 1.4.13.

670 LLULL, *Llibre de Contemplació*, 21, 122: *Nos veem que los sags viuen per pendre homens e per penjar homens e per assotar homens e per sercar homens.* See also, MASSIP, *Costums de Tortosa*, 9.25.22: *E si de V sous en amunt, tro a XV sous, deu córrer la ciutat, tot nuu en brages, lo sayg él assotan e cridan: qui aital farà aita pendrà.*

671 LLULL, Arbre, 1, 312: *Saygs són necessaris a príncep per ço que ab ells pusca fer pendre els hòmens qui són accusats,*

672 Riera i Sans, J. (2014), 'Saig, morrodevaques, botxí. The executioner and his names in the Medieval Catalan-Speaking Lands', *Recerques: Història, economia i cultura*, 2014, p. 9-12.

makes it clear that the *saio* was an important instrument in the judiciary and that he acted not only during the trial but also did work both before and afterwards. If we imagine a judicial assembly with the authorities sitting listening to the parties, the *saio* would have been the perfect mobile executive, bringing forward the witnesses whilst maintaining the order during trial. Although we miss out on those details in the sources, it is easy to imagine that he was doing all the work that a required a mobile aspect. It is unclear if he also carried out the corporal punishments in Catalonia during the time period we are concerned with, but later sources do point in that direction and that would make him an intimidating individual to encounter.

IV.2.2. Court Order

The author of the formulation of laws should not use discussion, but the law. And it is not appropriate to establish the law with controversy, but with order. The conduct of affairs does not call for the acclamation of theatrical favour, but the law that satisfies the desired salvation of the people.[673]

The goal of this chapter is to give an idealised version of the typical structure of court order as dictated by the Visigothic law and the *Usatges*. Legal matters in regards to proceedings in the first law code can be best reconstructed mostly from the second book *De negotis causarum,* while the customs of Barcelona mostly deal with this matter in a stand-alone chapter. To avoid repetition, changes to procedure in the following chapters shall be highlighted or questioned on a case-by-case basis rather than referencing any single document in which court order was observed regarding a lawsuit.

The Visigothic law states that in order to know the case well the judge should first interrogate the witnesses (*testes*) and then request the written documentation (*scripturas*)[674] related to the case, so that "truth can be discovered with certainty", meaning that an oath does not always have to be taken. An oath did have to be sworn in those cases where the decision of the judge is not supported by any document, evidence, or certain indications of the truth; it is, however, up to the judge to determine in which cases an oath must be taken and which individuals must be sworn in, taking into account that it should be done "only when it serves the investigation of justice".[675]

However, the Catalan documentation suggests that a slight change of order became the custom, presumably due to a simple advantage of procedural logic. The

673 LV I.1.2: *Formandarum artifex legum non disceptationem debet uti, sed iura; nec videri congruum sibi contentione legem condisse, sed ordine. Ab illo enim negotia rerum non expetunt in teatrali favore clamorem, sed in exobtata salutatione populi legem manifestam.*

674 Within the *Lex Visigothorum* the use of the word *scriptura* is employed to designate any legal document thus the law must be understood in the way that the parties could bring forward all kind of charters that would support their claim.

675 LV II.1.23: *Quid primum iudex debet ut causam bene cognoscat. Iudex, ut bene causam cognoscat, primum testes interroget, deinde scripturas requirat, ut veritas possit certius inveniri ne ad sacramentum faclie veniatur. Hoc enim iustiticie potius indagatio vera comendat ut scripture ex omnibus intercurrant et iurandi necessitas sese omnino suspendat. In his vero causis sacramenta prestentur, in quibus nullam scripturam vel probationem seu certa inditia veritatis discussio iudicantis invenerit. In quibus tamen causis et a quo iuramentum detur pro sola investigatione iusticie, in iudicis potestate consitat.*

judges usually first heard the case and argumentation brought forward by both parties, then examined the documents, and finally questioned the witnesses.[676] This whole procedure is well attested to in the documentation, sometimes backed up with direct citations of the law but mostly simply followed through.[677]

Before this process of inquiries and investigation of evidence could start off, the judge in charge was meant to ask the complainant if the case brought forward is his or someone else's, and if the latter was so then the judge should ask for the representative from whom he had received the mandate.[678] Once the trial was over, according to the law the court record should include both the person who had been heard in the prosecution of the case and for whom he was acting. Furthermore, the judge had to receive a copy of the mandate from the representative to keep in his possession along with the copy of the judgment.

Likewise, if there are too many litigants, two should be chosen to carry out the lawsuits initiated – so if one party of opponents (*adversarii*) has many litigants and the other fewer, the judge should make a choice between them, so that each of the parties choose representatives who would act in place of the others.[679] As the law argues that only those who had been elected by each of the sides should have access to the trial – so that none of the sides would be disturbed by the pressure or "clamour of many" – it seems reasonable to consider that this election of representatives in most cases happened beforehand. Magnates, however, seemed not to be intimidated by bigger crowds as sometime a whole family clan is listed as representing their claim.

676 The order suggested *secundum ordinem legis* becoming the exception. SALRACH, MONTAGUT, *Justícia,* doc. 242: *Iudices autem hec audientes, secundum ordinem legis, primum testes interrogaverunt quos a parte Guitardi predicti sufficientes invenerunt. Deinde ab utrisque partibus scripturas requisierunt.*

677 For example LV II.1.23. SALRACH, MONTAGUT, *Justícia*, doc. 292: *Iudex ut bene causa cognoscat, scripturas requirat ut veritas certius inveniri possit ne ad sacramentum facile veniatur. Hoc enim iusticie potius indagatio vera commendat ut scripture ex omnibus intercurrant et iurandi necessaria sese omnio suspendat,* […]

678 LV II.3.2: *Ut iudex a litigatore perquirat utrum propriam an aliena sit causa prolata. Iudex primum a litigatore perquirat utrum propriam causam dicat in alienam fortasse susceperit. Interrogetur etiam cuius manatum habet et postquam causam iudicaverit, iudex comprehendat in iuditio quem aut ex cuius mandat audierit negotium prosequentem, ac preterea mandati exemplar accipiat illius assertoris aput se cum iudicati exemplaribus reservandum. Liceat tamen illi, qui pulsatus est, mandatum a petitore quoram vidice petere, ut quam ob causam fuerit iudicio presentatus vel qui tenor mandati contineat, indubitanter possit agnoscere.*

679 LV II.2.3.: *Ut de plurimis litigatoribus duo eligantur, qui suscepta valeant expedire negotia. Si pars adversariorum litigatores, una plures habeat et alia pauciores, iudicantis inter eos erit electio, ut utreque partes inpugnantes se invicem eligant, qui eorum negotia suscipiant. Quia omnes ad causam dicendam consurgere non debebunt, set, ut diximus, ab utraque parte electi in iudicio ingrediantur, ut nulla pars moltorum intentione aut clamore turbetur.*

Nevertheless in many cases a selection of men represented a community and the law, while never being explicitly cited, seems to have been applied on those occasions.

Following these preludes, the investigation of evidence could start with first hearing the accusation, complaint, or demand (*petitio*). Thereafter, the court addressed the opposing side, the defendant, and questioned them on the content of the matter.[680] Having heard the accusation and the defence, the court then requested written evidence and oral testimony from both parties, as the *Liber* clarifies that in accordance with the law evidence (*probatio*) should be required from both sides of the dispute.[681]

The charters submitted as evidence were carefully examined to verify that the requirements laid down by law were met, which are specified as a clearly expressed date and the descriptions of the author and witnesses. Only then were they considered as firm and valid evidence.[682] The importance of the documents being signed by one's own hand is emphasised by the presence of exception, given in the case of someone being impeded by sickness (*egritudine*) and therefore asking someone else to sign in his stead. When this individual had recovered from the illness it was deemed necessary that he or she must then sign themselves so that the charter was considered valid in the long run.

After the written evidence had been examined in that manner the judges proceeded with possible witness declarations. After the testimony of one side's witnesses had been given, the court asked the opposing party if they had any objections to make, if they disapproved of the witnesses, or if they could present more

680 From the numerous examples just one: SALRACH, MONTAGUT, *Justícia*, doc. 222: *Contra hac petitione Renardi episcopus ita respondit*: […]. Due to the fact that the *petitio* is articulated by one side and was recorded in many court records it is more often expressed through the verb *petere* in the past tense *unde me petivit* et al.

681 LV II.2.5: *Quod ab utraque parte causantium sit probatio requirenda. Quociens causa auditur, probatio quidem ab utraque parte, hoc est tam a petente quam ab eo, qui petitur, debet inquiri, et quae magis recipi debeat, iudicem discernere competenter oportet. Tamen si per probationem rei veritas investigari nequiverit, tunc ille, qui pulsatur, sacramentis se expiet, rem vel si quid ab eo requiritur, neque habuisse neque habere nec aliquid de causa unde interrogatur, se conscium esse vel quiddam inde veritatis scire, nec id, quod dicitur, et illi parti, cui dicitur, comisisse. Et postquam ipse inraverit qui pulsatus est, V solidus ille, qui pulsavit, ei cogatur exsolvere.*

682 In accordance with the requirements found in the law. LV II.5.1: *Quales debeant scripture valere. Scripture, que diem et annum habuerint evidenter expressum atque secundum legis hordinem conscriptae noscuntur, seu conditoris vel testium fuerint signis aut subscriptionibus roborate, omnio habeantur stabili firmitate. Simili quoque et ille scripture valore constabunt, quas ei si auctor suscribere egritudine obsistente non valuit, in eis tamen qui subscriptores accederent postulavit, sicque subscriptionem vel signum ad vicem illius auctoris ille, qui est rogatus, impresserit, hoc tantum est observandum, ut si conditor talium scripturarum de ipsa egritudine, qua detinebatur, revalerit, si hoc ipsuum quod in huiusmodi scripturis testastus ets, firmum esse voluerit, manu sua illud solita subscriptione corroboret, et sic plenam quod testari visus est obtineat fimitatem.* […].

and better witnesses who with their statements could invalidate the preceding ones. Here the order could vary but it seems that it was customary that the plaintiff presented his witnesses first and the defendant second. The objections against witnesses most likely referred to the fact that according to the law, murderers, evildoers, thieves, criminals, poisoners, those who had committed an abduction (*raptum*), had given false testimony, or had resorted to spells and fortune tellers were not permitted to testify in court.[683] As both sides were allowed to add witnesses later, if they wished to do so, finding witnesses could imply the need for more than one court session, as judges actively asked for better or more witnesses and gave new court dates on which to provide missing evidence if necessary.

The importance of written evidence in Catalonia could well primarily rest upon its legal prevalence over oral testimony. With respect to the gathering of evidence in court, the superiority of writing over contrary witness statements is clearly expressed in Visigothic legislation. The chapter "Regarding the investigation of justice if the witness says one thing and the scriptures another" deals with such issues.[684] Moreover, it is the judges obligation to investigate in cases where a witness that provided a document now differs in his or her statement, by searching through all the written evidence and allowing the witness the option to swear they had not signed the presented scripture. If after this investigation it should be proven that the witness had lied "to make truth disappear", he or she should be marked with infamy. If the witness was considered an important local (*honestior persona*) the individual was obliged to pay a fine, while inferior persons unable to pay would receive corporal punishment in form of a hundred lashes.

683 LV II.4.1: *De personis quibus testificare non licet. Homicide, malefici, fures, criminosi sive venefici et qui raptum fecerunt vel falsum testimonium dixerint seu qui ad sortilegos divinosque concurrerint, nullatenus erunt ad testimonium admittendi.*

684 LV II.4.3.: *De investiganda iustitia, si aliut loquitur testis, aliut scriptura. Quociens aliut testis loquitur quam ea scriptura continet, in qua ipse subscripsise se dinoscitur, quamvis contra scripture textum diversa verborum a testibus sit impugnatio, scripture tamen potius constat esse credendum. Quod si testes dixerint eam, que offertur, scripturam minime roborasse, prolator eius probare debebit utrum ab eisdem testibus scripturam fuisse roboratam constiterit. Et si hoc ipse quibuslibet aliis documentis convincere fortasse nequiverit, experienca iudicis id requirere solerter curabit, ita ut per manus contropationem testis ille, qui negat, iudice presente scribat, qui etiam plus cogatur scribere, ut veritas facilius innotescat; ubi scilicet et hoc omnino querendum est, ut scripture querantur et presentur, quas antea fecit sive subscripsit. Et si tota ista defecerint, tunc condicionibus editis iurare non differat quod nequaquam inibi subscriptor accesserit. Et si pots hec quocumque modo patuerit, pro extinguenda veritate mentitum eum fuisse, falsitatis notatus infamia, si honestior persona fuerit, quantum ille perdere poterat, cuius partis testimonium peribere contempsit, tantum dupla ei satisfactione conpellatur exsolvere. Si certe inferior est persona et unde duplam rem dare debeat non habeat, testimonium amittat et centum flagellorum ictus extensus accipiat.* […]

As witnesses finally had to officially give testimony (*testimonium*) after truth had been investigated, the above-mentioned alternation of order allowed the court to proceed directly to this step and this made the practical workings of justice a bit more efficient than in the code. Witnesses were asked if they were willing to testify, while the other side had to officially accept the declarations. Witnesses had to swear before God the Father, Jesus Christ and the Holy Spirit, and with their hands on sacred relics, that they know for certain that which they stated and know well and truly, and that they were present when what they were about to declare happened. The oath was essential, as the code itself says "witnesses cannot be believed if they do not swear."[685] Again it was the judge's obligation to investigate the statements and if testimony was given by both sides, they should weigh the truth of words, and it was the judge's choice in deciding who was to be believed.

Only after the opposing party admitted that they had no objections, nor could they present more or better witnesses, did the court close the enquiry and sentence the case. The verdict (*sententia*) usually required the losing party to agree in writing to the outcome of the case in the form of a renunciation of rights. The court's verdict in these cases usually consisted of granting justice to one party while denying the disputed right to the other. The judges requested that the losing party confirmed the outcome of the case in written form, thus renouncing the matter in dispute. However, when one side clearly was left without arguments or evidence, it must often not always have been deemed necessary to formulate the mandatory renunciation that would otherwise have occurred.

The law, again, is quite specific about the written documentation that should be produced after the court's resolution. If a lawsuit concerned quantities or goods of great importance or of a "certain dignity", the judge should have two judgements (*duo iudicia*) written on the matter in question in the presence of both parties. These identical texts should both be corroborated through descriptions and should be given to the parties in dispute.[686] In the case of goods of lesser importance, though, only the clauses for which an oath has been taken (*sole conditiones*) should be written down and thus functioned as a record of the trial and consequently should be given to the

685 LV II.4.2: *Quod testibus sine sacramento cedi non possit et, si utraque pars proferat testem, cui debeat credi, et vera testificare neglexerit testis.*

686 LV II.1.25 (Zeumer, II.1.23.): *Iudex qualiter faciat iudicatum. Si de facultatibus vel rebus maximis aut etiam dignis negotium agitetur, iudex, presentibus utrisque partibus, duo iudicia de re discussa conscribat quae simili textu et subscriptione roborata ligantium partes accipiant.*

person who won the case. Nevertheless, the loser would also have a copy of these clauses corroborated by the same witnesses.[687]

This leaves investigators with an interesting conundrum as the application of this law could explain why in many cases only the witness declaration and evacuation of rights or similar legal results are preserved and not a complete court record, and consequently less documentation in cases of minor importance would mean a correct usage of the law code. Also, it is not completely clear what would be considered *rebus modicis* and what *rebus maximis,* but following that logic, a detailed account of the trial would indirectly indicate that any detailed court record was considered a case of importance.

Moreover if the defendant in any lawsuit stated before the judge that it is not necessary for the plaintiff to present any evidence, even if the case is about something of little importance, the judge would have the trial written down and corroborate it by signing in his hand, "lest in the future any dispute arise from it".[688] The same law also allows, however, for later witnesses to be added and their testimony received if ordered by the judge. This also was the case if one side withdrew from the trial without consulting the judge and, in such a case, he may accept the witnesses brought in and what they confirmed through their testimony may be recorded in favour of the side which stayed.[689]

687 Ibid.: *Certe si de rebus modicis mota fuerit actio, sole conditiones, ad quas iuratur, aput eum, qui victor extiterit, pro hordine iudicii habeantur. De quibus tamen conditionibus et ille, qui victus est, ab eisdem testibus roboratum exemplar habebit.*

688 Ibid.: *Quod si pars, que compellit pro negotio quocumque compellitur vel professa fuerit apud iudicem, non esse necessarium a pulsato vel a petitore dari professionem aut probationem, quamlibet parve rei sit accio, conscribendum est a iudice suaque manu iuditium roborandum ne fortasse quaelibet ad futurum ex hoc intentio moveatur.*

689 Ibid: *Si vero, hordinante iudice, una pars testes adduxerit et, dum oportuerit eorum testimonium debere recipi pars altera de iudicio se absque iudicis consultu substraxerit, liceat iudici prolatos testes acciperere, et quod ipsi testimonio suo firmaverint, illi, qui eos protulit, sua infantia consignare.*

As mentioned before the order dictated by the law of first interrogating the witnesses and then consulting the written evidence was mostly inverted in the Catalan documentation preserved. Changing the order accordingly but sticking with the rest of the second law book allows one to map out the court procedure graphically.[690]

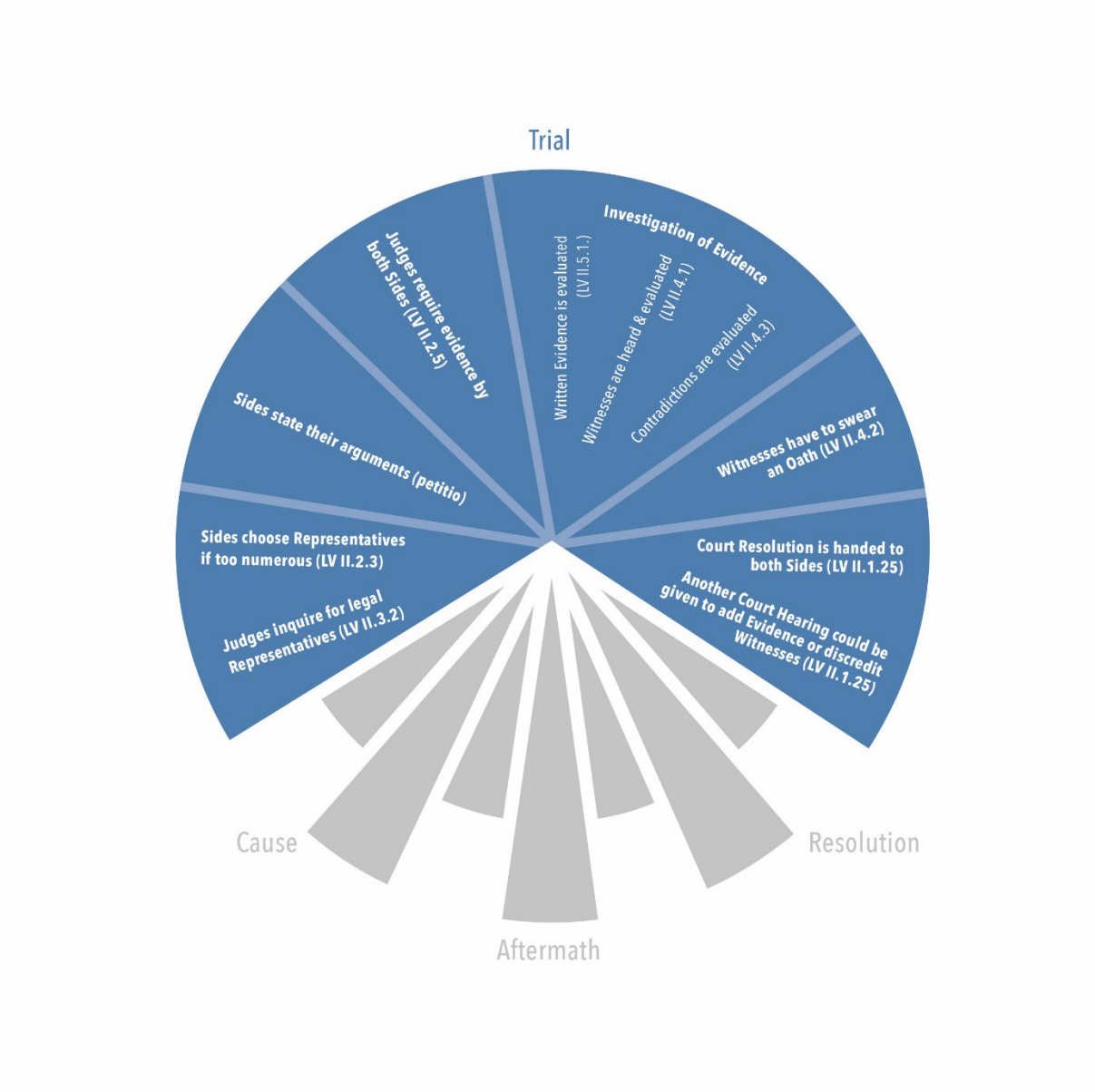

Fig. 5: Court Order According to Visigothic Law

690 The visualisation of this process is based on the second chapter of the Visigothic Law code; changes and inquiries within this process regarding witnesses, testimony etc. will be given in the corresponding chapters.

The *Usatges*, in contrast, are not particularly interested in certain parts of procedure, like for example the idea that witnesses should be interrogated or written evidence be inspected, and the simple explanation could be that these continued to be in place as the *Usatges* were rather conceptualised to complement the legislative tradition of the *Liber Iudiciorum*. Although the number of direct citations of the Visigothic law code declines during the 11th Century, the evidence does not suggest a change in that regard. However the court order dictated by the *Usatges,* as found in the Us. *De Omnibus Namque,* is quite different from the one that can be reconstructed through different laws from the *Liber*. The first striking and obvious difference is that it is a law in itself, but also that it considers four judicial sessions (*quatuor placita*).[691]

These four hearings included the prelude of posting sureties from the litigants, not as an optional event but as a necessity beforehand. Together with the deposit of sureties (*directum firmatum per plivios vel per pignora*), the complaints (*querimoniis*) of both sides should be heard. In the second session these should be articulated *dicte et rationate* and judgements should be given by the judges chosen by both litigants. In the third step these judgements should be reviewed by the judges and altered if need be. Then, the verdict should be approved and sanctioned by the judges, again secured through pledges. Finally, the *dominus placiti* overseeing the lawsuit should take possession of the pledges and ensure the verdict is carried out exactly as it was adjudged.

691 Us. 24: *De omnibus namque comunibus causis non plus oportet quam quatuor esse placita: unum in quo sit directum firmatum per plivios vel per pignora convenienter sicut opus erit vel necesse, querimoniis ex utrisque partibus auditis; aliud namque in quo sint querimonie dicte et rationate, et iudicia data a iudicibus ex utrisque partibus electis; tercium quoque in quo sint a iudicibus querimonie et iudicia retracta, et, si opus erit vel necesse, iudicia meliorata: postea sint laudata et auctorizata et ad laudamentum iudicis illorum bene assecurata per pignora ut sint facta, et ibi debent crescere pignora ad laudamentum iudicis illorum; quartum namque in quo dominus placiti recuperet pignora, et, ilio ea tenente, sint directa facta et iudicia completa, sicut erunt iudicata et ex utrisque partibus auctorizata.*

Fig. 6: Court Order According to the *Usatges*

Important changes comparing both law codes thus include an emphasis on sureties beforehand, something the Visigothic Law also considers but is not as specific about,[692] and the fact that the selection of judges chosen by both litigants needed to agree on a common sentence. This passage seems to deal with lawsuits between magnates and men being bound through feudal ties and not for common people; for those the order of the Visigothic law code was kept intact as they did clearly did not choose their judges. The paragraph, however, speaks of "common pleas" (*comunibus causis*) which is rather confusing and should be taken with a grain of salt. While the

692 Comp. LV II.2.4.

posting of guarantees is clearly a concern in later cases, especially between magnates, the order suggested by the custom law of Barcelona does not seem to have had a strong impact even in the second half of the 12th Century.[693]

However, as we will see in the chapter dealing with trial by combat, the evidence suggests that, at least in agreements, if one side would consider such agreements broken then the clause could be added that both sides would choose judges that would adjudicate the lawsuit on their behalf. Thus for instance, again at least in cases regarding trial by combat, the selection of judges from both sides in legal quarrels between magnates seemed to be a valid option. In most cases though, the middle step of altering the sentence if necessary was clearly omitted and in no way was the procedure suggested by the *Usatges* common during the first half of the 12th Century.

The vocabulary is odd as well; choosing *directum firmatum* over the more commonly found *facere directum* while the term *dominus placiti* stands out as completely isolated and was not used in any charter I am aware of, including later trials from the second half of the 12th Century, assuming the later date of the compilation of the *Usatges* in the mid part of the same century. However, terminology like *plevius* or *plegius* used to describe a bailor and surety as well as a pledge and security are well attested.[694]

The law gives the impression of a conglomeration of established practices being put together, rather than writing down a legal procedure which was actually in place in the mid of the 12th Century. This does not discredit it as a source, however, but it

693 Coming to a very similar conclusion focusing on the charter material from the second half of the 12th Century. With regards to the Us. concerning procedure, comp.: Kosto, A. J. (2001), 'The limited impact of the "Usatges of Barcelona in twelfth-century Catalonia', *Traditio*, 2001, p. 77.

694 SALRACH, MONTAGUT, *Justícia*, doc. 324: *Item iam dictus Guillelmus comes misit in plivio comitissam, uxorem iam dicti Remundi comitis, per quingentos solidos per unumquenque annum ad Pontium, comitem Imporitanensem, et dimisit eam incurrere.* Ibid. doc. 330: *Et hoc emendet propter dictum plivid in quo stabat cum eo, et sic fiat ista emenda ut cavallarii Mironis qui fecerunt ista malefacta recognoscant quantum malum fecerint in onore predicti Guillelmi, et illi emendent illut, aud Miro per eos, et iurent se nihil amplius fecisse. […] Et postquam hoc iudicium fuit iudicatum a predictis iudicibus, prescriptus Miro nichil fecit de predicto iudicio iam dicto comiti, set comes eum pacifice sustinuit et suos plivios quos predictus Miro dedit iam dicto comiti per XX milia solidos super hoc iuditium noluit ducere ad encorredan, set eum sustinebat iam dictus comes ut posset habere predictum Mironem bonum in suo servicio.* Ibid. doc. 439: *Et retinemus ad nos ipsas pernas cum ipsos bannos et ipsos plivios de ipsos franchos homines et tota opera et potestatem de ipso kastello de Olone per fidem, sine inganno.* BAIGES, FELIU i SALRACH, Els pergamins, doc. 438: *Et super hoc faciunt plivios de ista finem iamdicta que sia tenuta per fide.* […] *Hoc sunt plivium: Pere Ramon, setanta uncias, Bertran At, XXXª, Bernard Guillem, XX, Mir Guirreta, XX, Guillem Ramon, XX, Pere Rodger, XX, Eriman Radolf, XX. Et hoc siat a valente de auro de Iacca. Plevire* as in to pledge allegiance. SALRACH, MONTAGUT, *Justícia*, doc. 238: *Et plevirunt istos homines que non seriad nullo se egano [et] consiliaverunt que ille se gachisset de istas melioraciones*. For *explevire* to bay back a bailment. Ibid. doc. 156: […] *ita tamen ut si prefatus Geribertus expleverit ad adventuras octubrias kalendas predictas sex uncias prefatis debitoribus suis,* […].

should probably rather be understood as an idealised procedure from the compiler as how he or they would like the court administration to work. As a whole, this contrasts with the precise usage of vocabulary from the Visigothic law, at least up to the mid of the 11th Century, but also afterwards to a certain degree as its terminology persisted and its tradition prevailed.

IV.2.2.1. Accusations & Complaints

The 'legal forum' (forus) moreover consists of the complaint, the law, and the judge. A complaint (causa) takes its name from the 'event' (casus) from which it arises. The complaint is the basis and origin of a proceeding, not yet opened up for trial and examination. When it is put forward it is a complaint, when it is examined it is a trial, when it is finished, it is the judgment.[695]

Drawing a clear distinction between what sometimes could be translated as indictment, charge or claim but mostly simply in the case at hand the *causa*, a reclamation including in the sense of false claim (*calumnia*), the accusation *(accusatio, accusare*) and a complaint or grievance (*querela, querelari*) within the documentation is a difficult endeavour.

The *causa* can be best understood as the legal action or legal process as a whole when the judges are *iussi sunt causas audire vel dirimere* but consequently also as the legal argument as well as the legal matter at hand depending on context.

That *calumnia* best be understood as an illegitimate reclamation, a false accusation or malicious prosecution can be seen in various example throughout the law code.[696] Just to give some examples: a fallen tree in the absence of the wood cutter or the one who did the clearing through fire would not allow an accusation (*calumnia*) to be filed against the person who cut the tree for any damage caused by its fall.[697] Trappers who had advised the neighbours of their presence could not be charged for livestock accidentally dying because of their traps,[698] and an unfenced meadow from which livestock strays does not allow for allegations.[699]

All three laws – none of which show up in the documentation but give a lively impression of concerns of everyday life that surely mattered and could involve local judges – used *calumnia* in the sense of a claim that could be uttered but would be

695 BARNEY, *Etymologies*, XVIII.15.1-2.

696 How depended on context; the word is best attested in Gerhard Köblers Mittellateinisches Wörterbuch which lists 58 possible translations. See: Köbler, *calumnia.*

697 LV VIII.3.4: *Si arbox ex parte incisa sit aut ex aliqua a parte igne conbusta et illo, qui absque dolo inciderat vel incendere ceperat, absente arbor ceciderit, nulla ei pro dampno, quod pro ruina arboris factum est, calumpnia moveatur.*

698 LV VIII.4.23: *Homines vero proximos vel vicinos venator antea commoneat et si post monitionem quisquam in hec incautus inruerit, nihil ex hoc calumpnie venatori oportet opponi, quia se ille periculo, qui commonitionem audire neglexit, obiecit.*

699 LV VIII.5.5: *Consortes vero vel ospites nulli calumpniae subiaceant, quia illis usum erbarum, quae concluse non fuerant, constat esse communem.*

considered invalid in hindsight given the circumstances. That also applies for accusations after killing someone in self-defence:[700] if someone was declared innocent after an ordeal the plaintiff would not have to fear an accusation afterwards,[701] and it is applied in that sense in other laws as well.[702] While the continuation of this word's significance, imported from Roman Law to the Visigothic law code, is no surprise it is nevertheless remarkable that it was not only used accordingly within the charters, which meant the correct legal understanding of its meaning, but that it was also adapted to new circumstances.

It makes sense, for example, that the word was mostly used in security charters guaranteeing someone's right so that no one could put forth a claim (*calumnia*) related to the case.[703] Such a reclamation after the charter was issued would be per se illegitimate, which was thus emphasised by the choice of word. Although rarely used in Catalonia, the technical term nevertheless finds its way into the documentation through the typical argument in property disputes, often revolving around the uninterrupted ownership of property over a period of thirty years. The corresponding law was cited directly and it uses *calumnia* to describe what would be an illegal claim

700 LV VI.4.6: *Quicumque ergo incaute presumptiosus fuste vel gladio seu quocumque ictu aliquem iratus percutere voluerit vel percusserit et tunc idem presumptor ab eo, quem percutere voluit, ita fuerit percussus, ut moriatur, talos mors pro homicidio computari non poterit nec calumpniam paciatur qui pressummentem percusserit, quia commodius erit irato viventis resistere quam sese post obitum ulcisendum relinquere.*

701 LV VI.1.3: *Quomodo iudex per examine caldarie causas perquirat. Multis cognovimus querelas et amb ingenuis multa mala pati credentes in trescentorum solidorum questionem agitari. Quod nos modo per salubrem ordinationem censemus, ut quamuis parva sit rei facta criminis, per examinacionem caldarie a iudice districtos pervenire ordinamus et, dum facti temeritas patuerit, iudex eos questionandi non dubitetur, et, dum suam dederit professionem, superiori legi subiaceat. Quod si per examen caldarie innoxius aparuerit, petitor nullam calumpniam pertimescat. Hoc quoque erit ed de suspectis habentibus personis, qui ad testimonium venerint dicendum hic ordo servabitur.*

702 For example in cases of fugitive slaves (LV IX.1.14; IX.1.15) or transmarine trade (LV XI.3.1).

703 SALRACH, MONTAGUT, *Justícia,* doc. 165: […] *ut si unquam in placito fuerit presentata, nullam calumpniam exinde pertimescas, sed vacua exinanita permaneat modo vel ultra, ut ab hodierno die et tempore nec ego nec ullus vivens homo utriusque sexus te apetere, requirere vel inquietare presumat exinde, sed securus et quietus exinde permaneas modo vel in futuro.* Ibid. doc. 248: *Et ideo sic [nos] exvacuamus, ordinantes suprascriptos bonos ominibus nostros libentes animos in conventu vicinorum, ut amplius secura permanete a prefata inquisitione ut in eternum sine molestia et damno et sine ulla calumnia permanete.* Ibid. doc. 288: *Et suprascripta quippe omnia, sicut ea vendidit vobis Girbertus Bonucii et in vestra scriptura empcionis resonat, ab omnes nostras voces in vestra potestate nos exvacuamus et quietos et sequros vos facimus, ut ab hodierno die et tempore nullam calumpniam inde pertimescatis.* BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 452: *Ita ut nos vel quelibet alia persona nichil inde acclamare possint vel calumpniare per nos; et si faceret sine nostro adiutorio de huius honoris calumpnia et inquietacione presumeret.* Rarely in sales charters and if the context allows for speculations, comp. RIUS, *Cartulario*, doc. 846: *Ea vero condicione et tenore hoc facio, ut aliquis vel aliqua in prephato alaudio per me vel per meam vocem, aut per meum ius nulla calumpnia beato Cucuphati vel eius servientibus obponat.*

in the case of prolonged possession.[704] Considering that this law uses the term in the same sense for an unfounded claim if someone possessed a property for over thirty years after this was truthfully established in court, all examples that I am aware of use it in a retrospective manner. That means if someone has a claim that still is open to legal discussion the word would not be used, but if someone loses in court his claim would be considered a *calumnia* in hindsight. This is confirmed in situations of conflict when the aggressor had already admitted defeat and his claim was thus deemed illegal when restitution and compensation was paid and therefore future claims regarding the same topic would be illegitimate.[705]

Accusations *(accusatio, accusare*) within the Visigothic law code are mostly linked to what could be considered penal law today, consisting of a criminal charge. The term was thus used in the sense of *accusationibus criminosorum*[706] for accusations like the abduction or *raptio* of women,[707] adultery,[708], theft[709] and homicide.[710] Not only used coherently in chapters dealing explicitly with these matters, but also in chapters relating to them.[711]

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704 LV X.2.6: *De interruptione tricenii. Sepe proprium ius alterius longinqua possessio in ius transmittit alterius; nam quod XXX^tis^ quisque annis expletis absque interruptione temporis possidet, nequaquam ulterius per repetentis calumpniam amittere potest.* Comp. SALRACH, MONTAGUT, *Justícia,* doc. 244, 314 bis, 350.

705 SALRACH, MONTAGUT, *Justícia,* doc. 138: *Et pro adimplendum usus rectitudinis iustitie, pro compescenda adfutura iurgia ac calumpnia, has vineas et terrulas pretaxatas prenotatus Bonushomo tradidit et donavit vel transfundit, coram prelibata comitissa vel ante prefato vicecomite et iudices, in iure et dominio de pretaxata Matrona ab integre, ad suum proprium, ob emendationem debitis hereditatibus vel facultatibus quas ei fraudulenter dissipaverat.* Ibid. doc. 406bis: *Ad locum etiam Beati Michaelis, in cuius domo praescripta calumnia illata est, reddo trecentos mancusos et quinque mansos in Salto; […].* Ibid. doc. 550: *Ideoque vero, transacta multa adversa et calumpnia de supranotato Espeut ab ipso Petro Raimundi et filiis suis facta absque vim et aliquo ullo malo ingenio, difiniunt et evacuant Bernardo, iamdicto archidiacono, omnem ipsum honorem de Espeut, simul cum ipsa turri et cum omnibus ad eandem turrem pertinentibus.*

706 LV VI.1. *De accusationibus criminosorum.*

707 LV III.3.7: *Infra quod tempus liceat accusare raptorem et si parentibus puelle cum raptore de nuptiarum definitione conveniat.*

708 LV III.4.3: *De adulterio uxoris. Si cuiuslibet uxor adulterium fecerit et deprehensa non fuerit, ante iudicem competentibus signis vel indiciis maritus accuset.* LV III.4.13: *De personis quibus adulterium accusare conceditur et qualiter perquiri vel convinci iubetur.*

709 LV VII: *De indicibus furtii.*

710 LV VI.5.14: *Ut homicidam cunctis liceat accusare.* See also: LV VI.5.15.

711 LV VI.1.2: *Inferiores vero humilioresque, ingenuae tamen personae, su pro furto, homicidio vel quibuslibet aliis criminibus fuerint acusate nec ipsi inscriptionae premissa subdendi sunt questioni nisi talis fuerit causa quamquingentorum solidorum summam valere constiterit.* LV VI.1.6. Qualiter ad regem accusatio defferatur. In rare occasions also in other contexts like accusing a dead for having an unpaid debt. LV II.4.7.: *Ceterum si debitum defuncti vel preasumptio accusetur,* […].

In comparison, within charters words like *accusator*[712] or *accusare*[713] are rarely used. While Roman law clearly distinguishes between petition, i.e. "lawsuit" in civil cases, and *accusatio* as the indictment in criminal cases, a clear distinction between a general *petitio* and an *accusatio* within the law code cannot be seen within the cases analysed. That was even true in cases of homicide or other cases clearly belonging to penal law in which judges enacted *a petitione*.[714]

The most clear example is the use of *a petens vel accusans* dating in the year 1010 at the count's court at Barcelona, in which one can be assured that this was not an example of badly educated judges but that the distinction generally was just not made.[715] Other more figurative expressions like *pulsatus* as an accusation found in the law-code[716] were not used in charters either, but could be found used to mean 'to move forward' or 'to file a complaint.'[717]

While the technical term *petitio* also continued in its use in later documentation,[718] the prevalence of complaints or grievances (*querela, querelare*) becomes more accentuated in the early half of the 11th Century and become completely common by the end.[719] If this meant a difference in legal procedure in the beginning it is hard to tell, as men stated their complaints in the same fashion and at the same moment in procedure as it was done previously with the *petition,* and logically the two had to exist simultaneously.

712 For example in an accusation in regards of of counterfeiting money. SALRACH, MONTAGUT, *Justícia,* doc. 112: *Et sic domnus pontifex, data sententia iudicum, suae in honore ecclesiae distrinxit predicta accusatio V kalendas aprilis, anno III regnante Ugo Magnus regi franchorum.* The accusation in court was however was filled as a complaint. Ibid.: *Venit Sindaredus, custus monete, defferens querellam eo, quod invenerat denarios adulterinos in manu Riculfi, frater Bonaricci presbiteri,* […]. SALRACH, MONTAGUT, *Justícia,* doc. 320: Et insuper querentes universarum cartarum nostrarum scrinia, nec per cartis neque per testimoniis hec comprobare potuimus et accusatores et malivoli remanserunt mendaces.

713 Mostly in accusing witnesses of infamy as it was used in the law (LV II.4.7). SALRACH, MONTAGUT, *Justícia,* doc. 308: *Quorum testimonium antequam reciperetur predicti iudices commonuerunt prescriptos causantes Dalmacium et Guilelmum atque Udalgerum et requisierunt ab illis si haberent quod rationabiliter contradicere et predictos testes accusare potuissent causa infamationis, at illi nihil se scire dixerunt quod eis obicere possent.*

714 In both cases, being convicted (SALRACH, MONTAGUT, *Justícia,* doc. 96: [...] a pe[ti]cione […]) or absolved and guaranteed no further accusations (Ibid. doc. 203: Uunde ne ad futurum reiteraretur peticio, ista est ab eis confirmata paccio […].).

715 SALRACH, MONTAGUT, *Justícia,* doc. 153.

716 LV II.1.31: Ut si iudex a quocumque fuerit persona pulsatus, noverit se petendi reddere rationem.

717 BAIGES, FELIU, SALRACH, *Els pergamins*, doc. 678: *Ego Petrus, Barbastrensis episcopus, multi modis et frequentibus querimoniis pulsatus que* […]. FERRER, *Diplomatari*, doc. 53: *Quorum querela prius pulsatum est episcopus secundo Barchinonensium comes*, […].

718 For example dating in the year 1106, see: PUIG, El monestir de Gerri, doc. 91: […] *ad peticionem Poncii prioris eiusdem loci ac fratrum suorum* […].

719 Before the year 1000 only used on rare occasion, as far as the consulted documentation allows only on 5 occasions. Comp. SALRACH, MONTAGUT, *Justícia,* doc. 53, 79 bis, 112, 123, 127.

Within the Visigothic Law code complaints reach counts[720] and judges[721] or, if the latter themselves are the target of complaints, the higher authorities, be it the king[722] or the bishop.[723] It is also prescribed that the judges should reach out to the king or bishop and thus forward complaints.[724] However, the actual process of how filing complaints should be done is left open. A lawsuit was definitely initiated through a complaint as judges advised the adversaries through sealed letters[725] and should work to ensure that they show up in court.[726] Complaints within the conceptualisation of the Visigothic law code are thus not only directed to judges but also towards higher authorities, and this should be understood in most occasions as a formal complaint[727] issued before the first date of the lawsuit.[728]

720 LV IX.2.6. *Quod si contigerit ut ipse commes civitates aut annonarius per neglentiam suam, non habens aut forsitan nolens, annonans eorum dare dissimulet, comiti exercitus sui querelam deponant.*

721 In case of a transgression regarding to have no legal matters discussed on feast days. LV II.1.12: *Si quis autem contra decretum legis huius agere presumpserit et ad iudicem ex hoc querela pervenerit, L hictus flagellorum publice extensus accipiat.*

722 LV II.1.24: *Et qui suspectum iudicem habere se dixerat, si contra eundem deinceps fuerit querelatus, completis quae prius que per iudicium statuata sunt, sciat sibi apud audientium principis appellare iudicem esse permissum, ita ut, si iudex et sacerdos reperti fuerint nequiter iudicasse, et res ablata querelanti restituatur ad integrum, et a quibus aliter, quam veritas habuit, iudicatum est aliud tantum de rebus propriis ei sit satisfactum. Si certe iniuste contra iudicem querelam detulerit et causam, de qua agitur, iuste iudicatam fuisse constiterit, dampnum, quod iudex sortiri debuit, petitor sortiatur.* LV VI.5.14. *Quod si iudex admonitus huius rei vindex esse destiterit et dilatans accusantes, ad regiam cognitionem ex hoc querela pervenerit, sciat se pro mortuo, quem vindicare noluit medietatem homicidii, hoc est, CL soliuds petenti esse daturum.*

723 LV II.1.30 (Zeumer II.1.28.): *Si vero aepiscopus fraudis comunionem cum comite tenens repertus fuerit pauperi facere dilationem, eandem quintam partem eidem aepiscopus quaerelanti coactus exsolvat, stante nihilominus sic quoque negotio pauperum donec iuditium inveniatur veritatis.*

724 LV VII.1.1. *Quod si eum nec ipse iudex per alicuius potentis defensionem aut patrocinium seu metu regie potestatis discussioni suae presentare non potuerit, ad regiam id cognitionem, si prope est deferre procuret; si autem longe est, eopiscopo vel iudici denunciet, ut eorum major auctoritas hunc iudicio faciat presentari. Quod si neglexerit nunciare, de propria iudicis quaerelanti restituatur.*

725 LV II.1.19: *Iudex cum ab aliquo fuerit interpellatus, adversarium querelantis admonitione unius epistole vel sigilli ad iuditium venire compellat, sub ea videlicet ratione ut quoram ingenuis personis his, qui a iudice missus extiterit, illi, qui ad causam dicendam compellitur, offerat epistolam vel sigillum.* […] *Hii denique, quibus tam rationabile tempus adiectum est, si et ulterius dilatantes minime ad institutum diem superadiectionis occurrerint, confestum iudex ea, quae pars petit querelantis, reservato negotio dilatatoris, tradere non differat petitiori, ita ut, dum contemptor in postmodum ad negotium dicendum successerit, si vigisimum primum diem trancenderit, XX auri solidos coactus exsolvat.*

726 LV II.1.20: *Si quis iudici pro adversario suo querelam intulerit et ipse eum audire noluerit aut sigillum negaverit et per diversas occasiones causam eius protaxerit, pro patrocinio aut amicicia nolens legibus obtemperare et ipse qui petit hoc testibus poterit aprobare: det ille iudex ei quem audire noluit pro fatigatione eius tantum quantum ipse ab adversario suo secundum legale iudicum fuerat accepturus, et ipsam causam ille qui petit usque ad tempus legibus constitutum ita habeat reservatam, ut, cum eam proponere volverit, debitam sibi percipiat veritatem.*

727 Most probably an exception is the notion of slaves complaining about mistreatment as refugees on holy ground. LV V.4.17. *Conperimus multorum servos vel ancillas ad aecclesiam quordundam sollicitacione confugere et illic iniusto dominorum imperio sepissime querelari, ut ita intercedentibus clericis religionis obtentu domino necessitatem venditionis extorqueant.*

728 See the whole chapter. II.2.7. *Si quislibet ex alterius iudicis potestate in alterius iudicis territorio habeat*

This leads to the crucial question: does the increased use of terminology revolving around complaints indicate only a change in the legal vocabulary used and available through the law code, or does it mean a change in procedure, and if so does this change reflect a transformation of society?[729]

There are several models of explanation. First of all, a change in focussing on the complaint could be explained through the notion that regular judicial assemblies were rather common in the earlier documentation where more than one issue was discussed and decided upon and that this changed towards mostly arranged court meetings during the 11th century where the aim of attention moved towards the complaint as the basis for a legal conflict and for that as a necessity beforehand. Another significant change in mentality at least in how it is articulated in the charters is that in the second half of the 11th century a legal conflict was considered open and peace disrupted when a complaint was issued. The re-establishment of peace characterized by the recognition of a new existing legal situation becomes the centerpiece of this change that is, as we will see, first expressed in security charters and waivers of complaints and soon would be articulated through a range of sophisticated ways of resolving conflicts appeasing both sides through adjudication.

causam.

729 The glossator of the *Liber Iudicum Popularis* was not concerned with these differences, see: ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis*, p. 708: *Ad causam*: *ad actum, ad negotium*. F.35r; *ad querelam*, *ad peticionem* (*-ti-*). F.36v.

IV.2.2.2. Evidence & Testimony

A lawsuit consists either of argumentation or of evidence. Argumentation never arrives at a proof by means of witnesses or written documents, but it discovers (invenire) the truth by investigation alone. Hence it is called argumentation (argumentum), that is, a 'clear discovery' (argutum inventum). Evidence (probatio), however, involves witnesses and the authority of documents.[730]

This chapter takes a closer look on how the proposed court order translated into the documentation in regards to the course of investigating the evidence. The revision of the presented evidence, be it written or oral, always took place before both parties involved in the dispute.

When requesting written evidence judges asked the parties if they had any scriptures (*scriptura, carta, catula*) and faithfully used the terminology found in the Visigothic Law to describe all the modalities surrounding the inquiry, including the handing over of the scriptures or what they contain (*scriptura continet* etc.). In that regard the documentation leaves no doubt that the legal vocabulary was being used and adapted from case to case.[731]

The judges in cases that detail the *petitio* actively questioned the witnesses which were brought forward or presented (*proferre*: *testes prolati*; *protulit testes* et al. *affere*: *attulit*; *exhibere*: *exibuit testes*; ostendere; *hostenderunt testes*) or simply *dati sunt testes in probatione.*[732] They are described as suitable (*idoneos*), truthful (*viridicos*), legitimate (*legitimos*), or even very faithful (*fidelissimi*) – as previously mentioned, their condition of character was an important factor in their credibility in court.

Isidore of Seville's consideration regarding the distinction of witnesses' condition (*condicione*), nature (*natura*), and conduct (*vita*)[733] is reflected in the Law

730 BARNEY, *Etymologies*, XVIII.15.5.

731 The word *documentum* is rarely to describe written evidence as it is only used two times in the Visigothic law code (LV II.4.2; II.4.3). One could even suggest that the judges read the corresponding chapters beforehand as they would fit in most of the cases. SALRACH, MONTAGUT, *Justícia,* doc. 93, 205, 212, 285, 495.

732 SALRACH, MONTAGUT, *Justícia,* doc. 127.

733 BARNEY, *Etymologies*, XVIII.15.9: A witness is evaluated with regard to condition, nature, and conduct. Condition: whether one is a free person, not a slave – for often a slave, out of fear of the master, suppresses testimony of the truth. Nature: whether one is a man, not a woman. For (Vergil, Aen. 4.569) always a changeable and fickle thing is a woman. Conduct: whether one is upright and untainted in behaviour. If good conduct is missing, a person is not trustworthy, for justice cannot keep company with a criminal.

Code as well as in the sources. Witnesses were usually male, were never slaves and could be accused of infamy in order to discredit their validity in court.

Additionally, the judges asked for *any truthful evidence* (*ullum indicium veritatis*), and this is mostly answered in the negative, with the defendant admitting that they were not able to present said evidence.[734]

Lively dialogues between parties – mostly between the judges, plaintiffs and defendants as well as the witnesses themselves – were written down, especially in the process of investigating the evidence. The fact that this would have had to happen in the vernacular language of the time, but that in writing the participants often used technical legal terminology, even when speaking in first person, so to say, makes many of these accounts questionable and leaves the historian with several options to consider: either that the participants knew the legal vocabulary well and it was faithfully translated, or that the diction was adapted to fit the legal document. Another option, which I am inclined to believe is the case and does not contradict the others, would be that the judges actively used the right vocabulary in their questions and the other party in the dialogue answers, either repeating the words or confirming them. The latter idea fits into a world in which legal procedures are public and an understanding is kept alive through seeing, participating and living the law rather than reading it, which is linked to the office of the professionals. Judges in that sense were masters of ceremony, directing not only people but also language.

As previously mentioned, in most cases assemblies were held in front of the churches and matters were discussed there, while the final oath had to be taken inside. This is most clearly expressed in documentation dating in the year 1001. Contentions had risen between the inhabitants of Cornellà de Llobregat on one side and a certain Pere and Enric on the other[735] regarding some rights over the *vias publicas* frequented by the townsfolk. The judge in charge, Oruç, had the villagers select three witnesses out of eleven candidates, ten laymen and a priest, to swear in front of the altar of the church of Cornellà that they had been using the roads for more than thirty years; their testimony was accepted without further quarrel by Pere and Enric as they retracted

734 An indirect reference to what a judge must first observe in order to know the case well. LV II.1.23 (Zeumer II.1.21): *Quid primum iudex servare debet ut causam bene congnoscat. [...] In his vero causis sacramenta presentur, in quibus nullam scripturam vel probationem seu certa inditia veritatis discussio iudicantis invenerit*. Comp. SALRACH, MONTAGUT, *Justícia,* doc. 79, 91, 93, 132, 135, 136, 158, 286, 540.

735 SALRACH, MONTAGUT, *Justícia,* doc. 141: *Notum sit omnibus presentibus et futuris qualiter fuit orta contentio inter homines abitatores de villula de Corneliano de Lupricato, et homines, id est, Petrus et Aenricus.*

their claims. The interesting detail that allows a little bit of insight into procedure is that it was by the order of the judge that the selected witnesses entered into church (*per ordinatione iudicis* [...] *intraverunt in ecclesia*) and that it was Pere and Enric who received or accepted the testimony given *sub altario*.[736] This implies that the court session took place outside, where the witnesses were selected, and that probably only a select number of people went into the church for the oath taking.

There is a significant difference in how the oath is presented in earlier charters in comparison to later ones. Whereas in earlier documentation, the formal oath that the witnesses had to swear on the altar (*super altare*) was written down as a whole – starting with *Iurati autem dicimus* and continuing with slight variations on "by God the Father almighty and by Jesus Christ his son and by the Holy Spirit, who is the one true God in trinity" followed by the local saint (*hunc locum venerationis*) or his relics (*per reliquias*)[737] – this formula for recitation is found nowhere later on. First shortened to *per trinum et unum Deum super altari*[738] or per *Deum verum et vivum supra altrare*[739] and so on, variations became the rule[740] and eventually, rather than having the literal

736 Ibid. doc. 141: *De hos exios testimonia larga dederunt X laicos et unum presbiterum et protulerunt eos ante Auritio iudice et Aerutio, palacii custus, et alii plurimi viri; Et elegerunt ex ipsis XI testes tres, id est, Ferreolus, Vital et Solarius, qui per ordinatione iudicis prefato intraverunt in ecclesia Sancta Maria […] Et nos prefati viri, id est, Petrus et Aenricus, recepimus ipsum sacramentum sub altario prenotato.*

737 Salrach, Montagut, *Justícia,* doc. 4, 44, 68, 93, 102, 119, 125, 127, 132, 136, 137, 179.

738 Salrach, Montagut, *Justícia,* doc. 213, 214, 228, 272.

739 Salrach, Montagut, *Justícia,* doc. 304: *Nos testes Guifredus videlicet presbiter et Guilelmus laicus et miles iurando testificamur per Deum verum et vivum supra altare Sancti Benedicti in sede Vici quia vidimus et presentes extitimus quando Guilelmus de Monte Catano et Reimundus archidiaconus, frater eius, dederunt fratri suo Bernardo omnes voces quas habebant et habere debebant in Sorisa et in suis terminis, in domibus scilicet et in terris et in vineis cultis et eremis et in molendinis et in boschis, pro omnibus aliis alodiis quos predictus Bernardus habebat et habere debebat per successionem parentum suorum, et hec donacio fuit facta in ecclesia Sancti Petri de Montaniola, videlicet in coro, per tradicionem unius pergamini, et hoc fuit ipsa die quando fecerunt iudicium de matre sua. Quod est actum II idus octobris, anno XVIIII regis Henrici. Sig+num Guilelmi, militis predicti. Guifredus sacerdos sub SSS. Qui ad hoc negocium presentes extitimus ideoque hoc testimonium damus et iurando sic nos audisse et vidisse firmamus. Sig+num Reimundi Guilelmi de Hostales. Sig+num Borelli Delani. Sig+num Petri Ermengaudi. Guilelmus sacerdos et iudex, qui hoc testimonium cum aliis iudicibus subscriptis recepit SSS.*

740 Primo per Deum Salrach, Montagut, *Justícia,* doc. 216: *Et hec sunt nomina testium qui hoc testificant, sicuti et iurant, id est, Isarnus, Arnallus: «Iurandi autem dicimus nos prefati viri, in primis per Deum patrem omnipotentem et per Iesum Cristum, filium eius, Sanctumque Spiritum, qui est in Trinitate unus et verus Deus, et per hunc locum veneracionis Sancti Iuliani vel Sancti Petri apostoli, cugus altarius est consecratus infra aula Sancti Micaelis archangeli, qui est sita in capud Castro Vetulo extremum, in ipsa Marchia, supra cugus sacrosancto altario as condiciones manibus nostris continemus et iurando contangimus, quia nos suprascripti testes bene in veritate cognita nobis manet et videndo et audiendo eam legere et religere ipsam perditam scripturam que condam Suniarius comes fecit ad satellitem suum nomine Chalapodius, fecit ei similiter ad fratrem suum nomine Quadamiro presbiter prefatus comutator ipsam prefatam cartulam comutacionis et iure eorum tradidit.* Ibid. doc. 277: […] *primo per Deum Patrem omnipotentem, trinum in personis et in deitate unum, et per altare consecratum Sancti Christofori*. Ibid.: 231, 241, 242, 244, 268.

oath written down the focus shifts completely to the implicate message of the oath, especially in the separated short charters only preserving the witnesses' statements which use the swear *per super adnixum sacramentum in Domino*[741] or *hoc iuraverunt super altare Sancti Ioanis qui est situs in ecclesia Sancti Genesii ante plurimorum hominum.*[742]

The written documents themselves came in physical contact with the altars when the witnesses were asked (*rogare*) or made to sign them (*fecit firmare*) and *per punctos firmare*.[743] For example, as an act of penance on good Friday 1106, Ramon Miró de Oliana signed over the allods of his relative Engelberga to Santa Maria of Urgell and renounced all his rights, affirming that neither he nor his relatives will claim them anymore. He did so after admitting that he was a *fraudator res ecclesie* and that he had therefore incurred the wrath of God and deserved the penalties of hell and to be excluded from paradise. He signed the charter and then laid it on the altar.[744]

While the dynamics of trials are mostly lost to us, as scribes did not deem it necessary to state such details, sometimes one gets a glimpse of the ins and outs such proceedings could involve, for example, a trial that took place *ante ecclesiam* of the

741 SALRACH, MONTAGUT, *Justícia,* doc. 204: *Nos testes Ciprianus et Bernardus super has condit[ione]s iuramus per Deum vivum et verum desuper altare Sancti Iohannis quia ista est ipsa pecia de terra quod testamentum Madeixi proclamat ad opus Isarni prope ipsa vinea, quod nos vidimus ibi ipsa vinea et vidimus ipsa terra per hanc vocem tenere et fructuare ad iamdicto Isarno per suo proprio alaude et nos confirmamus iurando per super adnixum sacramentum in Domino. Et hec est ipsa pecia de terra, que affrontat: de orientis in via sive in casalos, de meridie in terra de comite, de occiduo in terra ubi fuit ipsa vinea, de circi in terra Sancti Petri et de Ramio abba. Et ego namque Guifredus iudex recepi hos testes cum Guiberto grammatico et ideo sic consigno et confirmo iamdicto alaude in potestate prefato Isarno ad suum proprium. Et si quis hoc dirumpere voluerit, componat uncias III de auro. Late condiciones V kalendas iunii, anno XXVII regnante Rotbertus rex. + Ciprianus. + Bernardus*

742 SALRACH, MONTAGUT, *Justícia,* doc. 296 Orís: *III idus augusti, anno XVI regis Henrici, iuraverunt Oriolus et Guifredus [et] [...] nel [et Geldrigus] et Assemnon et Ermemirus, in presencia Artal vicario et Dominicus iudice, quod ipsa decima [de sua tas]cha et de suis pertinenciis et de campo Sancti Corneli et de totam honorem Sancta Maria [...]er et de II [...]sa et de suis pertinenciis et de mansu in Sala de Baialede et de Clos de Sala et de Domenges et de Sancti Petri et de Sancti Genesii est propria de clerico Sancti Genesii. Hoc iuraverunt super altare Sancti Ioanis qui est situs in ecclesia Sancti Genesii ante plurimorum hominum. Sig+num Oriol. Sig+num Guifredi. Sig+num [...]nel. Sig+num Geldrigus. Sig+num Assemnon. Sig+num Ermemirus. Sig+num Artallus vicarius, [qui con]firmo et concedo ista decima ad clerico Sancti Genesii per totum tempus sive de suas comparaciones. Sig+num [...] Sig+num Gorner. Atoni sacer SSS. Raimundus presbiter SSS. Maier sacer scripsit die et anno SSS quod supra.*

743 SALRACH, MONTAGUT, *Justícia,* doc. 288: […] *et testes per punctos firmare rogavimus* […].

744 BARAUT, «Els documents», IX, doc. 1229: *Sig+num Raimundi Mironis, qui hoc firmavit et super altare Sancte Marie posuit.*

church of Santa Creu de Joglars,[745] where the witnesses swore *super altare*[746] and the document was drafted *ante fores* and, although not said but can be assumed, read publicly afterwards.[747]

The documentation also makes a clear distinction between witnesses (*testes*) that swore the oath, and men that were present and saw and heard the legal procedures (*visores et auditores*).[748] The latter are originally listed as being clearly separated from the witnesses but attest that they nevertheless heard, saw or both heard and saw the legal procedure. Those bystanders are mentioned by name but on many occasions do not even sign the documents.

From time to time they are named as only either *visores* or *auditores* but in most cases the depiction of their observation includes both senses.[749] While a close reading might overstretch the meaning of these words there is, however, a certain tendency with these kind of secondary witnesses to be mentioned exclusively as hearers in witness declarations and other types of oaths, which makes sense as the importance is in having heard the declaration.[750]

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745 SALRACH, MONTAGUT, *Justícia,* doc. 251: *Notum sit omnibus ominibus tam presentibus quam futuris qualiter omo Isovardus nomine, pro[lis condam] Trasovario, abuit altercacionem racionis cum Ermesindis, sorore sua, simulque et cum Arnallo, viro suo, ante ecclesiam Sancte Crucis [sit]a in pago Iugalares, in placi[to] Seniofredi Luc[i]anensis et Ermesindis, eius coniuge, et Ledgardis femina, uxor condam Ellemar.*

746 SALRACH, MONTAGUT, *Justícia*, doc. 251: *Nos testes, id est Oliba atque Argericho, iuramus per Deum vivum et veram Trinitatem sanctam constante[r, sive su]per altare Sancte Crucis, [quia] nos vidimus et audivimus et sub nostra presencia iamdictus Trasovarius dedit isto filio suo Isovardo et tradidit cum iaccionem unius virge ad suum proprium ipsas casas cum omni alaudio et arboribus diversis generibus quod venundavit Arnallo et Ermesindis iamdicto Guitardo atque Guilaberto, et hoc fuit intus in ipsas casas iamdictas quatuor anorum antequam [...] abuiset nec acepiset predicta Ermesindis, et postea omni tempore tenuit eum iamdictus Isovardus per suum proprium usque[quo] vendidit iamdicto Arnallo atque Ermesindis ipsa omnia Guitardo atque Guilaberto et illi, nos videntes, invaserunt ea omnia de potestate iamdicto Isovardo, et ita permanet verum si Deus nos adiuvet et iste sanctus Evangelius.*

747 SALRACH, MONTAGUT, *Justícia*, doc. 251: […] *Hactum est hoc ante fores Sancte Crucis predicte IIII idus iunii, anno III regni Enrici regis.*

748 BARNEY, *Etymologies*, XVIII.15.10: There are two kinds of witnesses, either those telling what they have seen, or those revealing what they have heard. Witnesses also are delinquent in two ways: when they utter falsehoods, or cover up true things by their silence.

749 Only on a few occasions they are only mentioned as *visores.* SALRACH, MONTAGUT, *Justícia,* doc. 126: *S+ignum Ramio Altemiri, Sig+num Ato Guifredi, Sig+num Miro Arioli, Serbus Dei, Borrellus, Asnerius, Ychila, visores sunt.* Ibid. 355: *+ Signum Bertran Ato seniore. Signum Mirone vigario. + Ponzo, filio Rodger. Signum Gelemundo et Sanilana fratrem eius, filios Sanciverto, et alii homines de Lacera, visores fuerunt.* Ibid. 531: […] *in hoc placito interfuit Clexnes et Augerius filius eius et Raimundus magister, qui testes et visores fuerunt.* BACH, Diplomatari, doc. 112: *Sig+num Arnalli Petri, Sig+num Guilelmi, filii eius, qui hanc cartam fecimus scribere et manibus firmavimus et testibus firmare mandavimus. Sig+num Bernardi Arnalli de Ponts. Sig+num Arnaldi Guilelmi de Taravall. Sig+num Raimundi Rodlandi. Isti firmaverunt cum supradictis visoribus.*

750 SALRACH, MONTAGUT, *Justícia,* doc. 98, 100, 137, 175, 185, 386.

The concept that this specific distinction may have had some meaning can be illustrated by a castle dispute between Bishop Sal·la of Urgell and Sendred de Gurb in which the Bishop presented three convincing witnesses, Guillem, Odo and Arnau, who signed as *testes*.[751] The audience in this case was massive and the document splits them into two groups. There are *visors*, or people who saw the oath being taken (*Qui hunc sacramentum iurare vidimus.*),[752] who were people of importance but it is the closer circle like the bishop, archbishop, count and the judges who were the ones that actually listened to the witness declaration (*Isti auditores fuerunt de hunc sacramentum*).[753] In this case this most certainly represents the physical distance, with the *auditores* standing next to the altar and the rest of the audience looking at the witnesses holding up one hand to swear the oath while touching the altar with the other, and therefore being physically further away.

In most cases these two notions overlap and one gets the impression of *visores et auditores* being a more standard formula used for selected people close enough to actually see and hear the witness declarations.[754] These men rarely coincide with the *boni homines* when the declaration was related to a trial and thus mostly served as additional accreditation in the legal process.[755]

As mentioned above the clear separation at witness declarations between the witnesses and attendees that had listened to the testimony is clearly expressed in the early documentation (*Et fuerunt auditores de sacramenta eorum* et al.).[756] Sometimes

751 SALRACH, MONTAGUT, *Justícia,* doc. 143: *Sig+num Guillelmus testis. Sig+num Odone testis. Sig+num Arnallo testis. Nos testes sumus et hoc sacramentum iuramus pariter in unum.*

752 Ibid. 143: *Durandus levita +. Eldemares SSS +. Sendredus archilevita +. Guillelmus levita SSS. Sig+num Guitardus SSS. Sig+num Guisadus Lucensis. Sig+num Guifredus Rionerensis. Sig+num Ratefredus Clarinensis. Sig+num Cherucius Cerdaniensis. Sig+num Isarnus Fundibularius SSS. Baldofredus presbiter SSS. Sig+num Guillelmus. Sig+num Isarnus de Spadamala. Sig+num Durandus Cerdaniensis. Sig+num Adalbertus Gerundensis. Sig+num Guillelmus Villamarinensis, de Gerunda abitator. Vivas presbiter SSS. Qui hunc sacramentum iurare vidimus.*

753 Ibid. 143: *SSS Arnulfus (signe) ac si indignus gratia Dei episcopus. Sig+num Ansulfus de Ausona de Montangnola. sss Ermengaudus archipresul. (Signe) Ermengaudus comes +. + Raimundus gracia Dei comes et marchio. Wifredus, levita et iudice, sub SSS. Dacho, sacer et iudex, SSS. Isti auditores fuerunt de hunc sacramentum.*

754 SALRACH, MONTAGUT, *Justícia,* doc. 123, 157, 180, 251, 252, 285, 286, 291, 339, 394, 418, 422, 439, 500, 536, 550; BARAUT, «Els documents», IX, doc. 1271, 1272, 1310, 1325, 1333, 1391; Puig, *El monestir de Gerri*, doc. 108; BOLÒS, *Diplomatari de la Portella*, doc. 47. BACH, *Diplomatari*, doc. 164; PÉREZ, *Diplomatari*, doc. 93; BAIGES, FELIU, SALRACH, *Els pergamins*, doc. 678.

755 With few exceptions, comp. SALRACH, MONTAGUT, *Justícia,* doc. 286, 291.

756 SALRACH, MONTAGUT, *Justícia,* doc. 98 *Et fuerunt auditores de sacramenta eorum, Comparati filius Aquila, et Exebi presbitero filius Bia, et Bonofilio filius Homar.* Ibid. 137: *Sig+m Ausarigo. Sig+m Leopardo. Sig+m Seniuldo. Ermemiro levita SSS. Sig+m Guifredo. Sig+m Durando saione. Sig+m Rikartus. Sig+m Langardo. Sig+m Guadamiro. Sig+m Solmo. Sig+m Durando. Sig+m Suniario. Sig+m Leudevigo. Sig+m alio Suniario. Isti auditores fuerunt de hunc sacramentum.* Ibid. 175: *Auditores de*

they are even lacking signatures but rather are just listed by name.[757] These lists were most probably simply designed to widen the scope for finding suitable witnesses in resurging legal conflicts.

However, from the mid-11th Century the terminology starts to overlap and witnesses and listeners are mentioned in the same line (*Testes sunt visores et auditores et est manifestum / Nos sumus huius rei auditores et testes*),[758] then eventually completely blend into one term in the beginning of the 12th Century, when both viewers and listeners start to sign as *testes,* an occurrence totally absent in earlier documentation.[759]

This change does not imply that the distinction between witnesses swearing an oath and *visores et auditores* who were present became obsolete, but rather can be explained as the fact that witnesses by necessity need to see and hear the act to be considered as such. Be that as it may, the early documentation clearly distinguished

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isto sacramento hec sunt: Signum Goxbert. Signum Adals saione Signum Arnal. Signum Seniofred. Signum Amalricus. Signum Odo de Rio Sicco. Stefanus petitor, qui me evacuavi. Ibid. 185: *Sig+num Miro. Sig+num Seguino. Nos testes qui hunc sacramentum fideliter iuramus. Sig+num Bernardus, qui istos sacramentos recepit et auscultavit cum filio suo Petrone. Sig+num Guillielmus comite. Sig+num Pontio. Sig+num Sonifredus iudex. Auditores de istos sacramentos hi sunt. Sig+num Berger. Sig+num Bernardus, gratia Dei comes.*

757 SALRACH, MONTAGUT, *Justícia,* doc. 157: *Hec sunt visitores et auditores: Trasvado de Alb, Durando de Alb, Durando presbitero.* Ibid. 285: *Maier, Senter et Baron Gadal et + aliorum plurimorum hominum visores et auditores sunt.* Ibid. 286: *Et sunt auditores et visores de placitum quod abuit Radolfo archipresbiter cum Mironi Riculo de suo alaude, id est Ebrino Radolf et Fulcho Senfret et Gisad Senfret et Gilelm Iouan et Salamon iudice et Arnald Oliba.* Ibid. 418: *Et sunt visores et auditors: Berenger Mir de Muro et Guilelm Guitard et Guillelmi Arnall et Mir Guerreta et Pere Rodger et Arnall Pere.*

758 With or without signatures. SALRACH, MONTAGUT, *Justícia,* doc. 339: *Testes sunt, id est, Ricolf Malvia et Arnalli Onofredi de Palatz et Od Macaroni et Guilelm Oruz et Guitardus Mironi et Bernardus de ipso Prato et Grasen de Terrers. Testes sunt visores et auditores et est manifestum.* Ibid. 394: *Sig+num Dalmacii Izarni. Sig+num Brocardi Guillelmi. Sig+num Raimundi Gondebaldi. Sig+num Berengarii Gondebaldi. Sig+num Alberti Izarni. Sig+num Guillelmi Arnaldi. Sig+num Mumis Aguet. Sig+num Bernardi Raimundi de Camarasa. Sig+num Guillelmi, fratris eius. Sig+num Ugonis Dalmacii. Sig+num Bernardi Dalmacii. Sig+num Giberti Guitardi. Sig+num Dalmacii Guitardi. Nos sumus huius rei auditores et testes.*

759 Just a few examples, see: BOLÒS, *Diplomatari de la Portella*, doc. 47: *Sig+num Bernardus Ugberti, qui hanc kartam mandavi scribere et manibus meis spontaneus firmavi et testes firmare rogavi. Sig+num dompna Ermesendis. Sig+num Bertrandus Ugberti. Sig+num Gerallus Guifredi. Sig+num Petrus Geralli. Sig+num Guillelmus Wilelmi presbiter. Sig+num Guilelmus Udalgeri. Nos sumus visores et auditores huius rei.* BARAUT, «Els documents», IX, doc. 1310: *Sig+num Gauzerandi de Iou. Sig+num Bernardi Guitardi de Scalarre. Sig+num Ramon Girberti de Otron. Sig+num Girberti de Lagunoves. Et ex alia parte: Sig+num Gilelmi Raimundi qui nunc est prepositus. Sig+num Mironis Bernardi prioris. Sig+num Bernardi Poncii. Isti et alii sunt visores et auditores.* BACH, *Diplomatari*, doc. 164: *Sig+num matris eius Ermeniardis. Sig+num Guilelmi, fratris eius. Sig+num Arnalli, fratris eius. Sig+num Guilelmi de Asua. Sig+num Ermesindis, uxor eius. Sig+num Raimundi Arnalli. Sig+num Petri de Todela. Sig+ Geralli de Prinonosa. Isti sunt testes visores vel auditores. Sig+num Iovan sacer. Sig+num Guilelmi Arnalli de Todela.*

the two but only mentions *auditores* with regards to witnesses in the chapter dealing with those who seek to falsify documents and precepts of the king.[760]

These eye- and ear-witnesses were occasionally called upon and could declare that they saw documents being reread (*in placeto ad relegendum*) in a square, for example.[761] When witnesses failed (*defecere*)[762], meaning that when one side was not able to present convincing witnesses but the other did, the case was decided in favour of the party providing what was demanded.[763]

The same goes with written evidence – it was essential in all kind of legal business as it could be demanded by the judges, for example a certain Ramon Bonpar was not able to provide the sales charter (*venditionis scripturam*) of the land he bought and thus lost his case.[764]

Judges were well aware that charters could get lost and explicitly asked for witnesses who could have seen the transaction, such as a donation (*testes qui hanc donacionem vidisent*).[765] This was especially applicable when the scriptures presented

760 LV VII.5.1: *De his qui regias auctoritates et preceptiones falsare presumpserint.* [...] *Quod si contingat illos auditores vel iudices mori, ad quos audientia vel iussio destinata fuerat aut aepiscopo loci aut alii aepiscopo vel iudicibus vicinis territorii illius, ubi iussum fuerat negotium terminare, liceat et datam preceptionem offerre et eisdem iudicibus negotium legaliter ac iustissime ordinare.*

761 SALRACH, MONTAGUT, *Justícia,* doc. 79 bis: […] *et de alios alodes qui sunt in ipso Buxo vel in Perles unde jamdictus Radulfus abba hostensit suas scripturas in placeto ad relegendum, vidimus ipsos alodes tenentes et posidentes ad abbates condam Segarii abbati vel Odeacer abbati sive domno Radulfo abba vel monaci ipsius monasterii, et pro hac voce plus merent essere ipsi alodes de jamdicto cenobio Sancti Martini* […].

762 LV II.4.3.: *De investiganda iustitia, si aliut loquitur testis, aliut scriptura.* […] *Et si tota ista defecerint, tunc condicionibus editis iurare non differat quod nequaquam inibi subscriptor accesserit.*

763 Eliarda presents a witness in a case against the bishop of Barcelona Guislabert who failed to provide the demanded evidence. SALRACH, MONTAGUT, *Justícia,* doc. 268: *Verumtamen quia defecerunt testes a parte domni Guilaberti episcopi predicti, expiavit Elliardis predicta conscienciam suam sacramento per quendam hominem Guilelmum Iohannis dicens ita:* […]. The inhabitants of the village of Torrefeta are not able neither to present a donation charter nor witnesses to prove their case in a legal face off with the Bishop of Urgell. 401: *Propterea, insistente iudice Bermundo, iudicatum est legitimo iudicio ut aut carta la[rgiti]onis a prescripto domno Ermengaudo corroboratam hostenderemus aut testibus eandem donationem nos accepisse omni modo comprobarem vobis testibus omnis scripture accepte veritas [...]raretur aut si hec omnia defecissent per testes idoneos solummodo donum hoc nos adquisisse demonstraremus.*

764 SALRACH, MONTAGUT, *Justícia,* doc. 493: *Statuto autem iam dicta die, non potui invenire iam dictam venditionis scripturam, quam iam dicto Petro Bernardi reddere debebam, sicut audierimus a plurimis satis est cognitum. Quapropter ego Raimundus Bonusparis pacifico et definio prescriptam modiatam terre.*

765 SALRACH, MONTAGUT, *Justícia,* doc. 251: *Quem prefatus iudex, ut hoc audivit, requisivit predictum Isovardum si hec dic[...] acta potuis[et] [...]; et pro[fes]sus est se abere testes. Deinde eciam requisivit prefato Arnallo atque Ermesindis si abebant scripturam [donacionis] quod eis feciset Trasovarius aud testes qui hanc donacionem vidisent; et professi sunt minime se a[bere] [...] istos neque per scripturam nec per aliqua certa indicia. Ita verum sui se reperire potuit prefatus iudex [...] [pre]fato Isovardo invenit iamdictus iudex testes largiter suficientes qui iure iurando confirmav[erunt] [...].*

were suspected of being false and the judges demanded witnesses who had seen the scripture being signed.[766]

Things could get complicated when both sides had provided written evidence and in such a case the judges again relied on witnesses. In the dispute over the possession of the castle of Malla between the abbot Guillem Bernat of Santa Maria de Ripoll and the bishop of Vic on the one hand, and Ermengol Guillem de Mediona on the other, both sides provided written evidence. The two church officials claimed that both the monastery as well as the see would have received half of the castle as beneficiaries from the will of Adelaida, viscountess of Girona. Ermengold Guillem argued that his father bought the castle from Berenguer Seniofred de Celrà and therefore Adelaida never really possessed it. The judges were thus confronted with two valid documents, a sales charter and a will, and found the solution through a witness declaration. Ermengol was not able to prove that the seller really owned the castle at the moment he sold it, and the opposing party sent a witness, the priest Seniofred, who testified on their behalf. As a consequence, Ermengol accepted the testimony and renounced his claims.[767]

In the opposite scenario, when neither side was able to provide convincing evidence, judges were sometimes flexible in finding solutions. For example, the judge Arnau Lahos[768] edited a scripture (*exaratio*) in 1014 to serve as record of a donation Sunifred makes to Maria, widow of the judge Oruç, and her children of half a vineyard situated at Cogoll Antic *in territorio Barchinonense* as a *plenissimum proprium*.[769] The

766 SALRACH, MONTAGUT, *Justícia,* doc. 414: *Prelibatus vero iudex requisivit Seniofredum si habebat testes que vidissent hanc scripturam firmari iamdicta Chixol et neque per testes neque per ulla vera indicia hoc facere potuit set professus est falsam esse scripturam quam mostrabat. Et legalis sentencia graviter eum iudicabat esse damnandum.*

767 374: *Et inquisita ratione, Ermengaudus nullo modo potuit hoc probare, et prefatus abbas optulit Seniofredum sacerdotem, et in manibus Ermengaudi eum misit, qui iure iurando supra altare Sancti Iohannis in Vico afirmavit quod neque ipse neque monachi sui hoc scirent ut Berengarius supradictus venditor per tricenale tempus prefatum castrum et alodium tenuiset, neque per se ipsum neque per alios homines neque cum Guillelmo emptore. Et sicut fuit iuratum est etiam scriptum in conditionibus inde editis et compositis. Ego namque Ermengaudus supranominatus, cum non potui hoc, sicut dictum est, probare neque aliam scripturam inde hostendere, sacramentum supradictum recepi per Seniofredum presbiterum et sic definio prefatum castrum et alodium ut amplius per supradictas voces non possim requirere illut nec ego nec ullus homo per me.*

768 For the epithet or *cognomen*, see: Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez), 1, p. 132: Entre 1010 et 1020, époque où l'anthroponymie double est loin d'être générale, plusieurs scribes ne revendiquant pas la qualité de clerc ajoutent à leur nom le *cognomen* de *lahos:* […] Doit-on assimiler cette practique à l'affirmation d'une appartenance au « peuple » des fidèles? Reconnaissance collective plus que revendication individuelle?

769 SALRACH, MONTAGUT, *Justícia,* doc. 164: *Propterea ego predictus Suniefredus ipsam medietatem dono et contrado in vestre donationis de te prefata Maria filiisque tuis, ut vos ea habeatis et possideatis iugiter*

document is the result of a court session that took place in front of a tribunal presided over by the recently elected bishop of Barcelona, Deodat.[770]

Both sides had claimed the vineyard for themselves and had stated their arguments in an initial encounter. Sunifred argued that his father and mother had held the land and that they cultivated vineyards there before Almansur took Barcelona, and concludes that since there had been a vineyard before and there is one now, everything must belong to him. However, Maria and her children reply that the vineyard belongs to them because their husband and father acquired the land, had the vineyard planted and cultivated it for quite some time.[771] The judges asked both parts if they were willing to prove it in court with evidence (*aut per scripturas aut per testes*) and they constituted a date (*instituto placito*) upon which neither Sunifred nor Maria could convince the judges with their evidence.[772] The judges gave counsel, in a rather Solomonic manner, to divide the vineyard between the two of them, so that one half would rightfully belong to Sunifred and the other to Maria and her children and as "it pleased both sides, so it was done".[773]

From a modern perspective this can be understood as an in-court settlement and if one looks at the different stages the judges are more like mediators, enquiring as to whether the two parties really want to go to court and present their evidence, and advising that if the evidence of one side was more convincing, then the other would

per omnimoda tempora simul cum exiis et regressiis earum ad vestrum plenissimum proprium, et faciatis de ipsa medietate quodcumque volueritis. Et qui contra hunc factum venerit pro inrumpendum, non hoc valeat quod requisierit, sed componat in vinculo centum solidos aureos vobis profuturos. Et in antea ista donatio firma permaneat omnique tempore.

770 Ibid.: *Noticie exarationis acta sub ordinatione iudicum subterius roborati edita, in presentia nobilium virorum confirmata et a Deusdedit episcopus vel clerum suorum atque Raimundo archidiacono concorditer predestinata, de causa obiurgationis qua acciderat inter Suniefredus Riorubense et Maria, uxor condam Aurucio iudice, filiisque suis. Eius contentio erat de una vinea noviter complantata que Aurucio iudice complantari fecerat et advineari et pro multis diebus, dum vixit, iuri suo retinuit. Et est ipsa vinea in territorio Barchinonense, super ipso Cucullo Antiquo, qui se continet de parte circi in vinea [...], de aquilonis in vinea de prefata Maria, de meridie in vinea de prefato Suniefredo, de occiduo in ipso torrente.*

771 Ibid.: *Adfirmabat prefatus Suniefredus quod ipsum fundum de condam patri suo fuerat et mater sua, ipsum fundum advineatum tenuerat et exfructaverat, antequam Barchinona capta fuisset a sarracenis, et quia vinea fuerat tunc et vinea erat nunc sua esse debebat integriter. Et prefata Maria cum filiis suis he contra respondebant: «Nostra pocius prefata vinea esse debebat, quia pater noster prefatus eum fundum adquisivit et postea complantari iussit et advineare».*

772 Ibid.: *Et sic in hunc modum diucius contendebant et cum interrogati amborum parcium a iudicibus fuissent si potebant hoc adprobare quod obiciebant aut per scripturas aut per testes, placitum inde requisierunt eis suficienter terminatum, quod et ita fecerunt. Et ad instituto placito non potuit prefato Suniefredo nec cartam nec testes pleniter exibere qui suam asserciones affirmassent, nec prefata Maria et filiis suis non potuerunt nec testes nec cartam exiberi quod illorum assertione confirmassent.*

773 Ibid.: *Et cum hoc advertissent iudices creati, talem inde dederunt consilium ut ambobus prefatis partibus ipsam vineam per medium dividere fecissent, ut una medietas fuisset iuri prefati Suniefredi, alia medietas iuri fuisset prefata Maria filiisque suis. Placuit utrisque partibus et ita factum est.*

lose everything. It is however hard to believe that the judges did not have certain sympathies for the widow of a former colleague. Whatever the case, as *iudices creati*, nominated officials, they gave advice and proposed a solution which pleased both sides,[774] and shows that when evidence failed split decisions were considered an option.

These sometimes complicated endeavours of finding truth were not static and involved certain dynamics including the change of place and setting. While in many cases the time line of events is not completely clear others provide insight into why several court sessions took place and why the judges changed the place of trial rather often.

774 A very similar expression was used in another case. SALRACH, MONTAGUT, *Justícia,* doc. 138: *Cum enim iudices creati hoc advertissent per eorum discussa insistentia* […].

IV.2.2.3. The Dynamics of a Trial

It is more than likely that some or indeed most trials were held in the same areas where the conflict originated, which helped to facilitate the appearance of the people involved, including the witnesses. However, in many cases appealing to authorities meant travelling to their location and therefore several changes of place could occur, in addition court sessions were rather regularly adjourned and relocated, which could result in the physical displacement of most of the important individuals for that case.

To avoid repetition, and to prepare the reader for the more complex cases found later in this work, this chapter only briefly analyses some cases in which these changes of place occurred and tries to look at the reasoning behind it. The dynamics of a trial could become quite complex and many times are not completely clear, as reasons for a change of scenario are not always explained but must have still been obvious to contemporaries.

The most common reason for adjournment was that one party did not have the testimonies or written evidence at hand. Under such conditions judges normally gave a second date, a perfect example of which is a trial already mentioned in the last chapter that took place in Barcelona in 1002. The issue at hand revolved around the rights over the castle of Queralt that the bishop of Urgell, Sal·la, claimed from a certain Sendred.[775] As the defendant had a sales charter as well as the seller to hand and the bishop relied solely on witnesses, the latter requested time to provide sufficient evidence. After being asked by the judge if he could facilitate testimony the diligently recorded answer was: "Of course I can, give me a trial and I will prove this through legitimate evidence."[776]

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775 SALRACH, MONTAGUT, *Justícia,* doc. 143: *Annus Domini in trabeationis secundus post millesimus, era quadragesima post millesima, septimo anno regnante Rotberto rege franchorum in regno, venit quidam venerabilis episcopus Sanla in civitate Barchinona ante reverentissimo marchiso Raimundo coniuxque eius Hermisindis comitissa intus in domum Sancte Crucis sedis Barchinone ubi adfuerunt episcopi, id est Aecius Barchinonensis et Arnulfus Ausonensis, iudices quoque Gimara, Marcho, Guifredo, Aurucio, Bonushomo, procerum etiam Hudalardo vicecomite fratrique suo Geriberto, Bonucio Clarummontese, Bernardo Pharense, Miro Hostelense, Suniefro Riorubense, Gaucefredo Huristense, Guisado Lucenense, Odo Accutense, Hugo Monteaccutense et alii quamplures nobilissimi viri quorum incertus est numerus. In horum namque presentia apetivit prelibatus Sanla, Sinderedo, Ansulfi prolis, pro castro Cheralto dicens esse predicto castro iuris ac potestatis seu ecclesie Sancte Marie Sedis Horgillitense pro conlacione Guadalli.*

776 Ibid.: *Tunc prenotati iudices interrogaverunt eum: «Potest hoc ad probare ita esse ut asseris?» Et ille: «Utique possum, date mihi placitum et probabo hoc esse per legitimam probacionem».*

This led to a second session taking place in Vic,[777] in which Salla provided three witnesses that swore that they knew well, knew it to be true, that they were present and saw with their own eyes that the castle had been handed over to the bishop through investiture with a golden ring.[778] They thus proved the statement Sal·la gave in Barcelona to be true, that the donation had been done according to tradition and that he had ejected the men that guarded it and then introduced them back in for his *beneficium.*[779] The indirect information given through the witness' testimony has a wide range of implications regarding the investiture of castle holders, but specifically for our purpose here it shows that the displacement and adjournment was justified because this would allow the bishop to present his witnesses.

In 1045 the abbot of Sant Cugat del Vallès, Guitard, had a quarrel with the brothers Oliba, Ricard, and Albert over some vineyards which had been given as a donation to the monastery by the deceased Udalard, located in the area of Aqua Alba and the river Tort. After an initial session in which the witnesses presented by the abbot swore as to the delimitations of the property, the rest of the involved were informed via messengers of the second date, in three weeks' time, so that all could assist the next assembly. At this session the brothers admitted to have neither charters nor witness evidence to back up their claims, so the witnesses facilitated by the abbot led to the consecutive evacuation of rights.[780]

777 Ibid.: *Et dato placito ita ut convenissent pariter in comitatu Ausona die V[a] feria post festivitatem sancti Petri et ibidem exhibuisset sua testimonia qui legitime testificassent illi hoc quod asserebat. Et ita actum est transacta V[a] feria, alio scilicet die quod est VI[o] nonas iulii, adgregati sunt prenominati iudices in supradicto comitatu Ausone in sede Vico intus in domum Sancte Marie ante illustrissimo comite Raimundo fratrique suo Ermengaudo, ubi etiam adgregati sunt.*

778 Ibid.: [...] *quia nos suprascribti testes bene scimus et in veritate sapemus et de presente eramus et occulis nostris vidimus quando predictus Guadallus filius quondam Trasoarii tradidit ac donavit predicto kastro Cheralto, cum fines et termines suos et cum omnia que ad iuss pertinet de predicto kastro, in potestate et dictione supradicti episcopi Sallani, cum uno anulo aureo revestivit eum ad iure propio de predicte ecclesie Sancte Marie Sedis Orgellitane, nos videntes absque aliqua obiectione. Et ea que dicimus recte et veraciter testificamus atque iuramus per super hanc nixum iuramentum in Domino».*

779 Ibid: *«Nequaquam emmi illum vel abeo exinde aliquam scribturam, sed Guadallus per tradicionem ac donacionem sicut mos est transfudit illum ac donavit iuri prefate ecclesie vel meo. Et ego statim aprehendi illum et tenui et eieci homines illos exinde qui custodiebant illum et per meum beneficium iteratim introduxi illos ibidem, ut custodissent predictum kastrum mihi fideliter sub munificencie prelibate ecclesie».*

780 Salrach, Montagut, *Justícia,* doc. 290: *His igitur, ut dictum est, digne promulgatis prolati testes, scilicet: Seniofredus presbiter et Guillelmus et Sallanus et Guimara et alii quamplures, laici, ipsum terminum omnino piduantes et fexurias et cursus et signa ostendentes profitebantur se hoc velle iurare. Interim predictus honorabilis Umbertus et alii quamplures boni et optimi viri postulati sunt dari eis spatium trium septimanarum, ut in hoc spatio mittantur nuncii ex nomine predicti iudicis et ipsius domni Umberti, singulis quibusque eredibus, ut in predicto termino omnes congregati adsisterent, ut unicuique redderetur ratio prout competeret, et ut si qua essent eis, aptarent necessaria. Quod et factum est; et nemo eorum qui vocati sunt adfuit preter Olibanum predictum et fratrem eius Arbertum. Isti percontati*

The examination of evidence did not solely revolve around witnesses, though, but instead depended on the case at hand. For instance, a trial settled by Ponç Bonfill Marc started in Barcelona in the year 1019. A certain Vidal accused a man called Pere, who was acting on behalf of his wife Guisla, of having dug a ditch through his property to bring water to the mills owned by Guisla and her daughters. While the accusation took place in Barcelona, the investigation of evidence and the court resolution was done *in situ* and it is only thanks to the specifications given in the *eschatocol* that one knows about this change of place.[781] Eleven years later another trial (that was also directed by the judge Ponç Bonfill Marc) began before the bishop Guadall Domnuç in Barcelona but was finished in Monistrol d'Anoia,[782] and again it was irrigation systems and mills that required the judge to be at the place in question to get a proper idea of the circumstances.[783]

While some examples will be studied in more detail later,[784] here the question arises as to how many times charters do not inform us about the displacements, especially if only the witness declaration is preserved. Certain judges were either more actively travelling on behalf of their superiors or were very diligent and added more detail.

One such judge is definitely Ponç Bonfill Marc, but he is no exception; for instance the veguer Esteve appeared in the castle of Besalú before count Bernat I Tallaferro and his judge Sunifred to claim services or tax for two pieces of land in 1018.[785] It was the judge who displaced himself to Vilana to take the oaths from both

sunt a prelibato iudice, si habere cartulas aut testes unde hoc adquirere potuissent; neque testes se habere professi sunt, sed neque cartulam aliquam ostenderunt, sed hoc tantum dixerunt accipere se testes predictis abbatis et definire, unde isdem iudex precepit supradicto abbati ut ostenderet testes superius nominatos.

781 SALRACH, MONTAGUT, *Justícia,* doc. 182: *Scriptio huius iudicii facta est Barchinonae III kalendarum iunii et audientia supradicta acta est in Vallense, super iam dictam ripam, sub arboribus prefati Vitalis qui sunt prope iam dictum regum molinorum qui fuerunt Trasoarii, die siquidem et anno prescripto.*

782 SALRACH, MONTAGUT, *Justícia,* doc. 230: *Ipse vero Guilabertus dicens nescire ipsius scripturae veritatem, mutata est audiencia de civitate Barchinona in Sancta Mariam de Monasteriolo, ubi per sometipsum adfuit Odolardus vicecomes cum iam dicto suo mandatario, petieruntque huius rei causa eundem Guitardum coram supradictis viris et aliis* […].

783 SALRACH, MONTAGUT, *Justícia,* doc. 222

784 For two examples that also give some insight: the first including a change of place from Sant Cugat del Vallès to Santa Maria de Martorell (SALRACH, MONTAGUT, *Justícia,* doc. 241) and the second from Barcelona to Badalona (Ibid.: doc. 211).

785 SALRACH, MONTAGUT, *Justícia,* doc. 175: *Conditiones sacramentorum, ad quas ex ordinatione Sonifredi iudici, sive in presentia Arnalli et filio suo Arnallo, Mirone et filios suos Adalberto et Odo, et Gausfred de Lercio, et Gauceberto de Borraciano et aliorum multorum bonorum hominum, qui ibidem aderant. In istorum supradictorum presentia venit Stephanus vicarius cum suos homines dominico, que tenet pro feo in Monte Canudo, qui ibidem manent in ipsa dominicaria, et apetivit sive mallavit Sendredo et Guadamio de petias duas de terra cum vinea qui ibidem est, qui est in Serra Sancti Martini, hec omnia*

sides, only to find the defendant's testimony more convincing, and so this event is concluded by an evacuation of rights from Esteve's side.[786]

Travelling judges, *saios* and the authorities – bishops, counts and so on, together with their entourage – must have been a common sight in medieval Catalonia. That has several implications; for example legal quarrels regarding far off property would become a bigger hurdle. Rights for lodging, watering horses and all kind of basic necessities for travelling must have been crucial in this regard, and indeed could become the centrepiece of legal disputes themselves, especially later. At the same time such factors surely played a role in the increasingly localised administration of justice that allowed for more practicability and a more efficient way for the powerful to govern their dominions.

Judges constantly travelled to inspect evidence, be it the written or spoken word and to a certain degree their decisions could determine the fate of individuals. Certainly pressured by the powerful but at the same limited through procedure and their conscience they surely encountered moments of doubt such as when confronted with contradictions or the clear feeling of someone lying. One of the most spectacular ways to determine truth and used as a last resort was to ask for a divine sign and let God himself judge the veracity of the presented evidence.

iuxta ipsa ecclesia. Quod a domnico debet servire suprascriptas terras cum iamdicta vinea, et dederunt exinde fideiussores in castro Bisulduno ante Bernardo comite, quid ipsi dominici probassent suprascriptas terras pro domnico, et si hoc non poterant probare, recepissent ipsa testimonia, quod profert suprascriptus Sendret et Guadamir.

786 SALRACH, MONTAGUT, *Justícia,* doc. 175: *Venerunt ante predicto iudice in villa Bundanti ad domum Sancta Maria, et ab utraque parte adduxerunt illorum testimonia, quorum de istis suprascriptis primus profert suprascriptus vicarius Stephanus sua testimonia separatim, sicut mos est.*

IV.2.3. The Ordeal – Extension of the Oath

Ordeal, or judgment of God (*Iudicium dei*), is an umbrella term generally used as a synonym for several methods of finding truth. The outcome of an ordeal in the Catalan sources does not determine if someone was right or wrong but is instead linked to an oath and thus is used to prove if someone spoke the truth or not. In Catalonia it was applied under special circumstances when the legal situation was uncertain and contradictions did not allow a clear judgment, or if certain charges were made that in their inherent nature were hard to prove, especially theft, homicide, adultery and treason.

The enormous interest ordeals have received, be it in general as well as in Catalan historiography, can be understood as twofold. Its otherness generated "intrinsic interest and fascination" as it makes for a colourful display of ancient practice that contrasts particularly in Catalonia with the rather modern outlook of judges using the written law in a nearly contemporary fashion, citing it directly.[787] Another aspect that made it an ideal object of study, just to provide a second argument, is the narrative presented by these sources, which make them appealing to the modern reader as it departs from the sometimes rather sterile restrictions legal documentation is subjected to.

The inherent logic of an ordeal must be adressed before looking at the evidence as it must have had consequences for the way the charters' narratives are presented. Ordeals, both in general and in the Catalan documentation, are not used as a technique of finding proof as an ordeal does "not prepare the sentence, but constitutes it. It does not aim to discover the materiality of past events and, if it establishes a truth, it is a truth understood in terms irreducible to those of factual truth."[788] In other words the

787 Bartlett, R. (1990), *Trial by Fire and Water*: *The Medieval Judicial Ordeal* (Oxford: Clarendon Press), p. 1: The medieval ordeal is a subject of great intrinsic interest and fascination. It is one of the more dramatically alien practices of medieval society and, as such, it demands and yet resists explanation. For those concerned to make the imaginative leap into a past society, the ordeal is a hurdle and a challenge. Its 'otherness' represents an explanatory problem. Just as anthropologists seek to understand the inner rationale of strange and apparently incomprehensible practices and beliefs among peoples of other cultures, so here the medievalist is confronted with the problem of a custom which has no familiar counterpart in the modern West.

788 Jacob, R. (2017), *La gracia de los jueces*: *La institución judicial y lo sagrado en Occidente* (Valencia: Tirant lo Blanch), p. 53: La prueba es la técnica que permite alcanzar esta adecuación. Es una etapa preparatoria y distinta de la sentencia pues, una vez los hechos establecidos, hará falta analitzarlos en términos de derecho para sacar las conclusiones respectivas. Ahora bien, la ordalía no se inscribe en esta

ordeal is not a method the judges use to prove if one side is right and the other wrong but rather to discover God's sentence on the matter.

Thus first and foremost the outcome of an ordeal must be respected as God himself has confirmed one side's testimony and this forces the recognition of one's crime as well as the radical marginalisation of the version presented by the other side. Modern criminology speaks of the hindsight bias as the tendency to overestimate the predictability of a result once it is known. While modern concepts are hard to apply[789] it is still fitting as the sources' narratives review the cases with the negative outcome in mind and in that sense what applies to modern judges must be even more true if God's judgement was involved.[790] The end result thus dictates the narrative of the charters and blocks the viewpoint of the party that was found guilty. This, from a modern viewpoint, the irrational method effectively allowed the judges to solve contradictions and establish truth.

As far as I am aware there are only four types of ordeals clearly distinguished by contemporaries that are attested to in Catalonia, be it in legislation or charters, which if one takes the wide range of different types of ordeals in Europe as a comparison represents a very small selection. To use modern terminology, that would be the hot and cold water ordeal, the bread ordeal, and trial by combat, or in other words an ordeal through a judicial duel. There is a significant gap between what is found in legislation and what is found in charters, especially if one distinguishes between the law actually found in the *Liber iudicum popularis* and includes the rituals found in its annex, as well as what is actually documented in charters regarding the ordeal of cold water and its usage in the different proclamations of the Peace and Truce of God movement, and ulimately how ordeals are used within the *Usatges.*

lógica. Ella no prepara la sentencia, sino la constituye. No apunta a descubrir la materialidad de los hechos pasados y, si establece una verdad, se trata de una verdad entendida en términos irreductibles a los de la verdad fáctica.

789 Historians have relied on legal anthropology and on modern societies in which ordeals are still practiced in an attempt to strengthen their argument or get a better understanding of its function in medieval society; legal psychology has not been considered in the same regard as a means of analysis.

790 I am not aware of this concept being applied to medieval judicial processes. For literature regarding modern studies, see: Giroux, M. E., Coburn, P. I., Harley, E. M. et al. (2016), 'Hindsight Bias and Law', *Zeitschrift für Psychologie*, 224/3: 190–203.

Ordeal Type	LV	LV – Annex	Peace & Truce	*Usatges*	Charters
Hot Water	X	X	-	X	X
Cold Water	-	X	X	X	X
Bread	-	X	-	-	-
Duel	-	-	-	X	X

Tab. 3: Types of Ordeals in Catalonia: Documented (X) / Not Documented (-)

The following chapters first analyse on what could be considered the most typical ordeals in medieval Europe through a closer look at the *Liber iudicum popularis* and its annex and its application in charters in regards of the ordeal through hot water, thereafter examines the evidence for the ordeal of cold water and the proclamations of peace and truce. At last, trial by combat and its evidence both in legislation and charters deserve an chapter on its own.

IV.2.3.1. Ordeals in Legislation

Literature regarding ordeals is abundant[791] and has evolved from seeing them as "the irrational custom of Dark Age ignorance [...] to rescue ordeals from European legal history's museum of the absurd".[792]

It is tempting to look at ordeals from a modern perspective and consider them an irrational method. But if we take a closer look at the definition of *rational*, we can see that it is rather helpful: "the reasons and intentions for a particular set of thoughts and actions".[793] This definition is useful as it allows a certain focus on the different stages in the procedural context. What kind of set of thoughts allows or even stimulates the use of an ordeal to solve a conflict? What are the reasons and intentions behind the ordeal and how is it executed? Nevertheless our perspective is filtered through the sources, which are in most cases silent about the reasons or intentions behind the action. Therefore cases in which we actually can learn something about motives are extremely valuable. Nevertheless, legal procedure can still be perceived and actions analysed, keeping in mind that rationality is time bound.[794]

The debate regarding ordeals in Catalonia[795] first and foremost revolved around the question as to whether the only chapter within the Visigothic law code dealing

791 The standard volume on the anglo-saxon word is surely Robert Bartlett's overview on ordeals, excluding trial by combat. Robert Jacobs viewpoints may be controversial but were very useful for the Catalan documentation; he also delivers an up to date piece of literature. Bartlett, R. (1990), *Trial by Fire and Water*: *The Medieval Judicial Ordeal* (Oxford: Clarendon Press). Jacob, R. (2017), *La gracia de los jueces*: *La institución judicial y lo sagrado en Occidente* (Valencia: Tirant lo Blanch).

792 Peter Leeson gives a good overview of different standpoints and readings of ordeals with the corresponding literature while he himself considers them effective and sees in them "miracles of mechanism design." See: Leeson, P. T. (2012), 'Ordeals', *The Journal of Law & Economics*, 55/3: p. 692.

793 Definition taken and slightly modified from the Cambridge English Dictionary which defines *Rationale* the following way: *"the reasons or intentions for a particular set of thoughts or actions"*. Dictionary, o. (2016). rationale meaning in the Cambridge English Dictionary. [online] Dictionary.cambridge.org. Available at: http://dictionary.cambridge.org/dictionary/english/rationale [Accessed 25 Feb. 2018].

794 The article by Paul Hyams is extremely helpful, even though he is looking at English sources, giving a variety of rationales around ordeals. Hyams, P. R. (1981), 'Trial by Ordeal: The Key to Proof in the Early Common Law', in S. E. Thorne and M. S. Arnold (eds.), *On the laws and customs of England*. *Essays in honor of Samuel E. Thorne* (UNC Press Enduring Editions, Chapel Hill: University of North Carolina Press), p. 99: In its context the ordeal is rational and remains so until the transformation of its world demands a new rationality.]

795 Josep Balari, definitely paved the way for making the ordeals a major topic as the procedure is used in all kind of arguments from there on. For a more up to date approach and the corresponding literature see Jeffrey Bowman. Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 381-386. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 119-140.

with ordeals formed part of the original code or not, and thus "the genuineness of this law has come under scholarly attack."[796] Aquilino Iglesia affirmed "that among the Visigoths there is no evidence of the use of the ordeal within the [judicial] process"[797] and concluded that "data speaks in favour" of the practice being unknown and not practised in the period of Visigothic Spain but attested to a certain *pensamiento* [...] *preordalíaco*,[798] a standpoint that became the standard view in that regard and received little resistance as it is hard to debate.[799] Since Bonnassie, the ordeal[800] has been seen as an erosion of the legal system and an alternative to the traditional way of legal investigation.[801]

The chapter in the code itself is short[802] and is only found in a few of the manuscripts which initially made it seem to be a later addition, which seems to be the case for the *Liber Iudicum Popularis.* Yolanda García, one of the leading experts of the manuscripts concerning the tradition of the Visigothic law code,[803] argued

796 Bartlett, R. (1990), *Trial by Fire and Water*: *The Medieval Judicial Ordeal* (Oxford: Clarendon Press), p. 8.

797 Iglesia y Ferreirós, A. (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981, p. 104: Se podría hablar así de testimonios de un pensamiento preordalíaco, pero no se puede afirmar que entre los visigodos exista testimoinio alguno del empleo de la ordalía dentro del proceso. Los visigodos conocieron la intervención de la divinidad en los asuntos de los hombre, pero no utilizaron la ordalía, en tanto juicio de Dios, com elemento probatorio dentro del proceso.

798 Iglesia y Ferreirós, A. (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981, p. 97: No parece exagerado concluir que la época visigoda no ofrece testimonio claro alguno del empleo de las ordalías, mientras que todos los datos hablan en favor de su desconocimiento en la mencionada época. Ahora bien, una cosa es no utilizar las ordalías dentro del proceso, como medio de prueba, y otra cosa es negar que no existiera durante la época visigoda un pensamiento que podríamos llamar preordalíaco.

799 An exception: Alvarado Planas, J. (1997), *El problema del germanismo en el derecho español*: *siglos V-XI* (Madrid: Marcial Pons), .p. 149: Por el contrario, nosotros creemos que no se puede reducir el fenómeno ordálico a su exclusivo uso dentro del proceso judicial, pues en otro caso estaríamos suprimiendo de un plumazo todas las ordalías extrajudiciales.

800 Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI)*., 2 vols. (Barcelona).

801 Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 77: Los indicios de erosión de la justicia y de desconfianza por parte de los usuarios se corresponden con la búsqueda de alternativas mediante la invocación de pruebas superiores, como pedir su pronunciamiento al mismísimo Dios.

802 LV VI.1.3: *Quomodo iudex per examine caldarie causas perquirat. Multis cognovimus querelas et amb ingenuis multa mala pati credentes in trescentorum solidorum questionem agitari. Quod nos modo per salubrem ordinationem censemus, ut quamuis parva sit rei facta criminis, per examinacionem caldarie a iudice districtos pervenire ordinamus et, dum facti temeritas patuerit, iudex eos questionandi non dubitetur, et, dum suam dederit professionem, superiori legi subiaceat. Quod si per examen caldarie innoxius aparuerit, petitor nullam calumpniam pertimescat. Hoc quoque erit ed de suspectis habentibus personis, qui ad testimonium venerint dicendum hic ordo servabitur.*

803 For her erudite analysis of the different manuscript traditions and the reason why this work decided to cite from the edition of the *Liber Iudicum popularis* as Zeumers in his edition gave total priority to two codex, see: García López, Y. (2003), 'L'edició de Zeumer i la tradició manuscrita del Liber', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1,

convincingly that the law regarding the ordeal by the cauldron already formed part of some of the manuscripts from the 8th and 9th century, which would have put the discussion to rest.[804] But things get more complicated with regards to the *Liber Iudicum Popularis* where the same author ascribes the later addition of that chapter to an initial resistance to ordeals that finally led to its full acceptance.[805]

For the purpose of the work here it is important to look at the Catalan evidence and find at which moment the ordeal was contemplated, used and what results it produced, but before that it is important to see what the law code itself says. The use of ordeal as an enhancement of a purgatory oath is also established in the Visigothic law code itself, as the law regarding the ordeal *per examine caldarie* explicitly refers to the anterior law and thus does not stand alone. The notion that if the culpability of a crime had been proven the judge should not hesitate to subject the guilty to torment, and that after his confession he shall be subject to the above law (*superiori legi subiaceat*), can not only be read in that direction but also in the opposite. In the middle part of the preceding law it is established that if evidence is lacking in the case for which one is being prosecuted, the defendant must clear (*expiare*) his conscience by taking an oath.[806] The law continues on, clarifying that persons of a lower and more humble rank, but nevertheless free, when accused of theft, murder or any other crime, must not be subjected to torment after the prior delivery of the indictment unless the case is worth more than the sum of five hundred solidi. Bearing in mind that, as Robert Jacob puts it, "history furthermore shows that ordeal and torture are mutually exclusive"[807] and torture within the Law code already was "restricted in all fields",[808]

Barcelona: Departamento de Justícia i Interior),

804 García López, Y. (1993), 'La tradición del Liber Iudiciorum. Una revisión', in Fundación Sánchez-Albornoz (ed.), *De la antigüedad al medievo, siglos IV-VIII: III Congreso de Estudios Medievales* (Santiago García), 383–415.

805 García López, Y. (2003), 'Rituals per la celebració de les ordalies', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 251–5.

806 LV VI.1.2: *Pro quibus rebus et qualiter ingenuorum personae subdende sunt questioni. [...] Sed si in hac causa, pro qua compellitur, probabtio defuerit, suam qui pulsatur debeat iuramento conscientiam expiare. Inferiores vero humilioresque, ingenuae tamen personae, su pro furto, homicidio vel quibuslibet aliis criminibus fuerint acusate nec ipsi inscriptionae premissa subdendi sunt questioni nisi talis fuerit causa quamquingentorum solidorum summam valere constiterit. Si autem actio minoris est quantitatis quamquingenti sunt solidi, per probationem convictus qui accusatur secundum leges alias conponere conpellatur aut, si convinci non potuerit, sacramento se expians conpositionem accipiat, quae de mala petitione legibus continetur.*

807 Jacob, R. (2017), *La gracia de los jueces*: *La institución judicial y lo sagrado en Occidente* (Valencia: Tirant lo Blanch), p. 40-41: La historia muestra, además, que la ordalía y la tortura se excluyen mutuamente.

808 Martínez Diez, G. (1962), 'La tortura judicial en la legislación histórica española', *Anuario de Historia*

the ordeal thus allowed a middle ground within the framework of the Visigothic law, when torture could be contemplated as an option but was reserved to extreme cases, and the simple oath considered insufficient in some lawsuits, and could be applied even in crimes regarding minor matters (*ut quamuis parva sit rei facta criminis*).

What could be considered a minor matter is hard to evaluate, however sometimes a distinction between *placitos minoris* and *maiores* is made in franchise charters in which homicide, adultery and arson are separately defined as great matters.[809] An interesting document regarding the questions posed here is an agreement between Udalgar de Castellnou, bishop of Elna, and Arnau de la Torre about the disputes they had over the justice of Elna and the *batllia* that Arnau had for the bishop in La Torre, dating on the 8th of February 1134. It serves as an example showing that ordeal by the cauldron was still in place for theft at the end of the time period analysed in this work and that the three major offences in what today would be considered criminal law, homicide, adultery and theft, received special attention. With this accord they came to peace (*venerunt ad pacem*) and regarded their dispute as finished (*venerunt ad finem et concordiam*). Arnau accepted the bishop as *dominum suum* and promised to take care of two jurisdictions for him according to good custom (*secundum bonam consuetudinem*), one reaching from the *collo de Baias usque ad ripam maris* and the other, as his name suggests, at the place La Torre, which he fully held for the Bishop.[810] They agreed that in terms of the administration of justice in the latter, Arnau would take sureties and afterwards conduct trials *ante presentiam domini sui episcopi*. The exceptions were adultery, here expressed by the legal term of *cugucia* (*cogociis*), and homicide, which the bishop reserves the right to deal with himself, meaning two thirds of the income would be his and one third would be Arnau's.[811]

del Derecho Español, 32, p. 246: Asi Ervigio restringía en todos los campos la aplicación de la tortura, suprimiéndola practicamente para los testigos, aun siervo, elevando la cuantia minima en las causas pecuniarias y reforzando las sanciones en caso de abuso. Asi la "inscriptio" de un acusado resultaba una operacion tan arriesgada que nadie, salvo casos extremos, podía lanzarse a solicitar la "quaestio".

809 SALRACH, MONTAGUT, *Justícia,* doc. 285: [...] *ut ab hodierno die et deinceps nullum teneam neque ego iam predictus comes neque mulier mea neque filii mei neque nullus homo aut femina de proienia nostra neque persona aliena non habeat potestatem, non predare, non placitum ibi tenere, non rem forciare, non iudicare neque homicidium neque adulterium neque nullum placitum sive bonum sive malum sive maiore sive minore que in lege Gotorum inveniri potest vel in lege Franchoram;* Ibid, doc. 439: *Et donamus ad illum placitos minoris et retinemus ad nos ipsos maioris, hec est, omicidium et adulterium et incindium.*

810 MONSALVATJE, Noticias históricas, XXI, doc. 34: *In nomine Domini. Manifestum sit omnibus hominibus tam presentibus quam futuris quod contentiones fuerunt inter domnum Uzalgarium Elnensem episcopum et Arnaldum de Turri de justiciis Elne et de baillia quam ipse Arnaldus tenet pro episcopum in Turri, in villa scilicet et in campis et vineis et ortis que sunt in eius terminiis.*

811 Ibid.: *Et de omnibus placitis que fuerint in iamdicta bailia de Turri accipiat prefatus Arnaldus*

Regarding the former jurisdiction some clarifications regarding cases of theft are given. The Bishop presides over all *iustitias*, including the three mentioned and trial by combat (*batailas*), while it is specified that in the case of theft,[812] Arnau has the right and obligation to restrain thieves and *miserit illum ad iudicium,* but if the thief was convicted through the cauldron (*escaldatus fuerit*) he should be taken to the Bishop. It is also clearly expressed that the *domini* who hold the thieves should not take them to Arnau, even if he was the corresponding lord (*senior*), but to the Bishop himself. The feudal hierarchical relationship between the Bishop and Arnau is thus reflected in the severity of crimes that needed to be administered, while still considering practical issues.[813]

One important type of source material for ordeals are in fact not charters but the rituals surrounding the preparation of ordeals. The rituals regarding ordeals in the *Liber Iudicum Popularis* are the ordeal of hot and cold water[814] and, taking advantage of a blank page, the ordeal of bread and cheese was added later.[815] Both the ordeal of hot water and the ordeal of cold water were considered an option in cases of homicide, adultery and thievery (*homicidii adulterii, latrocinii*),[816] clearly inspired by the triad in

fideiusores et postea conducat placita ante presentiam domini sui episcopi, excepto de cogociis et homicidiis que sunt proprie episcopi et de hoc quod episcopus habuerit de ipsis placitis per iustitiam donet tertiam partem predicto Arnallo, et duas partes sibi retineat.

812 Ibid.: *Et de istis contentionibus venerunt ad finem et concordiam talem quod prefatus Arnaldus laudavit et recognovit Domino suo episcopo predicto omnes iustitias et omnes batailas et omnes cogocias et omnia homicidia de collo de Baias usque ad ripam maris, in suo et in alieno, et omnes latrones. Set si aliquis homo vel femina hominum ipsius Arnalli furatus fuerit aliquid domino suo cum quo manserit, distringat ipsum furem dominus suus quocumque modo voluerit, excepto esmanganar; et si miserit illum ad iudicium et escaldatus latro fuerit, reddat ipsum latronem episcopo, et episcopus trahat ei suum directum, et predictus dominus latronis non habeat licentiam latronem ducere ad Arnaldum seniorem suum nec ad alium aliquem si deliberare se voluerit, nisi ad domnum episcopum qui extrahat inde suum directum.*

813 Comp. Flach, J. (1886), *Les Origines de l'ancienne France, Xe et XIe siècles.* (2, Paris: L. Larose et Forcel). p.270: Sous la réserve de certains délits, sous la réserve aussi du déni de justice, le maître était investi, à l'exclusion de tous autres, du droit de juridiction sur ses hommes. [...] Il se manifesta même une tendance, contre laquelle les justiciers luttèrent tant qu'ils purent, à étendre le droit de justice au suzerain du maître, et à créer ainsi une hiérarchie personnelle de la justice correspondant à la hiérarchie personnelle du fief.

814 Found in the last part of the *Liber iudicum popularis*, f. 281-286. Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 793-799.

815 Somewhat as a kind of sidenote, f. 28-28v. Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 791-792.

816 Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 796: [...] *tu clementissime dominator: presta ut si quis innocens ab huius culpa vel causa sui reputationis, homicidii adulterii, latrocinii fuerit et in hanc aquam manum miserit salvam et inlesam inde educas qui tres pueros supradictos et Susana de falso crimine liberast* […]. Ibid. p. 798: *Adiuro te ut si de hoc furtum aut homicidium aut arium aliquid fecisti aut consentaneus exinde fuisti, et sic habes cor incrassatum et induratum ut hanc ad*

the commandments that you shall not murder, commit adultery or steal,[817] even following the same order. The ordeal of bread and cheese was used in cases of *res furatus* and required the men undergoing the ordeal to swallow a piece of bread and cheese,[818] and this was usually reserved for clergymen.[819]

Besides the charter evidence these three rituals are the best clue in comparing the Catalan sources within the European framework; it must be considered that ordeals were a phenomenon throughout Europe in the eleventh century. Elsewhere in Europe, liturgical instructions for ordeals are found in pontificals, missals, and sacraments but not, as far as I am aware, in law codes.

Liturgical instructions for ordeals found in pontificals, missals, and sacramenties all follow their own logical composition. The pontifical "is the bishop's book *par excellence* and it contains all the liturgical services a bishop needed to perform *ex officio"*.[820] Rituals for ordeals are mostly but not exclusively preserved in these books of liturgical services all over Europe. While others could perform these rituals, the general notion was that they were usually expected to be ordered and executed by the apostolic successors. Apart from pontificals and missals, formulas for ordeals are sometimes found in books that subsume a diverse array under the name *rituale*.

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probationis dei iuditium per aliquod malefitium evacuari vel evertere te posse facere credideris, si culpabilis es evanescat cor tuum et non suscipiat te aqua ista neqne ullum malum possit inimicus contra hunc [hoc] elementum prevalere, sed manifestetur et declaretur dei virtus in isto loco per invocationem domini nostri Iesu Christi.

817 Deut. 5:17-19; Exod. 20:13-15.

818 Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 791: *ut si quis de his quorum nomina hic tenentur inserta de his rebus que in hoc breuiculo continentur aliquid furatus est aut consentiens fuit aut quolibet modo comotus, si reddere uel confiteri in presenti noluerit coram omnibus panis et casei istius partem sibi datam transglutire non possit, set spumanti ore ac sputo sanguine mixto faucibus constrictis conuictus apareat.*

819 Compare John Niles for the *Corsnæd* in Anglo-Saxon law (panis conjuratus). Roberto Fiore gives an excellent overview about this type of ordeal in its early stages. Niles, J. D. (2009), 'Trial by ordeal in Anglo-Saxon England: what's the problem with barley?', in S. Baxter, C. Karkov, J. L. Nelson et al. (eds.), *Early Medieval Studies in Memory of Patrick Wormald* (Studies in Early Medieval Britain and Ireland, Florence: Taylor and Francis), 369–82. Fiori, R. (2017), 'Ordalie e diritto romano', *Iura: rivista internazionale di diritto romano e antico*, 65: 1–128, esp. 70-85.

820 Kay, R. (2007), *Pontificalia*: *A Repertory of Latin Manuscript Pontificals and Benedictionals* <http://hdl.handle.net/1808/4406>, accessed 4 Feb 2021, p. 2: The pontificale is the bishop's book *par excellence*, containing all the liturgical services that a bishop needed to perform *ex officio*. He might, of course, also own other liturgical books that he used in his lesser capacity as a priest, such as a missal or breviary; but when he functioned *qua* bishop, his pontifical was enough. The most complete pontifical included a *benedictionale*, which provided the bishop with blessings for every occasion that required an episcopal benediction rather than a merely priestly one. Beside the astonishing work done by Richard Kay in his repetory the digital database for the study of latin liturgical history by of the Centre for the Study of Religion at Eötvös Loránd University's Faculty of Humanities is extremely useful as it allows for an unprecedented study of the widespread manuscripts many of which were digitalized in recent times. See: https://usuarium.elte.hu/, accessed 4 Feb. 2021.

In most cases the formulas for ordeals are found in the last third of these books. There is a certain internal logic to how these liturgical collections are arranged.[821] In general, without going into great detail, it can be seen that the blessings are grouped together. After the blessing regarding trees, fruit, homes, etc. come the water-related blessings, for example. Therefore, one can find the formulas to bless a fountain, then the exorcism of salt and water and, lastly, the preparation of the ordeal of boiling water. The ordeal of the hot iron can be found next to the blessing of the sword and the benediction for the ordeal of hot and cold water next to the exorcism of demons and so on.

Several pontificals concerning our time period and region are preserved and it is also worthwhile to look at sacramentaries and other types of manuscripts that could include the rituals concerning ordeals as they sometimes found their way into these manuscripts in other places in Europe.

That would include, for example, the pontifical from Vic (ca. 1050)[822] and the pontifical from Roda[823] (11th century) as well as parts of a manuscript from Roda d'Isàvena (1076-1126),[824] all of which do include a whole variety of blessings, but none of these refer to ordeals. Widening the scope to sacramentaries gave similar results; neither the sacramentary of Santa Maria de Vilabertran[825] nor the one from

821 This even includes some practical standpoints as blessed water was used for exorcism and for ordeals , which received the same denomination in some manuscripts, etc. As far as I am aware these are mostly looked at seperately but keeping in mind the internal composition of these manuals will be helpful for future studies regarding ordeals. For the practical application of rites, see: M. Tamm (2003), 'Saints and the demoniacs: Exorcistic rites in medieval Europe (11th - 13th century).', *Folklore-electronic Journal of Folklore*, 23: 7–24.

822 Dels Sants Gros i Pujol, Miquel (2004), 'El pontifical de Vic. (Vic, Arx. Cap., ms. 104(CV))', *Miscel·lània Litúrgica Catalana*, 12: 103–138. Dels Sants Gros i Pujol, Miquel (2007), 'El Pontifical romà de Vic. Vic, Arx. Cap. ms. 103 (XCIII)', *Miscel·lània Litúrgica Catalana*, 15: 187–272.

823 Barriga i Planas, Josep Romà (1975), *El sacramentari, ritual i pontifical de Roda*: *Cod. 16 de l'arxiu de la catedral de Lleida c. 1000 (Liber pontificalis Rotae)* (Barcelona). Today's signature: ACL, RC_0036. Altisent i Jové, Joan B. (1926), 'Pontifical de Roda (s. XI)', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 1926: 523–551, p.: 523: Per això l'anomenem Pontifical, i no Cerimonial de Bisbes, com Villanueva; ni Ordinari, com el P. Pascual; ni Sagramentari, corn li diuen l'I·lutríssim Abad i Lasierra (3) i el P. Baranda. Swanson Hernández, R. (2016), 'Tradicions i transmissions iconogràfiques dels manuscrits de la Ribagorça entre els segles X – XII', vol II, p. 151-168.

824 Only a certain part contains material strictly pontifical (BPT, Ms. 26, 203v-223v). For detail surrounding the Diversorum Patrum Sententiae. Collectanea Canònica. Rituale. Diplomata Ecclesiastica, see: Swanson Hernández, R. (2016), 'Tradicions i transmissions iconogràfiques dels manuscrits de la Ribagorça entre els segles X – XII', I, p. 179-195, II, p. 323-349.

825 Dels Sants Gros i Pujol, Miquel (2011), 'El Sacramentari de Santa Maria de Vilabertran (París, BnF, lat. 1102)', *Miscel·lània Litúrgica Catalana*, 19: 47–202.

Ripoll[826], nor Vic[827] nor the short fragments of another sacramentary also stemming from Vic,[828] nor the miscellaneous liturgical codex from Montserrat list blessings regarding ordeals.[829] While this collection is most probably not complete it nevertheless shows the absence of the ordeal in these types of books in Catalonia.

However there is one exception: the *Collectari-Ordinari* of the abbey of Santa Maria de la Grassa.[830] The part in which ordeals are mentioned dates, according to Miquel dels Sants Gros, in the second third of the 12th century, which would put it out of our time frame.[831] It includes some short benedictions regarding the heated iron a contestant had to hold in that type of ordeal – something not encountered in any of the documentation, and thus left out of our initial scheme as it dates later.[832] This is followed up by a benediction for water which was usually used in cold water ordeals, somewhat awkwardly appearing next to it.[833]

This fragment is missing the instructions for the *Iudicium aque frigide* that follows shortly after, however what is the interesting for the concerns studied here is that the instructions from Grassa are very close to the ones found in the *Liber iudicum popularis*. Karl Zeumer has four variants in his addition that have a close resemblance to the instructions for the ordeal by cold water.[834] The means of transmission of these

826 Olivar i Daydí, A. (1964), *Sacramentarium Rivipullense* (Monumenta Hispaniae Sacra. Serie litúrgica., 7, Madrid: CSIC).

827 Olivar i Daydí, A. (1953), *El sacramentario de Vîch* (Monumenta Hispaniae Sacra. Serie litúrgica., 4, Barcelona).

828 Dels Sants Gros i Pujol, Miquel (1995), 'Els Fragments del sacramentari Vic, Museu Episcopal, Frag. 1/8', *Miscel·lània Litúrgica Catalana*, 6: 165–175.

829 The miscellaneous liturgical codex dated in the beginning of the 12th century by Alejandre Olivar who gives a short overview in an article, see: Olivar i Daydí, A. (1948), '«Serie de benedictiones lectionum en cod. Montserratensis 72»', *Ephemerides Liturgicae*, 62: 230-234.

830 Dels Sants Gros i Pujol, Miquel (2008), 'El Col·lectari-Ordinari de l'Abadia de Santa Maria de la Grassa. (París, BnF, ms. lat. 933)', *Miscel·lània Litúrgica Catalana*, 16: 203–453.

831 Dels Sants Gros i Pujol, Miquel (2008), 'El Col·lectari-Ordinari de l'Abadia de Santa Maria de la Grassa. (París, BnF, ms. lat. 933)', *Miscel·lània Litúrgica Catalana*, 16, p. 220: Ja hem parlat d'aquest primer suplement, escrit seguint la presentació externa del text primitiu del manuscrit, amb lletra molt semblant però quelcom més tardana, que sembla que pot ser atribuïda al segon terç del segle XII. Hauria, doncs, estat escrit en època de l'abat Berenguer, el germanastre del comte Berenguer III de Barcelona, que regí l'abadia en els anys 1117-1162.

832 Ibid. p. 379: *Beneditio ferri iudicialis. Benedic domine per invocacionem sanctissimi nominis tui ad manifestandum verum iudicium tuum hoc genus metalli, ut omni daemonum falsitate procul remota, veritas veri iudicii tui fidelibus tuis manifesta fiat. Per. Alia benedictio post orationem super ferrum. Benedictio + dei Patris et Filii + et Spiritus Sancti + descendat super hoc ferrum ad discernendum iudicium dei. Amen.* The benediction has close resemblance to one of Karl Zeumers *formulae* which continues with a benediction of water but is related to an ordeal of hot water. ZEUMER, *Formulae,* p. 604.

833 Ibid.: *Benedictio aque ad iudicium faciendum. Omnipotens sempiterne deus qui baptismum fieri iussit et hominibus remissionem peccatorum in eo concessit, ille rectum iudicium in ista aqua discernat si culpabilis sit de hac re, aqua quae in baptismo te suscepit nunc non recipiat, si autem innocens sis, aqua quae in baptismo te suscepit nunc recipiat. Per.*

834 ZEUMER, *Formulae,* p. 618-622. Especially 17, taken from *duobis codici Pariensis*.

instructions, which survive in several manuscripts – the earliest dating in the 10th Century – to Catalonia is not completely clear and needs to be investigated further. As these instructions are usually found en groupe,[835] including not only the ordeals by hot and cold water but the one by bread and cheese, which could maybe make it possible to track down manuscripts related to the one that was used in Barcelona. My attempts so far have failed, particularly because the variant Zeumer lists in regards to the ritual of the hot water is based on a lost manuscript that was preserved in Paris *quodam incognito edidit Baluzius*.[836]

However this short survey should make it clear that until the later collection from the abbey of Grassa the instructions for ordeals seemed to only have found their way into a book that was destined for use by used by the judges, which contrasts with other places in Europe where they are mostly found in the manuals for the bishops. There would be no obstruction to adding the ordeals next to one of the benedictions found in the Catalan pontificals or sacramentaries, which sometimes even seem to invite such an addition.[837]

Having this in mind it is time to actually look at the charter evidence and see how, by whom and under which circumstances the ordeal was administered and used as a tool to find justice.

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835 For the English manuscripts, regarding the ordeal of hot water for example, see: LIEBERMANN, *Gesetze*: I, p. 401–405.

836 See: García López, Y. (2003), 'Rituals per la celebració de les ordalies', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 253.

837 For example the rituals regarding the ordeal of hot water in the *Liber iudicum popularis* (LI) starts: "first make him [the accused] enter with all humility in the church and laying in prayer the priest says the following three prayers" (Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), p. 613). The following three prayer are also found in the in the chapter *orationes pro pecatis* in codex 66 from the episcopal museum of Vic, also known as the Sacramentary of Vic (SV) dated in the third decade of the 11th Century. It seems that the codex never left Vic. (Olivar i Daydí, A. (1953), *El sacramentario de Vich* (Monumenta Hispaniae Sacra. Serie litúrgica., 4, Barcelona), p. 195-198.) Right after these one finds the *Missa pro his qui a demonio vexantur,* (Ibid. p. 206-208) and *Orationes contra demon[es]* (Ibid. p. 208). Rituals for ordeals would fit in quite convincingly. Comp. 1) LI: *Auxiliare domine querentibus misericordiam tuam et da veniam confitentibus, parce supplicibus, ut qui nostris meritis flagellamur, tuae miseratione salvemur. Per.* / SV 1279: *Alia. Auxiliare domine querentibus misericordiam tuam, et da veniam confitentibus, parce suplicibus, ut qui nostris meritis flagellamur tua miseracione salvemur. Per.* 2) LI: *Quesumus omnipotens deus afflicti populi lacrimas respice et iram tuae indignationis averte, ut qui reatum nostrae infirmitatis agnoscimus tue consolatione liberemur. Per.* SV 1300: *Alia. Quaesumus omnipotens deus, afflicti populi lacrimas respice, et iram tue indignationis averte, ut qui reatum nostre infirmitatis agnoscimus, tua consolacione liberemur. Per.* 3) LV: *Deus qui conspicis omni nos virtute, interius exteriusque custodi, ut et ab omnibus adversitatibus muniamur in corpore et a pravis cogitationibus mundemur in mente. Per.* SV 1314: *Deus qui conspicis omni nos uirtute destitui, interius exteriusque custodi, ut et ab omnibus adversitatibus muniamur in corpore, et a pravis cogitacionibus mundemur in mente. Per.*

IV.2.3.2. Cases

In comparison to the attention ordeals received in the literature, the charters strictly related to judicial decisions involving unilateral ordeals is rather small – a total of 13 – with a large time gap in the middle, the first four dating from 988-1036 and the last nine between 1072-1112.

The question at hand is if the above-discussed ritual instructions were used and who administered the ordeals. For these issues two possible indicators can be helpful. The first is simple and straightforward – to see who according to the charter was in charge of the ordeals. The second means looking at the vocabulary used within the charter, as it is hard to imagine that scribes and judges who rigorously cite Visigothic Law literally would deviate from this practice in cases involving ordeals.

IV.2.3.2.1. *Iudicii Aquae Calidae*

The first case received special attention as it "escapes the norm"[838] by being the first recorded ordeal and the only one before the turn of the millennia.[839] It is also a clear example of a narrative constructed in retrospect, and fraudsters being revealed through divine judgement.

Presided over by the bishop of Girona Gotmar III, the abbot of Sant Cugat del Vallès Odó and the judge Bonshom himself, the judge Ponç acting as *assertor et mandatarius* for the abbot initiates the petition, asking (*petivit*) a man called Sentemir

838 Salrach i Marés, Josep Maria (2004), *Catalunya a la fi del primer mil·lenni* (Lleida), p. 176: Dels processos continguts en la documentació catalana dels segles IX i X només n'hi ha un que potser escapa a la norma.

839 Discussed in most detail by Salrach and Bowman. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 122-24. Salrach i Marés, Josep Maria (1997), 'Prácticas judiciales, transformación social y acción política en Cataluña (siglos IX-XIII)', *Hispania*, 57/197, p. 1020-21. See also: Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 381-383. Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 77-78. Salrach i Marés, Josep Maria (2009), '"Ad reparandum scripturas perditas": El valor del documento en la sociedad de los condados catalanes (siglos IX y X)', in F. J. Fernández Conde and García de Castro Valdés, César (eds.), *Symposium Internacional Poder y Simbología en Europa, siglos VIII-X* (Oviedo), 315-317. Vogel, C. (2019), *Individuelle und universelle Kontinuitäten*: *Testamente und Erbverfahren auf der Iberischen Halbinsel im frühen Mittelalter (ca. 500-1000)* (Geschichte und Kultur der iberischen Welt, Band 16, Berlin: Lit), p. 139-140.

if he hid and concealed (*celabat vel ocultabat*) the testament of his late brother Fredemund which would have had benefited Sant Cugat.[840]

In his answer Sentemir not only denied the concealment but claimed that he had neither seen it, received it nor tore it apart, nor burned or dissolved it and that he was not aware of where and how it had been lost. One must assume that his quite elaborate answer reflects most precisely what Ponç inquired about. Now, surely having got the tribunal's attention, he presented the quite truthful (*satis veredicum*) priest Ennecó who declared he had found the testament in a container for charters (*cartatario*) of the deceased and that he went to the city of Barcelona to hand it over to Sentemir himself, so that he could present it to a judge and make it public *ut nec celasset voluntatem fratris sui.*[841]

As Sentimir had no evidence to support his innocence the judge and the other *ydoneis viris* asserted that he should not hide the truth *adversus Deum et adversus Sancti Cucuphati,* but he did not want to obey their words and instead, persisting in perversity of justice, insisted on God's judgment through the ordeal of the cauldron (*Dei iudicium petens per examine caldaria*). He put his hand in the cauldron while assuring them that he would remove it in perfect condition since he knew various spells and incantations. But, when the moment of divine judgement arrived, his spells were of no use: "the hand was immediately burned". The scorched hand left the court with no doubt and "his malice and falsity was detected", and by the ruling of the judge his guilt was confirmed. Sentemir confessed that he had given the will to his wife to burn it and thus he signalled his knowledge of the crime.[842]

840 SALRACH, MONTAGUT, *Justícia*, doc. 106: *In iudicio domno Gondemare episcopo et domno Odo abba seu et iudice Bonushomo, et in presentia Seniofredo et item alio Seniofredo, sacerdotibus, laicorum presentia Erovigio, Sesemundo, Adalo, Bellus et Vuillara, et Audesindo. In istorum supradictorum presentia Poncius, qui fuit assertor et mandatarius ex predicto Odoni, abba ex cenobio Sancti Cucuphati, petivit homo nomine Sintemiro de testamentum quod celabat vel ocultabat ex fratri suo nomine Fredemundo, qui per ipsum testamentum relinquerat et concesserat ad cenobium prefatum ex suas vineas et ex suas terras et ex suas omnia facultate ipsa medietate propter Deum et remedium anime sue.*

841 Ibid.: *At ipse Sentemirus in suo responso cepit detestare et adfirmare se ipsum testamentum nec unquam vidisse, ne unquam accepisse, nec unquam disrumpisse, nec combusisse, nec diluisse, neque conscium fuisse ubi perditus fuisset ipsum testamentum, de qua re iamdictus Poncius, assertor de abbati Odo, exibens unum sacerdotem satis veredicum nomine Ennego, adfirmans quod ipsum testamentum ille eum invenerat in cartarario iam dicto Fredemundo, postquam ipse periit in Barchinona civitate, et dederat eum ad isto predicto Sentemiro, ut ante iudice eum publicasset, et iudicium exinde obligasset, et fecisset ex rebus fratri sui, quemadmodum in ipsum testamentum erat insertum, et comonuerat eum, ut nec celasset voluntatem fratris sui.*

842 Ibid.: *Et cum hoc in faciem suam ita ei adfirmasset et protestasset predictus sacerdos, ipse in malitia sua diu insistente, noluit professionem suam exinde facere, set nescium et sine culpa fincte et similate se de eo in omnibus demostrans. Tunc predictus iudex, cum aliis ydoneis viris rogavit eum et simpliciter commonuit plures vices, ut ne celasset veritatem de ipso testamento adversus Deum et adversus Sancti*

But when in accordance with the law the *saio* arrived to hand him over to the abbot of Sant Cugat, against whom he had commited the fraud, so that he would atone for his guilt in perpetual slavery, Sentemir begged for mercy.[843]

The bishop, abbot and judge were moved by divine clemency and resolved the case by agreeing that Sentemir should not be condemned to slavery[844] but that his meagre possessions should be used to the advantage of the monastery, the bishop (*pro sua portionis districtio*), the *saio* and the judge. The change pleased both parts and Sentemir was not condemned but instead made certain concessions[845] and the document thus is defined as a *pactum et conventum*.[846] As Salrach already observed the whole procedure was done completely according to the law.[847]

Cucuphati, set veram professionem exinde fecisset, et ad satisfactionem venire, et oberrata sua legitime emendare penitus non erubuisset. At ipse rennuit profiteri, noluitque obedire voci eius, set similando innocentem se ex ipso esse demonstrans. Et cum ita infestissime in nequitia sua semper persistens, Dei iudicium petens per examine caldaria, et introivit ad eum asserens se sanum evasurum ab eo per maleficias et diversas suas incantaciones quem noverat, set adveniente ultio divina, incantaciones suas nichil ei prestiterunt, manu eius statim apparuit combusta. Et ita in malitia et sua falsitate detectus, iudice ordinante suam exinde confirmavit professionem, qualiter eum testamentum comburere iusserat uxori sue iniuste et absque lege, et tunc firmavit exinde suam recognicionem.

843 Ibid.: *Et cum voluit eum tradere ipse saio in potestate de iam dicto assertore de abba Odo Sancti Cucuphati cenobio, cui fraudem fecit, et perpetuo ad servitutem abdicari ipsius sicut, quemadmodum lex ordinabat et iubebat, implorans mesericordiam et indulgentiam ad iamdicto episcopo vel abbate, ut sub eorum pia miseracione aditum ei evadendi tribuissent ex servili catena, et ne incurvassent suam personam ad eam, sicut lex iubebat.*

844 Ibid.: *Ex qua re iamdictus episcopus vel abba seu et iudice sub divina miserandi clementia talem dederunt consilium, ut ista prefatus Sentemirus non fuisset traditus, set ex suis exiguis rebus fecissent in aliquantulum concessionem ad supralibato monasterio vel et ad supranominato episcopo pro sua portionis districtio seu et ad saio atque et ad iudice.*

845 Ibid.: *Placuit utriusque partibus et ita fecerunt et adquieverunt et Deo dederunt ad Sancti Cucuphati ipsas vineas de Monte Catanello, qui sunt de ipso plantero Sancti Cucuphati, et iuxta Riopullo ipsa casa et curte et ipso mulino cum ipso plantario ex Sancti Cucuphati de vinea et de arbores, que Unifredus condam dimisit ad Sancti Cucuphati, et ipsa parte quod Sentemirus iamdictus habet in ipsa vinea quod ipse plantavit in campo vel in terra de Estegeso, similiter ei dederunt, sub ea tamen ratione, ut si aliquis ex heredibus de iamdicto Stegeso voluerit emere per ipsa voce de ipso plantario, dare faciant precium iuste adpreciatum ad cenobio iamdicto. Et iterum ei dederunt alia vinea qui est in Valle Maiore, qui fuit de Fredemundo, ad cenobium iam dictum, et ipsos III cubos et III tonnas, que sunt in ipsa casa de Riopullo, similiter ei dederunt.*

846 Ibid.: *Et tali convento et placito in huius conventione instituerunt, ut si in aliquo tempore iste iamdictus Sentemirus adversum huius conventum consurgerit ad disrumpendum, tam ipse quam suum advocatum vel heredum suorum vel alicuius homo, et ita istum pactum confringere voluerit et fecerit, et ista omnia superius comprehensa ad cenobium prefatum vel et ad donationem ipsius auferri vel alienari presumserit, libram auri in vinculo persolvat ad cenobium iamdictum perpetim habitura. Et in antea istum pactum et conventum firmum permaneat omnique tempore.*

847 Salrach i Marés, Josep Maria (2003), 'Tradicions jurídiques en l'administració de justícia a l'edat mitjana: El cas de l'"Aliscara-Harmiscara" i la humiliació penitencial.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), p. 82-83. Si ens hi fixem, veurem que en tot s'havia seguit el *Liber*: en el recurs a la prova caldària, en la condemna a la pena d'esclavitud per fals testimoniatge (II, 4, 6) i ocultació o destrucció de document públic (VII, 5, 2; VII, 5, 3; VII, 5, 4; VII, 5, 5) i, fins i tot, en la rebaixa de la pena per misericòrdia (XII, 1, 1).

The second example[848] dates in the year 1000 and the charter starts off by invoking divine law with[849] a well versed construction taken from the Visigothic law code.[850] Before the bishop of Elna Berenguer, surrounded by many clergy- and some laymen, including the Viscount of Cerdanya,[851] the judge Guillem directed a court case. Some clergy of the see stated that they went to visit their brother (*frater noster*) the levite Oriol, upon his deathbed before he died, as was custom, and they all heard him make a donation of some possessions in Elna to the see.[852] However, others *qui malicioso animo habebant*, namely Oriol's niece Ermel·la and her husband Elderic, also claimed the same property, arguing that her uncle gave it to her.[853]

After this prelude of the charter introducing the legal issue at hand the bishop is represented through his archlevite (*assertorem suum*) and the judge starts his inquiry. Upon the interrogation of the two parties the couple states that they have a donation

848 Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 124-25.

849 SALRACH, MONTAGUT, *Justícia*, doc. 140: *Sacrae legis sacris decenter imperavit oraculis, quia solus Pater omnipotens tam immense divinitatis imperiis hoc cordibus imprimuntur humanis, ut iustitiam diligerent habitatores terre, et si obediendum est Deo, diligenda est iusticia quae, si fuerit dilecta, instanter erit operandum in illa.*

850 LV II. 1.2.: *Quod tam regia potestas que populorum universitas legum reverentiae sit suiecta. Omnipotens rerum dominus et conditor unus, providens commoda humane saluti, discere iustitiam habitatores terre, sacre legis sacris decenter imperavit oraculis. Sed quia solius tam inmense divinitatis imperiis haec cordibus imprimuntur humanis, convenit omnium terrenorum quamvis excellentissimas potestates illi colla submittere mentis, cui etiam militi ecelestis famulatur dignitas servituti. Quapropter si obediendum est Deo, diligenda est iustitia; quae si fuerit dilecta, erit instanter operandum in illa, quam quisque tunc verius et ardentius diligit, cum unius aequitatis sententia cum proximo semedipsum adstringit.*

851 Ibid.: *Idcirco, dum resideret venerabilis Berengarius, gratia Dei sedis Helenensis episcopus, in pago Rossilionense, in vicho Elna, unacum mutitudine clericorum suorum katerva, scilicet presbiterorum et hordine levitarum, id est Amaliricus presbyter et claviger, Aurutius presbiter, Suniarius levita, Adalardus presbiter, Adroarius presbiter, Goltredus presbiter, Volveradus archilevita, Austendus archilevita, Aribertus levita, Durandus levita, Udalgarius presbiter, Eldemarus levita, Teoferedus caputscolis et levita, Petrus levita, Raimundus levita, Amalricus levita, Marchucius levita; laicorum vero nobilium Sonifredus, vicecomes Cerdaniense, Bernardus, Segovinus, item Bernardus, Gauzbertus, Durandus, Aigulfus, Finardus et aliorum multorum hominum, qui ibidem aderant simul et cum iudice qui iussus est iudicare, causas dirimere et legibus definire, id est Guilielmus.*

852 Ibid.: *In istorum namque presentia venerunt quidam de fratribus, qui dixerunt predicto episcopo: «Iubere nos audire: frater noster Auriolus, levita, capudscole Beatissime Eulalie Virginis, quando egritudine est retemptus, unde migravit de hoc seculo, adhuc in suo sensu proprio loquelaque integra permanente, venerunt supradicti sacerdotes cum aliquis de levitarum ad visitandurn eum, sicut nos facere consuetum est. Et coram illius audientibus tantum modo verbis promulgavit atque constituit alodem suum, quod ille habebat in pago Ressolionense, in vicho Elna, id est solario cum curte et clauso, et cum ipsa fexa I de terra, qui ibidem est, ut si de hac egritudine mori contingerit, quomodo fecit, fuisset ipsum alodem de prelibata ecclesia. Et exinde nobis recedentibus iam demens effectus erat.*

853 Ibid.: *Venerunt alii homines, qui malicioso animo habebant, fecerunt de hoc, quod predictum est, voluntatem suam immutare et scriptura donationis facere in nomine nepta sua, nomine Ermelde, et viro suo Eldericho. Et non licebit eam facere nec roborare nec aliquid a vicibus suis instituere, qui eam legitime signis aut suscriptionibus confirmare, sicut in lege preceptum est, donec spiritum exalaret».*

scripture from the deceased in their favour.[854] Therefore the tribunal decided to send the judge to, one must assume, the home of the couple, so that they could show him the document. After reading and rereading it the judge considered the scripture to be most false (*et invenit eam mendacem atque falsissimam*) as it did not comply with the law, missing out signatures and signs so that *adulterinis fuerat manifesta*.[855] We must assume the couple still insisted on its validity and the judge therefore asked if they would be willing to undertake an ordeal (*audebat presumere ad Dei iuditium*) to rule out conscious fraud, as they could prove that they were not aware of the deceitful nature of the charter. Elderic's answer is noted in the charter and it is a straightforward *Possum.* The judge thus went on to assign a date for the ordeal (*dedit ei placitum constitutum*) so that he could purify himself (*ut se purificaret)* so that he would be able to proceed with the ordeal.[856] In the meantime the couple's *asertores*, which should here be understood as mediators, went to see the bishop and together with other good men seemed to find a compromise.[857] The charter then leaves the reader with a gap and it is unclear which kind of ordeal happened or even if it happened at all as the couple's renunciation of their rights follows without any further explanation.[858]

The memoir of these events was written down on All Saints' Day (*Data et confirmata notitia*) and as in other similar *notitiae* it is rather a summary of events than a detailed record and the chronology does not deliver clear dates.[859] Clearly first a

854 Ibid.: *Et ab hac causa iamdictus episcopus misit assertorem suum, iamdicto Austendo archilevita, ut predicto Eldhericho et uxori suae Ermelde fecisset perquirere, et in sua presentia exibere et legaliter prosequeri, sicuti et feci[t] a petitione illius vel ab interrogatione de supradicto iudice. Isti homines in suis responsis dixerunt: «De hac causa, unde nos petistis, scriptura donationis habemus, quod condam Auriolus ad me iamdicte Ermelde in sua vita fecit et ordinavit et in mea potestate tradidit».*

855 Ibid.: *Et iussit eam predictus iudex, ut eandem scripturam in suam presentiam exhibere, sicuti et fecerunt. Et predictus iudex audivit eam legentem et relegentem, et invenit eam mendacem atque falsissimam, et contra lege fuerat facta et ad vice morientis, nec signis nec suscriptionibus fuerat roborata nec legaliter confecta, sed signis et suscriptionibus adulterinis fuerat manifesta.*

856 Ibid.: *Et pro hac causa interrogavit predictus iudex iamdicto Elderico, si se audebat presumere ad Dei iuditium, ut in eadem fraudem conscius non extitisset, aut eadem cartula, que in placito offertur, mendacem nescisse; et ille dixit: «Possum». Et predictus iudex dedit ei placitum constitutum ut se purificaret, ut ad Dei iudicium possit pervenire.*

857 Ibid.: *Et ex illis inde recedentibus miserunt asertores suos a predicto episcopo, id est Austendus, Gauzbertus et Aigulfus, ut se veritate legisque in eis feriendi erant parceret, et predictum alodem pro qua altercatio erat, acciperet. Et ille, intercedentibus istis vel aliis bonisque hominibus, adquievit.*

858 Ibid.: *Et ego iamdictus Eldericus et ego Ermelde iam sumus professi de hac causa que superius dictum est, et cedimus atque tradimus iamdictum alodem a prelibata ecclesia vel in manu Berengario episcopo, ut in eorum iure inrevocabili modo perpetualiter firmetur. Et notum sit omnibus hominibus et in cunctis personis ibi convenientibus in harum noticia valitura consistat.*

859 Ibid.: *Data et confirmata notitia sub die kalendarum novembrium, anno V quod Rodbertus, Franchorum rex, regnandi sumpsit exordium. Ostendus archilevita. Teutfredus levita, qui et coripanta. Wolveradus*

hearing took place where both sides stated their arguments, with the couple confirming that they had a charter. The judge in charge, Guillem, went on to inspect the document and as the couple insisted on its validity he offered an ordeal, which they agreed upon, but in the end the intervention of good men allowed the reaching of some kind of compromise. Considering the narrative structure of the other documents, the malicious couple being presented in such a bad light indicates a recognition of their scripture being false. Even though the ordeal was proposed, the couple accepted and finally a compromise of some sort was reached, the tone and narrative of the charter corresponds to other examples when one side was unable to perform or lost an ordeal, and so it is likely the agreement just included a renunciation of their claim without having to fear further consequences regarding their, as it was surely considered, false testimony.

The introduction of the charter, taken from the Visigothic law code, leaves no doubt that this summary was written down after having consulted the law book on the issues at hand. Comparing this document with others of its type, weeks could have passed until these events were recorded by the judge who had been in charge and whose signature was essential for its legal validity, as the charter reads: *Ego Wilielmus, iudex, huius edictionis tactu necessitate occulorum signoque impressionis corroborans.*

The relationship between oath and ordeal becomes clear in the use of the word *conscius*, referring to the notion of being aware (or not) about the validity of a document, which is related to the chapter of the Visigothic law stating that judges must demand proof from both sides in dispute (LV II.2.5). This chapter specifies that if the truth of the matter cannot be ascertained from the evidence (*Tamen si per probationem rei veritas investigari nequiverit*), then the defendant has to exculpate himself by swearing (*sacramentis se expiet*) that he has not had and does not have in his possession the goods or whatever else is asked of him, and that he is not at all aware (*se conscium esse vel quiddam inde veritatis scire*) of the cause for which he is being questioned.[860] In the discussed cases this applied to a certain degree and

archilevita. Raimundus levita. Marcutius levita. Amalrichus levita. Udalgarius presbiter. Amaliricus presbiter et claviger. Seniullus presbiter. Aribertus presbiter. Sig+num Bernardus. Sig+num Gauzbertus. Sig+num Bernardus. Sig+num Durandus. Sig+num Aigulfus. Sig+num alio Bernardo. Sig+num Segoinus. Aurucius presbiter. Ego Wilielmus, iudex, huius edictionis tactu necessitate occulorum signoque impressionis corroborans. Soniarius levita. Sig+num Wilielmus levita, qui hanc notitiam scripsit et die et anno quo supra.

860 LV II.2.5: *Quod ab utraque parte causantium sit probatio requirenda. Quociens causa auditur, probatio quidem ab utraque parte, hoc est tam a petente quam ab eo, qui petitur, debet inquiri, et quae magis recipi debeat, iudicem discernere competenter oportet. Tamen si per probationem rei veritas investigari*

allowed the judges to proceed and demand an oath.[861] As the couple Ermel·la and Elderic seemed to have been considered *suspectis personis* by the judge after having seen their donation charter therefore proposed the examination through the cauldron as an option.[862]

Certainly contemporaries "were not worried [...] by the possibility of fraud in our sense. A more serious danger was that spiritual or magical powers might disrupt the course of justice,"[863] and that is also true for the Catalan sources as Sentemir was not the only one thinking he could trick God's justice.

In one donation charter, Bermon I, Viscount of Osona, donated some allods to the church of Sant Vicenç, situated in the castle of Cardona.[864] He obtained these judicially from Sendred and his wife, Ermoviga (*mihi advenerunt per voce placitalis*). The two had been in charge as administrators for some of his property (*quos constitui ministros de mea substantia*) but they stole large quantities of cereals and barley from him as well as a list of other things too long to elaborate on (*quod longum est enarrare per singula*).[865] Confronted with the theft, Sendred was first asked in an assembly to return the stolen goods.[866] But in this case the couple did not in any way acquiesce to the

nequiverit, tunc ille, qui pulsatur, sacramentis se expiet, rem vel si quid ab eo requiritur, neque habuisse neque habere nec aliquid de causa unde interrogatur, se conscium esse vel quiddam inde veritatis scire, nec id, quod dicitur, et illi parti, cui dicitur, comisisse. Et postquam ipse inraverit qui pulsatus est, V solidus ille, qui pulsavit, ei cogatur exsolvere.

861 In other cases a simple oath was enough comp. SALRACH, MONTAGUT, *Justícia*, doc. 401: *Sed quia cuncta hec penitus deserere, iudicatum est ut iurasset prescriptus episcopus istius rei veritatem nullatenus posse nec aliqua de causa unde interrogabatur se conscium esse.*

862 LV VI.1.3: *Quomodo iudex per examine caldarie causas perquirat. Multis cognovimus querelas et amb ingenuis multa mala pati credentes in trescentorum solidorum questionem agitari. Quod nos modo per salubrem ordinationem censemus, ut quamuis parva sit rei facta criminis, per examinacionem caldarie a iudice districtos pervenire ordinamus et, dum facti temeritas patuerit, iudex eos questionandi non dubitetur, et, dum suam dederit professionem, superiori legi subiaceat. Quod si per examen caldarie innoxius aparuerit, petitor nullam calumpniam pertimescat. Hoc quoque erit ed de suspectis habentibus personis, qui ad testimonium venerint dicendum hic ordo servabitur.*

863 Morris, C. (1975), 'Judicium Dei: the social and political significance of the ordeal in the eleventh century', *Studies in Church History*, 12, p. 102: Contemporaries were well aware that something might go wrong with the ordeal, but they were not worried (or only a little worried) by the possibility of fraud in our sense. A more serious danger was that spiritual or magical powers might disrupt the course of justice. [...] In particular, the prayers in the ordines were directed towards driving away Satan from any interference: [...].

864 SALRACH, MONTAGUT, *Justícia*, doc. 167: *Congruum atque oportunum decenter convenit cunctorum fidelium totis nisibus ad celestem patriam anelare, ut misericordia Omnipotentis possimus adquirere. Qua propter, in Dei nomine, ego Bermundus vicescomes inspirante Dei clementia et recogitante die ultima, nullius cogente imperii causa nec suadentis ingenii fraudulentia, sed mihi hoc spontanea bona elegit voluntas. Donator sum Domino Deo et sancto Vincentio, cuius ecclesia sita est kastro Kardona, alodes meos proprios quos habeo in comitatu Ausona, vel Minorise, vel in illorum terminos.*

865 Ibid.: *Que mihi advenerunt per voce placitalis de quidam Sendredo et uxor sua Ermoviga, quos constitui ministros de mea substantia, unde mihi furtim fraudulenter abstulerunt copia frumenti ordeique, complurismasque causas quod longum est enarrare per singula.*

866 Ibid.: *Et unde ego prefatus Bermundus in presencia Eriballo archilevita et Fulcho et Raimundo, fratres*

counsel (*nolens adquiescere nonnullorum consilia*) offered by the assembled - instead Sendred put his trust into malign art (*arte maligna*) and demanded God's judgment through boiling water (*ferventi aqua ad Dei iudicia*), which he did not pass as God saw beyond his malice and revealed his fraudulence.[867] The viscount asked the judge to administer the ordeal *secundum lege gotica et nostra* so that the severe theft was revealed through the burned skin and flesh.[868] To avoid the penalty of servitude the two handed over all the property to Bermon,[869] who for the benefit of his soul donates it to the Church of Sant Vienç of Cardona.[870] The choice of the *sanctio* is fitting,[871] warning that anyone who attempted to take the property away would be cursed with Anathema and condemned like Beelzebub and the traitor Judas to *inferni claustra.*[872]

While there was a certain hesitance to use the ordeal in some of the earlier cases, as the judgement of God was demanded in most, the documentation of the second half of the 11th Century does not give that impression at all. A donation charter dating on the 29th of October 1079 by count Hug II of Empúries – concerning all the property of a certain Arsenda and her son Bernat given to the abbot Guillem of Sant Pere de Rodes –

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meos, sive in presencia de Ermomiro vicario et Guissado Allemar, et aliorum bonorum hominum qui ibidem presentes aderant, blande et limiter interrogavi et rogavi supra taxato Sendredo, ut mihi per directum consilium reddidiset mea substantia quod mihi habebat furata.

867 Ibid.: *Quod ille nolens adquiescere nonnullorum consilia, sed per contumaciam confidens per arte maligna incautare iudicialis examine, proclamavit se examinare per ferventi aqua ad Dei iudicia. Sed Deus, qui oculta novit cuncta, patenter voluit revelare in supradictorum presentia illius iniquissima fraudulentia.*

868 Ibid.: *Proinde ego Bermundus rogando, arcessito Ansefredo iudice secundum lege gotica et nostra, predictus Sendredus manu missa in caldaria, crudeliter corio et carne assata, cunctis qui aderant presentibus, ipsius sevissima furta est revelata.*

869 Ibid.: *Et interpellantibus me Bermundo, atque rogantibus istis in presentia domina Ermessindis, comitissa, id est, Ermemiro, vicario, et Guissado Ollemaro, seu supra taxato iudice Ansefredo et aliis plurimis qui presentes aderant, ne illius iuris servituti subiugassem persona, sicut lex discernit gotica, eum consulendo et me rogando ille mente placida mihi Beremundo omnes alodes suos emendando tradidit per karta et scriptura ad sua manu propria firmata.*

870 Ibid.: *Et idcirco ego Bermundus, ut supra notatum est, dono et concedo a prefata ecclesia Sancti Vincentii predictos alodes, simul cum ipsa turre, cum casas, casalibus, curtis, curtalibus, ortis, ortalis et arboribus diversi generis, terras et uineas, cultas et eremas, aquis, aquatibus, vieductibus vel reductibus, pratis, pascuis, siluis et garricis, simul cum exiis et regresiis earum, et cunctorum affrontationibus earum, totum ab integrum quantum ibi abeo pro supradicta voce, seu per parentorum meorum, seu per aliqua auctoritate, sic dono domino Deo et Sancto Vincentio supradicto predictos alodes propter remedium anime mee vel parentorum meorum, ut in perpetuum liceat possidere predicta omnia Beato Vincentio et servientibus Deo in prefata ecclesia.*

871 Comparing the sanctio with the consulted documentation, the use of words seems to be unique but not unusal for donations. Comp. Martínez Gázquez, J., Escolà Tuset, J. M., Petrus Pons, N. et al. (2005), 'Las fórmulas de imprecación en Cataluña en los siglos IX al XI', *Faventia*, 27/1, p. 85.

872 Ibid.: *Quod si ego donator, aut ullus homo, vel femina, qui contra ista scriptura donatione venerit ad inrumpendum, non hoc valeat vindicare quod requirit, sed componat ad Beati Vincentii ecclesia auri libras XL et insuper ista scriptura donationis omni tempore permaneat firma et stabilis. Et qui aliquid de predictos alodes, cum illorum omnia, abstulerit a prefata ecclesia, permaneat maledictus anatema et cum Behelzebud et Iuda proditoris fiat condempnatus inferni claustra.*

allows for a detailed analysis.[873] The charter starts by noting that there had been a conflict between the abbot Guillem and Arsenda, wife of Guitard Agan, probably deceased, and her son Bernat.[874] This is followed by a chronological narration of deeds. One day the said abbot went to Llançà to stay in a house owned by the monastery.[875] Arsenda, her son, and other men came to serve him (*ad serviendum sibi*), to prepare his bed (*lectum sternere*), and to untie the thong of his shoes (*calciamenta solvere*), as they did with their own men.[876] In the hour before midnight (*conticinium*) when the abbot was asleep, they came with torches and candles and stole all the gold and silver he carried with him.[877] First they swore that they had nothing to do with the crime, however, when faced with the prospect of a trial they were "petrified and afraid" and acknowledged that they did in fact do it – and then, "moreover, worse still, they confessed to him [the abbot] a detestable crime, which cannot even be said."[878] The verb *recognoscere* used in this fashion is a clear reference to the *recognitio* as a necessary part of confessing a crime, especially in cases of theft or murder. Whatever they confessed, it left the abbot very angry (*nimium iratus*) and he put them on trial for the treason (*baudiam et tradiccionem*)[879] and confiscated everything he could find from them for the honour of Saint Peter,[880] "but even that could not satisfy his right" (*Sed nec ita directum invenire quivit*).

But the liars and fraudsters (*deceptores et fraudalores*), saying that they were undue victims of this punishment, went to the most excellent count Hug II of Empúries, from whom they demanded another trial, justice and defence.[881] The count,

873 The original charter is lost but was in the archives of the monastery of Sant Pere de Rodes, where it was read and transcribed by Jaume Villanueva i Astengo in the beginning of the 19th Century. VILLANUEVA, *Viaje*, XV, doc. 17, p. 243: *Ex autogr. in arch. S. Petri. Roden.* SALRACH, MONTAGUT, *Justícia*, doc. 422: *Facta est haec scriptura donacionis IIII kalendas novembris, anno XX Philippi regis.*

874 SALRACH, MONTAGUT, *Justícia*, doc. 422: *Notum sit omnibus hominibus praesentibus scilicet atque futuris, quoniam mota est vasta superstitio atque hortilis irrisio inter abbatem Guilielmum caenobii Rodensis Sancti Petri, et Arsendis, uxor Guitardi Agani, corumque filium Bernardum de quo talis est ratio.*

875 Ibid.: *Nam quadam die praedictus abbas venit Lancianum in propria domo Sancti Petri ospitandi causa.*

876 Ibid.: *At illa praefata Arsendis, cum filio eius praelibato, aliisque hominibus venerunt ad serviendum sibi lectum sternere atque calciamenta solvere quod et fecerunt cum hominibus suis.*

877 Ibid.: *Illo denique jam pregravi somno dormiendo quia conticinium erat venerunt cum accensis faculis atque candelis et furati sunt ei aurum et argentum quod ferebat secum.*

878 Ibid.: *Tunc, perterriti atque timore judicii concussi, recognoverunt se quod quaerebat jurati esse et insuper, quod peius est, obiecerunt ei delestabile crimen quod nefas est dicere.*

879 Ibid.: *Haec de causa praelatus abbas, nimium iratus, dixit eis baudiam et tradiccionem in hoc quod dixerant et fecerant et facere statuerant de eo habere factum.*

880 Ibid.: *Idcirco abbas, inquisitis ab eis fideijussoribus ut directum facerent et non adeptis, accepit sibi omne quod eorum invenire potuit in honore Sancti Petri.*

881 SALRACH, MONTAGUT, *Justícia*, doc. 422: *At illi deceptores et fraudalores, dicentes se indebite haec mala*

moved by their tears, ordered the abbot to present himself and return to them what he had taken, as he considered it unworthy that some men of Saint Peter should be banished from their houses and dispossessed of their property for such a small cause.[882] Thus, coerced, Guillem returned everything, but demanded justice. The count therefore summoned Arsenda, the liar (*deceptrix*), and her son Bernat and asked them to go to court for the betrayal and infidelity of which the abbot had accused them.[883] At the town of Canyelles, Arsenda and her son surrendered to the power of the count, along with all their allods and all the things that they possessed. The document suggests the motivation behind their actions as being that if they could not be excused from infidelity by the judgment of the boiling water and the betrayal concerning their lord abbot, all their goods, whole and complete, along with their own bodies, would belong to the count.[884]

The count then set an appropriate day for the abbot and the liar Arsenda and her son to attend, while the trial was prepared according to customs under the supervision of the abbot.[885] Then the judges of the land (*judices terrarum*), Ramon Bonfill, along with another Ramon Guillem and Miró Guillem, brought her to trial before the count,[886] which took place in the church of Sant Feliu de Vilajuïga.[887] And they were all standing around, "the names of which would be long to write one by one, which we hope to list at the end of this certificate".[888]

"Then, with the seal of the judge, as it is constituted, the hand was sealed and after three days his hand appeared burnt".[889] The language used corresponds here with

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pati, ad comitis praecellentissimi Ugonis cucurrerunt vestigia postulantes ab eo directum atque justitiam et defensionem.

882 Ibid.: *At ille, comotus eorum lacrimis, praecepit abbatem ad placitum tendere et qual tulerit restaurare, quia indignum ducebat sic homines Sancti Petri levi culpa a domitius cicere et sua omnia auferre.*

883 Ibid.: *Coactus enim abbas praedictus et sua omnia reddidit quamvis iniuste et justitiam petivit. Comes namque, convocata deceptrice cum filio eius Bernardo, requisivit eis si possint illi directum facere de tradiccione et baudia de quibus quaestus erat abbas.*

884 Ibid.: *Ipsa enim cum filio suo miserunt se in potestate comitis praedicti cum omnibus alodiis suis atque omnibus rebus quodcumque visi erant abere vel possidere, ut si per iudicium ferventi aquae non possent se expiare quod baudiam et tradiccionem non habebant factam de suo seniore abbate, omnia integra et inconvulsa essent cum propriis corporibus praenominati comitis. Ipsa vero suscepit omnia sicut ipsi fecerunt ei. Hactum est hoc in villa Cannelis.*

885 Ibid.: *Tunc comes statuit oportunum diem que abbas conveniret et illa deceptrix cum filio ipsius. Praeparato denique juiciojusta consuetudinem et omnia abbata ordinacione.*

886 Ibid.: *Judicum tunc judices terrarum Reimundis Bonifilii alter quoque Remundus Guilielmi necnon et Miro Guilielmi miserunt eam ad iudicium coram comite praescripto.*

887 Ibid.: *Factum est hoc iudicium intus in ecclesia Sancti Faelicis in Villa Iudaica.*

888 Ibid.: *Et omnibus circum adstantibus quorum nomina longum est per singula scribere quos in fine huius cedulae reservavimus quonnumerare.*

889 Ibid.: *Tunc, sigillo judicis, sicut constitutum est, sigillata manu, post tertia die apparuit manus eius*

the last of the invocations; not only the seal of the judge (*sigillo iudicis*) but also the time frame of three days.[890] The charter states "Then the abbot, seeing what had happened and that the hand appeared burnt, demanded justice from the said count".[891] The *combusta manus* from the ritual of the hot cauldron thus indicates the deception (*mendacium*) of Arsenda,[892] because if she was being truthful she would have had no lesions on her hand.[893] The count ceded victory to the abbot and wanted to give him satisfaction by handing the *fraudatrix* and her son, along with all their possessions, into his *potestas*.[894] When the abbot saw that the count wanted to do this, he demanded that "for God's sake", he should do so in accordance with justice and in such a way that St. Peter could have all these things.[895] To do such a *legaliter* transaction required another change of place, so the count and the abbot went to Estanyol, to the church of Sant Guerau, where according to the dispositions (*secundum ordinationem judicis*) of the judge Ramon Guillem, both mother and son together with all their possessions finally came into the *potesta* of the abbot.[896] Accordingly, the witnesses, Ramon Bonfill and Ramon Ademar, swore and testified on the altar of Sant Guerau, situated in the county of Peralada in the town of Estanyol, that they saw and heard the moment when the aforementioned Arsenda and her son Bernat surrendered themselves and all their possessions to the power of Count Hug in the town of Canyelles, in a hut (*cabana*), since the judgment of the boiling water, could not save them from what they had lied about.[897]

busta.

890 Compare, ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis,* p. 797: *Postea cum magna diligentia sic fiat involuta ipsa manu sub sigillo iudicis signata, usque in die tercio quo visa sit viris idoneis et extimata.*

891 SALRACH, MONTAGUT, *Justícia*, doc. 422: *Tunc abbas, videns quod factum fuerat et comodo combusta manus apparuit, petiit justitiam a supradicto comite.*

892 See, ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis,* p. 795: *Et si mendatium habet et iniustitiam appareat manu eius igne combusta, ut cognoscant omnes homines virtutem domini nostri Iesu Christi qui venturus est cum Spiritu sancto iudicare viuos et mortuos et seculum per ignem.*

893 Ibid.: [...] *si ueritatem habuerit, nullam lesionem in te accipiat. Et si mendatium habet et iniustitiam appareat manu eius igne combusta,* […].

894 SALRACH, MONTAGUT, *Justícia*, doc. 422: *Ille vero volens satisfacere ipsam fraudatricem cum possessione sua et filii sui in abbatis praedicti potestatem voluit mitere.*

895 Ibid.: *Quod ut vidit abbas praecatus est eumdem comitem per Deum ut si id facere vellet ita fecisset ut judiciali mente posset Sanctus Petrus illa omnia obtinere.*

896 Ibid.: *Deinde comes cum abbate venerunt in Stagniolo, in ecclesia Sancti Geralli, fecit legaliter comprobare secundum ordinationem judicis Reimundi Guilielmi quomodo vel qualiter in eius potestatem semedipsam mulierem cum filio suo miserat cum omni possesione eorum*

897 Ibid.: *Nos testes Reimundus Bonifilii et Remundus Ademari jurando decimus et testificamur, super altare Sancti Geralli cuius ecclesia sita est in comitatu Petralatensi in villa Stagnioli, quia vidimus et audivimus quando iamdicta Arsendis cum filio suo Bernardo donaverunt et tradiderunt semedipsos cum omnibus possessionibus eorum in potestate Ugoni comitis intus in villa Cannelis in uno cabanna si non*

As the count was already was in full possession of them and their properties their signatures were not needed in the final charter, so it is count Hug who delivered all these things which, by the aforementioned sentence, had been entrusted to the power of Sant Pere and its abbot Guillem, "saying this: I, the venerable count Hugh give and deliver to the power of Saint Peter and Abbot Guillem all this mentioned without any diminution so that they have it perpetually."[898]

The itinerary of the protagonists in the charter was the following: the infamous mother-son duo stole from the bishop in Llançà, appealed to the count in a hut in Canyelles, Arsenda underwent the ordeal in Vilajuïga, and after three days the wound was probably inspected there as well, and the final donation charter was drafted near Peralada at the town of Estanyol.

possent per iudicium ferventis aquae quod negabant eripere.

898 Ibid.: *Et sic omnia ordinata aque perhacta, iam dictus venerandus comes Ugo tradidid haec omnia quae per justitiam jam dictam sibi erant tradita in potestate Sancti Petri et abbatis praefati Guilielmi dicendo ita: «Ego venerabilis comes Ugo dono atque trado in potestate Sancti Petri et abbatis Guilielmi haec omnia praescripta absque ulla minoratione perpetim abitura».*

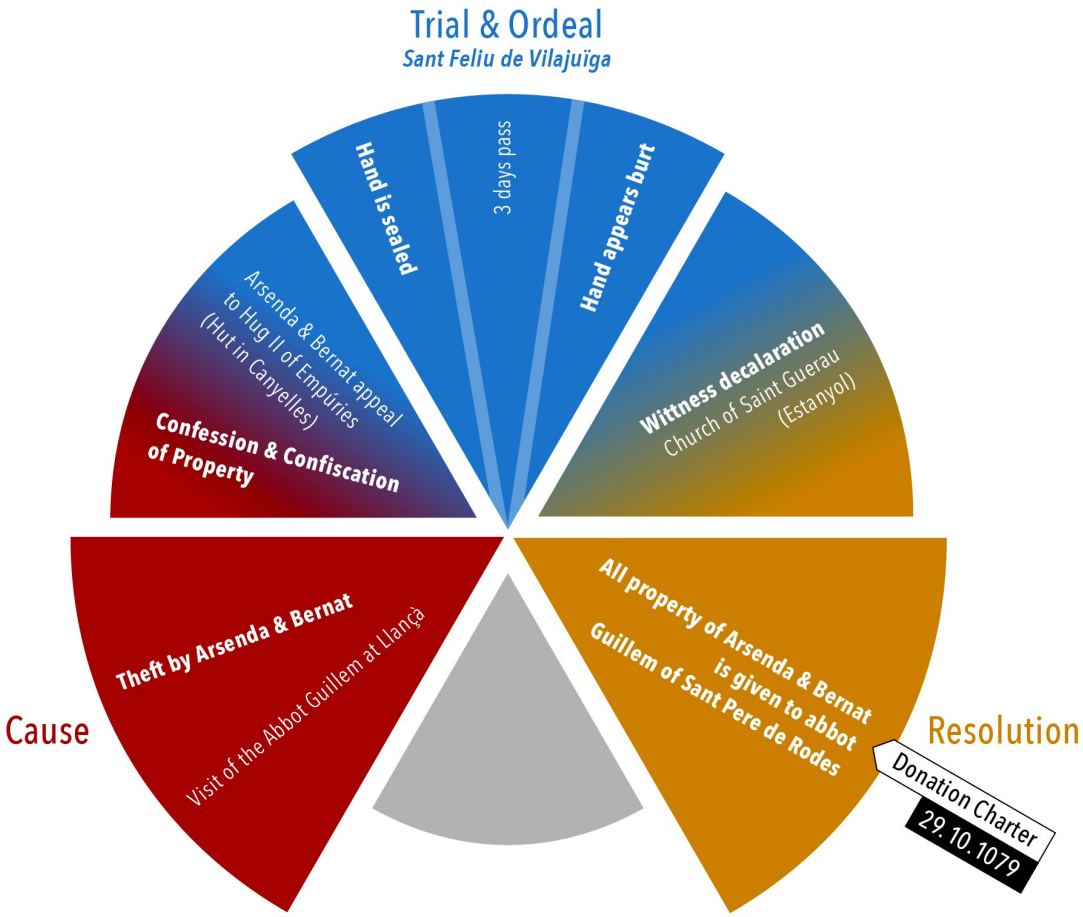

Fig. 7: Arsenda's Theft

The vocabulary suggests a proper use of one of the *Exorcismi aquae calidae* while the abbot himself states that not only was it prepared according to the customs but specifically that it was applied in a case of theft. The narrative created in the charter, as it was documented at the end of the case with the result of the ordeal in mind, thus does not hold back in emphasising the treasonous character of the two, using all the vocabulary available to address the *vasta superstitio atque hortilis irrisio* that the *deceptores et fraudalores* had caused. However Arsenda is the true antagonist; trying to escape God's justice to the point of not even stepping down at the last moment, when she must have heard one of the preliminary discussions about the ordeal that were undertaken on these occasions before she actually had to put her hand into the boiling water.[899]

Instead, right from the start the duo pretended to be faithful to the abbot and used all the symbolic communication of trustworthy servants – undoing the sandals[900] and treating him like their lord – only to beguile him into a false sense of security and to then steal what was his in the dark hours of the night. But as if this, together with the unspeakable crime they had confessed, was not enough, they also tried to switch sides by appealing to the count and entangling him into the conflict. The notion of *bausia* could not be expressed more clearly. Opportunist thieves are a constant of the human condition, but the duo features alone in the narrative and potential collaborators do not appear. Maybe there were none and it was only a spontaneous theft, the two simply seizing an opportunity, but it instead seems likely that the accomplices fled the sinking ship all too happy to leave the guilt with the two of them.[901]

Narration justifies judicial decisions and in this case one gets the clear notion that cases of treason were not reserved for those higher up in the ranks, like men holding castles as a fief, but rather that documents of a wider political scope are more likely to be preserved. In this sense the copy of the charter not only gives a glimpse

899 For example, Alturo, Bellès, Font, García, Mundó, *Liber Iudicum Popularis,* p. 796: *Deus iudex iustus, fortis et patiens qui es auctor et creator, clemens et misericors et iudicas aequitatem, tu iudica, qui iussisti rectum inditium facere et respicis super terram et facis eam tremere.* Et al.

900 A gesture taken from the Bible, in which loosening the sandals or shoe straps was seen as the work of a servant. Its most known use as an act of humility is John emphasizing that he is not worthy of serving Jesus by untying the straps of his sandal in John 1:27. See also: Marc 1:7; Luke 3:16.

901 The law is very direct in that regard. Everyone conscious of a theft is guilty if they do not take action. LV VII.2.7: *De his qui cum furibus conscii fuerint. Non solum ille, qui furtum fecerit, sed etiam et quicumque conscius fuerit vel furti ablata sciens susceperit, in numero furancium habeatur et simili vindicte subiacet.*

into the way ordeals worked but also into the mentality of honour and treason reaching down to two petty thieves and simple subjects of the abbot.

Not all cases are that spectacular; nevertheless, bearing in mind that the ordeal of the boiling water was related to theft, another case of a son stealing a mule just 7 years earlier can also be read in that fashion. It is a compensation and donation charter effectuated by Ramon Recosind and his wife Alisava, together with their sons Guillem, Enric, Pere, Ponç and Bernat. They gave the allod they had in the town of Cardona – at the place called Pinell, not far from the river Riera de Navel – to the church of Sant Vicenç de Cardona.[902] After clarifying the property's origin and how the couple came into its possession,[903] they outline the reasons for the donation. Their second youngest son stole a mule and swore that he did not steal it, but was vanquished (*et fuit victus*), and so afterwards he admitted (*recognovit*) that he had committed the theft.[904] The charter is rather short and straightforward and it must have been clear for contemporaries what being vanquished meant. While the very similar term *victus fuerit* is used mainly in trial by combat it is plausible that this case is another ordeal through boiling water as the offence is, again, theft, so therefore the implication is simple: the thief was vanquished by evidence, in this case most likely a failed attempt at an ordeal.

While Arsenda was pressured into a situation where the ordeal was the only way to preserve her property, but also was afraid of a trial, the situation for a woman named Bonadona was similar but different.[905] In front of the Church Sant Esteve de Tuixén she and her six children were accused by the bishop Bernat of Urgell, in

902 SALRACH, MONTAGUT, *Justícia*, doc. 397: *In Dei nomine. Ego Ramon Recosen et coniux mea Alisava et filiis meis Guillelmi et Aianrig et Pere et Ponc et Bernard, nos simul in unum donatores sumus Deo et Sancto Vincencio. Donamus namque Domino Deo et Sancto Vincentio per hanc scriptura donacionis nostre ipsum alodium quod abemus in Cardona, in locum vocatur Pinell, cum suis terminis et eius pertinenciis, quod est prope Kardosnario, non longe alveo Enavelis. Et affrontat hec omnia supra scripta a parte orientis in termino Berguedanis, a meridiana pars similiter vel in termino de Torredela, et de occidente parte in alveo Cardosnarii, a parte vero circii in Solaneles vel in ipso boscho de Sancta Maria*.

903 SALRACH, MONTAGUT, *Justícia*, doc. 397: *Et ipsum hec omnia advenit ad me Remon per genitori meo, et ad me Alisava per meum decimum aut per qualicumque voces, et ad nos infantes per genitores nostros. Quantum vero inter istas IIII^{or} affrontationes includunt et isti termi continent sic donamus istum alodium supra scriptum ad suum plenissimum proprium.*

904 SALRACH, MONTAGUT, *Justícia*, doc. 397: *Et propter hoc dopnamus ei ipsum alodium supra nominatum per ipsum pullium quem furavit Poncius, filio nostro, vel fratre, quia Poncius Reimundi iuravit per fratres vero Petrus Ramundi quod non furavit illum et fuit victus. Et postea recognovit Poncius que furavit eum.*

905 Comp. Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 383. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 129.

company of the judge Albertí and other *obtimatibus palatini,* of withholding an allod of the see *iniuste et absque lege* for which they should pay the *tasca*[906] to the church of Urgell.[907] Bonadona and her offspring denied being subject to this obligation: *Hoc nec fecimus nec facere debuimus.* The judge Albertí ruled (*iudicavit*) that Bonadona had to cleanse herself through a trial of God's judgement: the examination of the cauldron.[908]

Bonadona, frightened (*metu perterrita*) like Arsenda at the prospect of facing trial, replied that she could not do it, and in begging for mercy she promised to do whatever she was told from now on:

> *Oh, my Lord! It is a sin what I cannot do, I acknowledge that I have done this evil, but I beg for the mercy of God and the Blessed Virgin Mary and your mercy to forgive me and from now on I will do what you ask.*[909]

Hearing her words the bishop was moved by mercy and disregarded the offense (*scelera*[910] *dimisit*).[911] Bonadona, and her offspring promised to recognise the obligation to perpetually pay the *tascha* for the allod to Santa Maria and the canons with a "free spirit,"[912] so that they would receive the indulgence by the 'just judge and his mother,' meaning the Lord and Mary (*ut indulgenciam apud iustum iudicem et sue matri inveniamus*) as the offence was committed against the see of Urgell and thus against the *alme Virginis Marie*.[913] This short narrative combines three key elements of

906 Niemayer: tasca, p. 1114: share of crop that land-tenants owe to the landlord from fresh field.

907 Salrach, Montagut, *Justícia*, doc. 431: *Notum sit omnibus hominibus tam presentibus quam futuris qualiter venit domnus Bernardus episcopus alme Virginis Marie Sedis Vicho Urgelli in villa vocitata Toxen ante aula Sancti Stephani et cum eo domnus Guilelmus Regimundo et Albertinus iudex et aliis obtimatibus palatini officii predicti episcopi et petiit femina nomine Bonadonna cum filiis suis vel filias, id est, Arnall et Sperendeu et Mir et Guilelm et Bela et Maria, quod tenebant alodium Sancte Marie iniuste et absque lege, unde debebant taschamdare Sancte Marie et sue Kannonice.*

908 Salrach, Montagut, *Justícia*, doc. 431: *Et predicta femina cum filiis suis respondit. Hoc nec fecimus nec facere debuimus. Et iudicavit predictus iudex ad predicta femina ut se expurgasset per iudicium Dei ad examine callarie.*

909 Salrach, Montagut, *Justícia*, doc. 431: *Illa ut hoc audivit metu perterrita respondit: «O domine mi, est peccatum meum quod ego facere non possum, quia recognoscho hunc zelus fecissem, sed rogo misericordiam Dei et alme Virginis Marie et vestram mercedem ut indulgeatis super me et ego in antea faciam quod requiritis».*

910 In this case best translated as crime or offence. Comp. Salrach, Montagut, *Justícia*, doc. 115: [...] *propter scelera que fecimus* [...]. Salrach, Montagut, *Justícia*, doc. 124: *Et insuper propter celera quod comisi in alaudem Sancte Crucis et Sancte Eulalie,* [...].

911 Salrach, Montagut, *Justícia*, doc. 431: *Et predictus episcopus ut hoc audivit, misericordia motus, adquievit et hunc celera dimisit.*

912 As coercion was considered illegal by the Visigothic Law code the expression *libenti animo exspontaneaque voluntate* had to assure the legal validation of her decision.

913 Ibid.: *Et ego Bonadonna supra scripta cum filiis meis supra dictis et filias meas supra insertas libenti animo expontaneaque voluntate evenit nobis ut fecissemus scripturam Domino Deo et alme Virginis*

the administration of justice within the narratives of the charters: fear of God's judgment, mercy in the verdict, and the goal of justice to establish truth, here through the reinforcing oath in the form of an ordeal. It is clearly the judge who ruled to move on with an ordeal but as the threat of the boiling cauldron was enough to scare Bonadona into submission, no further details on the preparation and the proceedings surrounding the ordeal are given; however, the next example gives some insight into these.

On Friday 27th of April 1100 in front of the door of the church of Santa Eugènia de Berga[914], where a big crowd had gathered, Guillem Borrell d'Heures and Pere Miró de Muntanyola resolved a conflict between Ramon Bermon and his castle-holders - Bernat Berenguer and Bernat Guillem on the one hand, and Arbert Salomó and his heirs on the other – for the *batllia* of the Serra farmhouse, which the former claimed. The charter starts off with the claimant Ramon Bermon declaring in first person that he and his castle-holders Bernat Berenguer and Bernat Guillem came to trial[915] with Arbert Salomó and his heirs in front of the church-door of the Santa Eugènia de Berga within the presence of clergyman, armed men (*militum*) and peasants (*rusticorum*).[916] He continues: "and know that I, Ramon Bermon, with my castle-holders demanded the *baiulia* in the farmstead at Serra and that Arbert and his heirs replied that we had never had it, nor any person before us."[917] Only Guillem Borrell d'Eures and Pere Miró de Muntanyola were brought to judge the issues and they decided that Ramon Bermon

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Marie Sedis Vicho et sue kannonice ut amplius in antea donemus ipsa tascha de nostrum alaudium per directum quomodo nos melius facere potuerimus sive nos faciamus sive posteritas nostra usque in finem seculi, ut indulgenciam apud iustum iudicem et sue matri inveniamus, et est manifestum. Quod si nos donatores aud quislibet homo vel feminis, parva nobilisque persona qui contra hunc scripturam donacionis ecclesiastice rei ausus fuerit invadere, disrumpere vel infringere in primis iram Dei inveniat et a Patre et Filio et alme Virginis Marie sit excomunichatus et cum Iuda proditore in infermo dampnatus et sub iudicio maranatha anatematizatus, et hoc quod invasit reddat in quadruplum sicut kannones sancti constituunt atque discernunt, et in antea ista scriptura firma sit omnique tempore.

914 For a better understanding of the locality, see: Pladevall i Font, Antoni, 'Parroquia de Santa Eugènia de Berga', *Ausa*, 10/1: 436–443. Pladevall i Font, Antoni, Dalmau Font, A., and Casas i Font, P. (1997), *Santa Eugènia de Berga*: *Història i vida d'un vell poble osonenc* (Vic: Eumo).

915 The expression *venimus ad placitum cum* indicates and agreed trial by both sides where the place and time was already set and should be taken very literally as "*we came to a trial with"*.

916 The notion here is probably very simple as a big crowd of all provenances gathering for a trial. It is noteworthy though that the concept of the three estates, clergy, armed men and peasants, is already perfectly expressed here at the end of 11th Century.

917 SALRACH, MONTAGUT, *Justícia*, doc. 545: *Notum sit omnibus hominibus tam presentibus quam futuris quod ego Raimundo Bermundi cum meos castellanos Bernardo Berengarii et Bernardo Guielmi venimus ad placitum cum Arberto Salamone et suos heredes ante ostium ecclesie Sancte Eugenie cum multitudine clericorum, militum et rusticorum, scientes quod ego Raimundo Bermundi cum meos castellanos demandamus baiulia in ipso manso de Serra et Arbert cum suos heredes respondit quod nos unquam non habemus neque nulla persona nostra ante nos.*

and his castle-holders had to prove that the lords of Taradella had jurisdiction there, however, Arbert and his heirs couldn't present any testimony for their claim (*non potuerunt dare nullum testimonium*).[918] The charter continues in the typical straightforward manner with the test of the boiling water and one must assume that such a decision seems logical as no testimony was presented. The charter reads: after that *fuit paratus Arbert per suum corpus quando habuit missa dicta,* so that he can put his hand into the cauldron which after that would be heated in front of the church-door.[919] One must consider that this short line sums up all the arrangements that needed to be taken care of including the solemn mass, the correct prayers, the benediction of the water that Arbert had to drink before facing God's judgement and finally the preparation of the boiling cauldron in front of the church door. It is in the last moment when the "above-mentioned" shouted that they did not want to do it. The attendees advised Arbert and his men to agree to give Ramon Bermon and his *castlans* an annual census of a quantity of oats and three hens[920] in exchange for defence and protection.[921] Again details are meagre and there could be other rituals that were deemed necessary to prepare Arbert's body for the ordeal but the procedure seemed well established and known.

Considering that the ordeal was prescribed in cases of homicide, adultery and thievery the documentation clearly shows that it was actually used for the latter. However, property issues also demonstrate that the application of the unilateral ordeal was not limited to those three categories but was generally applied as an enhancement of the oath when word stood against word and no further evidence from both sides was provided, or if the evidence created a legal stand-off that needed God's judgment to be resolved.

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918 SALRACH, MONTAGUT, *Justícia*, doc. 545: *Et super hoc iudicaverunt Guielmo Borrelli de Edres et Petro Mironi de Montaniola quod Raimundo Bermundi cum suos castellanos se provassent ista baiulia si umquam habuissent seniores Taradellensi et unquam non potuerunt dare nullum testimonium.*

919 SALRACH, MONTAGUT, *Justícia*, doc. 545: *Et postea fuit paratus Arbert per suum corpus quando habuit missa dicta, ut misisset suam manum in ipsa caldaria qui calefiebat ante ostium ecclesie Sancte Eugenie et istos clamantes supradictos noluerunt recipere.*

920 SALRACH, MONTAGUT, *Justícia*, doc. 545: *Et post hoc dederunt consilium Guielmo Raimundi Taradellensi et Guielmo Borrelli et Bernardo Ermengaudi et Dalmacio, fratres, et Petrus Mironi et Berengario Amalrici et Petrus Suniarii et Raimundo Guifredi et Bernardo Guilelmi et Amatus Salamoni et aliorum multorum hominum qui ibi aderant quod Arbertus cum suos heredes donassent ad Raimundo Bermundi cum suos castellanos quartans III civada et gallinas III.*

921 SALRACH, MONTAGUT, *Justícia*, doc. 545: *Et propter istum censum quod illos acceperunt defendant illos vel progenia eorum corpora et avere et honore ubicumque habuerint contra cunctos homines et feminas. Et si non faciunt, non habeant istum censum neque alium. Et si bene regunt et defendent hoc quod suprascriptum est, habeant istum censum suprascriptum et in istam honorem nullam aliam forciam ibi non faciant nisi istum censum, et est manifestum.*

In a long-lasting dispute between the canons of Santa Maria of Urgell and Miró Isarn regarding an allod at Somont[922] that already had taken several sessions (*plurimos placitos*), they finally convened for what appears to be the final meeting on Thursday after Pentecost on the 28th of May 1097.[923] Miró, *ante conspectum* of the judge Guillem Guitard and many more men, stated that he came to possess the allod through the purchase made by his father and other rights,[924] while the canons uphold their "voices", meaning their evidence, that they had received the property through a donation from the archlevite Sendred and the woman Ermeriga.[925] After examining the documents (*cartulas*) of both sides, the judge considered those of Santa Maria stable and firm and those of Miró Isarn void and invalid.[926]

Guillem Guitard judged that Miró could show through an oath and the *iudicium aque calide*[927] that what appeared in the charter he showed was true and not the donation scripture presented by the canons, but it *remansit in Mironi quod non potuit*[928] *facere ipsum iudicium.*[929] The event of Miró not being able to perform the

922 Today close to Les Valls de Valira, north of the see.

923 SALRACH, MONTAGUT, *Justícia*, doc. 525: *Notum sit omnibus hominibus tam presentibus quam futuris quomodo fuit diu contemptio inter canonicos Sancte Marie et Miro Isarni de ipso alodio de Somonte, qui Sendredus archilevita et femine Ermeriga dimiserunt ad Canonicam Beate Marie, unde habuerunt canonici plurimos placitos cum predicto Miro qui auferebat iniuste ipsum alodium de Sancta Maria et ad eius Canonica.*

924 SALRACH, MONTAGUT, *Justícia*, doc. 525: *Ipse vero Miro dixit se illum alodium habere per comparaciones quas pater eius inde fecerat sive per alias voces. Super hoc autem hostenderunt canonici sedis voces et Miro Isarni suas ante conspectum Guillelmo Guitardi iudex et aliorum multorum hominum.*

925 Here typically mentioned in the introduction part of the conflict which already explicits the outcome in hindsight that Miró *auferebat iniuste ipsum alodium*.

926 SALRACH, MONTAGUT, *Justícia*, doc. 525: *Predictus namque iudex iudicavit scribturas Sancte Marie stabiles et firmas, cartulas vero de Mirone inanes et invalidas.* This opposite pair was used by several judges of the see of Urgell, see, SALRACH, MONTAGUT, *Justícia*, doc. 413: *Et predictus iudex ut vidit et audivit voces ex utraque partes et recognovit quia voces Sancte Marie prime fuerunt facte et voces Pontii posteriores composite, iudicavit voces Sancte Marie firme et stabiles et voces Poncii inanes et invalides.*

927 Not *per examine caldaria* so most probably using one of the older formulas, comp. ALTURO, BELLÈS, FONT, GARCÍA, MUNDÓ, *Liber Iudicum Popularis,* p. 793: *Exorcismi aquae calidae. Incipit exorcismus uel benedictione aque calide in qua manum ad iuditium dei mittitur. Cum homines uis mittere ad comprobationem iuditii aque calide, primum fac eos intrare cum omni humilitate in aeclesia et prostrati in oratione dicat sacerdos has orationes:* […].

928 Intentional or not the wording of he was not able to do it (*non potuit facere*) has resemblance to all kind of judicial interaction in which one side was not able to present prove or testimony. SALRACH, MONTAGUT, *Justícia*, doc. 308: [...] *et neque per testes neque per ulla vera indicia hoc facere potuit set professus est falsam esse scripturam quam mostrabat;* 374: *Et inquisita ratione, Ermengaudus nullo modo potuit hoc probare*, [...]; 414: [...] *et neque per testes neque per ulla vera indicia hoc facere potuit set professus est falsam esse scripturam quam mostrabat*. Et al.

929 SALRACH, MONTAGUT, *Justícia*, doc. 525: *Hac deinde iudicavit quod Miro Isarni monstrasset, per sacramentum et per iudicium aque calide, quia ipsum alodium quod resonabat infra illas cartas quas Miro Isarni monstrabat nec erat de ipso alodio quod Sendred et Ermeriga donaverunt ad Sancta Maria per scribturam donacionis, et remansit in Mironi quod non potuit facere ipsum iudicium.*

ordeal leads to the consequential creation of the document *carta exvacuacion* followed by the promise to help if someone should disturb this evacuation charter.[930] That Miró had the allod for a while successfully could be due to the double episcopacy that happened at the see of Urgell, with Guillem Arnau de Montferrer on one side and Ot d'Urgell on the other, that must have come to an end recently as Miró hands over the allod *in potestate novi electi episcopi.* Thus the document is a clear sign of a new bishop putting his diocese in order and establishing peace right after Pentecost. Again it is the judges' decision to proceed with an ordeal in a case when both sides presented scriptures, with Miró's seen as less credible and this was then confirmed by his incapacity to perform the ordeal.

While Miró stumbled in his attempt, disposition and determination were key and seemed to have been enough to make a case on some occasions. On the 14th of June 1072 in front of the bishop of Girona Berenguer a dispute between the canons of the see of Girona and the Priest Sendred, together with some *miles,* was discussed. In question were the tithes and first fruits of the village of Granollers which both sides claimed for themselves.[931] Sendred argued that he and the *parroechitanis suis* Dalmau Ramon and Guillem Arbert held the church of Sant Sadurní de Medinyà as the archdeacon Guillem from Girona had given it to them as a fief (*in fevum vel beneficium*), bringing forward a document signed by the former Bishop Serf de Déu, and that Granollers is within the borders of the parish of Medinyà.[932]

However, the canons responded that the village belonged to the church of Sant Julià de Castro Fracto, its chaplains and other men, as they had owned its rights for

930 SALRACH, MONTAGUT, *Justícia*, doc. 525: *Propterea ego Miro facio carta exvacuacione in potestate novi electi episcopi et omnium canonicorum [eiusdem] ecclesie de cunctis vocibus illorum alodiorum quem potest ius tenere et habere infra terminos de Somont et que ego ipse ibi tenui et habui de mea proprietate ad vestrum proprium alodium ad vestram voluntatem faciendam, exceptis illis quos ibi teneo per alios seniores. Quod si aliquis homo aut femina contra hanc scribturam exvacuacionis ad inquietandum venerit, ego Miro Isarni adiutor ero ad ipsos canonicos per fidem sine eorum engan.*

931 SALRACH, MONTAGUT, *Justícia*, doc. 396: *Presentibus sit notum et futuris non sit incognitum qualiter contentio orta est inter cannonicos sanctae Gerundensis ecclesiae, tenentes ecclesiam Sancti Iuliani de Castro Fracto, propter ius et dominicaturam cannonicae predicte sedis, et Sendredum, presbiterum ecclesiae Sancti Saturnini Mitinianensis et Dalmacium Remundi et Guilelmum Arberti, milites, qui tenent decimas iam dicte ecclesiae Sancti Saturnini per tres equales partes divisas per donum Guilelmi, Gerundensis archidiachoni, in fevum vel beneficium eiusdem archidiachoni de terminis ac decimis earumdem ecclesiarum vel parroechiarum.*

932 Ibid.: *Unde predictus Sendredus presbiter cum prenominatis parroechitanis suis Dalmacio et Guilelmo asserebant quod decimae et primiciae de villare Granollariis essent ius et dretaticum Sancti Saturnini predicti, atque monstraberunt inde scripturam testibus per conditionem iuramenti roboratam et nomine Servi Dei, Gerundensis dudum episcopi, firmatam, ubi legebatur predictum villarem de Granolariis aessae infra terminos iam dicte parroechiae Sancti Saturnini, quam scripturam predicti Sendredus videlicet presbiter et Dalmacius et Guilelmus monstraverunt predictis cannonicis ante Berengarium, Gerundensem episcopum.*

more than thirty years *sine legali disruptione.*[933] After hearing both sides, the bishop ruled *secundum formam sanctorum cannonum,* that if the canons were able to prove their possession for thirty year through oath and the judgment of boiling water, the tithes and first fruits would forever belong to Sant Julià and the canons.[934] Thus, the canons presented several witnesses including some good men (*aliquos bonos homines*), two brothers Berenguer and Guillem Ermemir, who after having traced the terms of these parishes on foot stated that the village of Granollers is within the terms of the parish of Sant Julià, and that the chaplains and others men of the canonry all agree on the fact that the canons have had possessed tithes and first fruits for over thirty years.[935] The witnesses were willing to prove their testimony (*aprobare volentes iuramento*) through the judgement of the boiling water,[936] but at last Sendred, Dalmau Ramon and Guillem Arbert accepted the *ius et dretaticum* through the long possession and recognised the claim of the canons.[937] The presence of the schoolmaster Joan of Girona suggests that the charter was written at the see and that the events most likely took place there as well.[938] In comparison to the other documents, the bishop acts as a judge giving a ruling and deeming the use of an ordeal an adequate way to prove testimony, and no direct involvement of judges can be discerned.

933 Ibid.: *Cui scripture respondendo, predicti cannonici dixerunt quod ecclesia Sancti Iuliani de castro Fracto et capellani sui et alii homines per vocem ipsius ecclesiae per XXX annos haberent possessas decimas et primicias de predicto villare de Granolariis, in presencia de capellania et parroechitanis iam dicti Sancti Saturnini, sine legali disruptione.*

934 Ibid.: *Quibus rationibus auditis, predictus episcopus iudicavit secundum formam sanctorum cannonum ut si predicti cannonici aprobare potuerint hanc tricenalem possessionem, cum iuramenti seu iudicii aquae ferventis aprobacione, omni tempore predicte decime vel primicie de prescripto villare de Granollariis in potestatem et dominium prescripti Sancti Iuliani et cannonicorum iam dictae sanctae sedis deberent manere inrevocabiliter.*

935 Ibid.: *Unde predicti cannonici fuerunt parati ad comprobandum habentes inde aliquos bonos homines, videlicet B[erenga]rium Ermemiri et Guilelmum, fratrem eius, sive alios parrochianos prescripti Sancti Iuliani, qui piduvando perrexerunt per termines iam dictarum parroechiarum et asserendo monstrabant predictum villarem de Granullariis aessae intra terminos iam [dictae] parroechiae Sancti Iuliani, atque capellanis et aliis hominibus predicte cannonicae per vocem Sancti Iuliani aessae possessum per XXX annos et amplius.*

936 Ibid.: *Et hoc predicti testes aprobare volentes iuramento seu ferventis aquae iudicio.*

937 Ibid.: *Ad ultimum predictus Dalmatius cum iam dicto Sendredo presbitero, recognoscentes predictas decimas et primicias de prenominato villare de Granollariis aessae ius et dretaticum per longinquam possessionem prescripti Sancti Iuliani, difinierunt eas sine engan predictae ecclesiae Sancti Iuliani et capellanis eius et cannonicae iam dictae sedis et cannonicis eius omnibus presentibus et futuris, sicut piduvando mostraverunt prenominati parroechitani Sancti Iuliani de castro Fracto et est manifestum.*

938 Ibid.: *Siquis vero hoc dirumpere voluerit penam excomunicationis subeat et insuper predicta omnia in duplo componat iam dicto Sancto Iuliano seu predictae cannonicae. […] SS Sendredus presbiter, Sign+um Dalmacii Remundi, Sign+um Guilelmi Arberti, qui hanc difinicionem fecimus et firmare rogavimus. Sign+um Atanolfi Remundi. Sign+um Geralli Guadalli. +Berengarius Dei gratia Gerundensis episcopus+. +Ioannes, levita et caput scolae sedis Gerundae Sancte Mariae. SSS Petrus Blidgerii presbiter. +Guilielmus archilevita. SSS Berengarius ipodiachonus, qui istam scripturam difinicionis rogatus scripsi die et anno quo supra.*

Security charters were meant to guarantee that the result of a trial was respected and therefore should show up in the documentation when former judicial decisions got challenged again in court. However, the scriptures presented by litigants and plaintiffs to bolster claims mainly use quite generic terminology such as *scripturas,* but sometimes the type, donation, evacuation etc. is added as well. A trial dating on the 18th of December 1063 is of special interest in that regard because it shows not only that this type of charter was used in court but also the importance of willingness and determination.

In a court case presided over by Ramon Berenguer I and the countess Almodis of Barcelona, the judge Guillem Marc and other nobles, two parties disputed the inheritance of a certain Gerovard. One side was represented by Guilla and her husband Joan, son of Miró, while on the other side Ermemir Oldemar and his daughters Duluriana and Eliarda[939] claimed the rights over some allods situated outside of Barcelona at a place called Ariga.[940] The dispute was settled with a compromise in which the side of Guilla pacified, defined and evacuated the property to the other party, and received six ounces of gold and a mancus in exchange, that was also destined to pay the *saio* and the rest of the court officials. The case was brought to court by Guilla and Joan as they claimed that Ermemir withheld and possessed the allods unjustly.[941] During the trial Ermemir presented scriptures *emptiones et definiciones et evacuationes* that were read and reread and it was judged that if *vera esset ipsam scripturam definicionis, evacuationis* the inheritance demanded by Guilla had to be considered valid.[942] But the document continues with the injunction *item iudicatum fuit* if Ermemir could prove that his documents are truthful, and if not then he should prove that in the case of Gerovard he had undergone a trial about the issue

939 Salrach, Montagut, *Justícia,* doc. 358: *Ego Iohannes, prolis Mironi, una cum uxori mea Guilia, nos simul in unum, pacificatores et definitores et evacuatores sumus vobis Ermemirus Ellemari et filias tuas Duluriana et Elliardis. Per hanc scripturam pacificationis et definicionis vel evacuacionis pacificamus et definimus vobis omnes voces et omnes nostros directos quod nos vobis proclamavimus et requisivimus in placito quoram domno Reimundo comite uxorique sue domne Almodis comitisse et in presencia multorum nobilium virorum ibi adsistencium, quorum nomina longum fuit texere ex parte patent subterius.*

940 Vallcarca close to Barcelona.

941 Salrach, Montagut, *Justícia,* doc. 358: *Et in iudicio Guilielmo Marcho iudice requisivimus tibi predicto Ermemiro de ipsos alodios qui fuerunt de genitori nostro Geruvard, quod nos dicebamus quod tu predictus Ermemirus iniuste possidebas eos et retinebas.*

942 Ibid.: *Unde factum est quod tu iam dictus Ermemirus in predicto placito scripturas hostendisti et emptiones et definiciones et evacuationes, et fuerunt ibi lecte et relecte, unde iudicatum fuit a predicto iudice et auctorizatum a predicto principe et comitisse ceterisque viris idoneis quod si vera esset ipsam scripturam definicionis, evacuationis, rectum erat omnem ereditatem quod nos requirebamus per vocem predicti Gerovardi de prelocuto Ermemir et filiabus suis prescriptis.*

and won. If Guilla and Joan maintained that the evacuation scripture presented by Ermemir Oldemar was false, he would prove that *ipsam scripturam securitatis* was not false through a trial by boiling water. Ermemir agreed to do the ordeal.[943] It is at this point that the *boni homines* interceded and a compromise payment was agreed upon.[944]

The documentation presented by the two sides had created a legal stand-off and consequently the proposition of an ordeal was considered fitting. Ermemir never had to enforce his oath through the ordeal of boiling water, as his determination to do so seemed to have been enough to achieve a compromise. This case also highlights that Ermemir's charter was understood as an evacuation and security charter by the judges, most probably issued by Gerovard. Nevertheless, after the death of Gerovard his daughter saw the property as unjustly held by Ermemir. The security charter alone was not enough but the willingness to prove that the charter was indeed the result of a previous court decision was, so the arbitrators stepped in.

The following example illustrates how much ritual practice one can expect, which the documents do not describe in detail due to their legal focus. A very brief fragment of a trial preserved in the Cartoral de Gerri, presided over by the count Pere Ramon I of Pallars Jussà (*Iudicium quod donavit domnus comes Petrus*)[945] and relating to an allod of Santa Maria de Gerri in Basturs[946] describes a small part of the ceremonies preceding the trial of boiling water. The ones holding the allod had to swear that they had more rights over the property than the men who drafted the charter that the monastery had presented. To perform the oath they had to hold a clod of earth in their hands taken from the four corners and the middle of the property in

943 Ibid.: *Item iudicatum fuit a predicto iudice ut predictus Ermemirus, si fieri posse, comprobasset iam dictam scripturam quod vera esset; sin autem minime facere potuisset, psaltim comprobasset quod in diebus Gerovardi prescripti aut cum ipso predictam evacuacionem placitasset aut cum aliis unde recuperassent de predictis alodiis qui ibi resonabant. Et si ista tota defecerint quare predictus Iohannes et uxorem eius Guilie predictam evacuationem in dubium vertebant et falsam ea dicebant, predictus Ermemirus deliberasset et eripuisset ipsam scripturam securitatis quod falsa non erat per iudicum aque ferventis. Deinde predictus Ermemirus dixit se facere sicut iudicatum fuit illi.*

944 Ibid.: *Deinde, intercurrente bonisque hominibus et consenciente predicto comite et comitisse, dedit predictus Ermemirus, per se et filias suas, sex uncias auri et uno mancuso a predicto Iohanne et uxorem eius Guilie, et inter predictum comitem et iudicem et saionem, et evacuavit predictus Iohannes et uxori sue prescriptos alodios qui fuerunt Gerovardi, qui sunt in termines de Ariga, quantique resonant in ipsas scripturas quas Ermemirus ostendit, ut ab odierno die et deincebs securus et quietus permaneat iam scriptus Ermemirus et filias suas de prelocuta peticione sive ceteris homines qui per illorum voces prelocuto alodio possederint.*

945 The charter can thus be dated roughly around the turn of the Century in the rule of Pere Ramon I of Pallars Jussà (1098-1112).

946 *Pasturço* probably refers to today's village Basturs close to Orcau.

question while *iurent super santos* hereafter touching the saints and then proceed with the ordeal to prove that they made a valid oath (*sano sacramento*).[947] The idea that this custom could be applied not only just for a field or vineyard but on any property could be expressed by the term "four boundaries" that described the property as a whole and is mentioned in many sales charters.[948] How common this practice was remains unknown, as the notion of a property as a whole defined through the four corners together with a piece of earth is an anthropological constant of gestures of law.[949] The saints' involvement and the giving of a certain notion of locality has already been seen in the Bonadona case, and can be easily explained through the general notion of swearing on the altars and the "position of the saint as lord and protector of his local church working mysteriously in human affairs through the power of his relics."[950]

947 PUIG, *El monestir de Gerri*, doc. 105: *Iudicium quod donavit domnus comes Petrus, de ipso alode Pasturço, de Sancta Maria de Gerr; quod illi nomines qui tenent ipsum alodem aprehendant de quatuor angulos de ipsas terras et de medium, et teneant terra in mans et iurent super Sanctos ut melius est direct de illos per suos parents qui a ilos et agiren et per tenecon ce abent quae non est de Sancta Maria per carta ne per dono chem abuisent de illos homines qui ipsas cartas fecisent, et tangant ipsos sanctos et faciant iudicium de aqua calida che sano sacramento abent facto.*

948 In all kind of charter types the *quatuor affrontaciones* could define the limits of a property. See, an early example dating into the year 904, CC VI, doc. 173: *Quantum in istas quatuor affrontationes includunt de ipsas salinas* [...]. Closer to the charter dating in the year 1001, see, BAIGES, FELIU, SALRACH, *Els pergamins*, doc. 328: *Quantum infra istas quatuor affrontationes includunt sic vendo* [...].

949 Lasch already gave an impressive list of *Erdscholleneide*. Lasch, R. (1908), *Der Eid, seine Entstehung und Beziehung zu Glaube und Brauch der Baturvölker.*: *Eine Ethnologische Studie* (Stuttgart: Strecker & Schröder), p. 30-37.

950 Morris, C. (1975), 'Judicium Dei: the social and political significance of the ordeal in the eleventh century', *Studies in Church History*, 12, .p 95.

IV.2.3.2.2. *Iudicii Aquae Frigidae*

An important charter which gives another perspective on ordeals dates on the 7th of July 1088. It is donation charter from a priest named Bonfill handing over some property to Arnau, son of Sendred, and his wife Ermetruid to hold it in *servicio Deo et Sancta Maria de Gissona,* and to hand over one fourth de *ipso expletum* on a yearly basis.[951] The charter starts off with a preamble[952] referring to the Visigothic Law concerning the importance of writing,[953] then the main text of the document goes on to announce a dispute in which it was not a lack of respect for written testimony but a distrust of a supposedly orally confirmed transaction that provoked a negative outcome. As the document states, it had been known (*Est sciendum*) that the allod was a donation that a certain woman named Adaleic made in her lifetime to Arnau *sine scriptura* but through *suis verbis.* Her brother, however, did not believe in that verbal contract which resulted in a cold water ordeal (*iudicium Dei aque frigide*) and the monastery came into the allod's possession.[954] This side note shows that the ordeal of cold water was used in the very same fashion as its counterparts to, we must assume prove someone's oath, as well as as a clear motivation to avoid oral contracts and rather rely on the written word, which is exactly what Bonfill did, and did not hold back on the emphasis. Ordeals as public spectacles had an impact on the surrounding community that remembered these events.

951 SANGÉS, *Recull*, doc. 58: *Igitur ergo in Dei nomine, ego Bonfilius, sacer, donator sum tibi Arnald pro[li] Sendre et coniux tu Ermetruit. Per hanc scripturam donacionis dono vobis alaudem qui est de Deo et Sancta Maria de Gissona. Hoc dono vobis in tali videlicet racione ut bene edificetis et laboretis vobis et gens vestra et abeatis predicto alod in servicio Deo et Sancta Maria de Gissona et de suos clericos hic et in pertpetuum, et donetis ipsum quartum de ipso expletum ad clericos Sancta Maria vobis et vestra posterita per unumquemque annum.*

952 SANGÉS, *Recull*, doc. 58: *Ut ita valeat donacio sicut et emptio, donacio qui pro voluntatem factam fuerit talem quam et emptio abeat firmitatem quia res donate si in presencia tradita est nullo modo repetatur a donatore.*

953 A clear reference to LV V.4.3. For a detailed analysis of this type of preamble, see: Boscá Codina, J. V. (1999), *Ideología, organización social y cultura escrita en la Cataluña de los siglos X al XII* (València: Universitat de València, Facultat de Geografia i Història), p. 102-103.

954 Ibid.: *Est sciendum iam dicto alod quod fuit de donacione Adaleics femina et per suis verbis sive per donacione quod fecit ad predicto Arnald in vita sua sine scriptura et hoc non fuit creditum fratres predicte Adalecis et post hoc invenimus in iam dicto alod per iudicium Dei aque frigide. Hoc quod scriptum est dono vobis ad abendum et possidendum omnibus diebus, et est manifestum. Quod si aliquis homo vel homines qui contra hanc ipsa scriptura venerit pro ad inrumpendum in duplo vobis componat predicto alaude cum suorum melioracione. Et inante ea ista scriptura firma permaneat mode vol omnique tempore.*

In the unilateral cases of the ordeal of hot water the notion of hindsight within the narration makes the whole setup feel staged, as we are presented with the outcome beforehand, but in bilateral ordeals results were not always so clear as they had to be negotiated beforehand.

The Abbot of Sant Cugat del Vallès, Guitard and Bernat, son of Otger, came to Barcelona in 1036 to resolve a conflict over the boundaries and lands of Santa Oliva, Calders and Castellet. The assembly was presided over by the countess Ermessenda, her grandson, count Ramon Berenguer I, the Bishop Guislabert of Barcelona, and the judge Geribert, besides a long list of important members of her court (*procerumque suorum*).[955] Both sides laid out their petitions and the abbot based his rights on a precept of king Louis IV and agreed to give sureties and submit himself to the law as was ruled by the bishop, Bernat Sendred and Folç Geribert.[956] Bernat, however, declared that he would not submit himself under the yoke of the law (*sub iugo supradicte legis*) and that he would not accept any law and would go to court "but if you want, let us put two infants to the judgment of the Almighty God in cold water so that it appears who is right."[957]

Seeing that there was no means of compromise (*p[acificaci]onem neque amodium*), the countess, together with the three men who had decided upon a trial beforehand, now proposed an agreement (*conveniencia*) to the litigants. The territory in dispute would belong to the party whose infant in their representation was received by the water, and that what was the object of the litigation would be divided in half between them in the event that one or the other child was received by the water or, on the contrary, floated upon water.[958]

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955 SALRACH, MONTAGUT, *Justícia*, doc. 256: *Notum sit omnibus hominibus tam presentibus quam futuris qualiter orta fuit contencio inter Guitardum, abbatem Sancti Chucuphatis cenobii, et Bernardum, prolem qui fuit Hodegarii, de terminos Sancte Olive [sive de] ipso Kaldario et de Kastelet. Proinde venerunt in presencia donne Ermisindis comitisse atque [nepti suo] domno Reimundo, prolis Berengarii comitis, procerumque suorum Guislibertus, episcopus [sancte sedis] Barchinonensis, et* […] *et aliorum multo[rum bonorum hominum] ibidem adsistencium.*

956 Ibid.: *De hoc alterca]ntes atque inter se contendentes iudicavit Gislibertus, suprascriptus episcopus, et donno Bernardus [Sendredus, et Fulco Geri]bertus, ut ex ambobus partibus misissent se] sub lege, et [dedissent fideiussores ut secum] dum sanccionem legis Libri Iudicum fecissent sibi inter se directum. Ad quem supradictus abba [Guitardus prestus fuit et fi]deiussores dare et secundum sanccionem] legis Libri Iudicum directum facere.*

957 Ibid.: *Supradictus vero Bernardus noluit se mittere sub iugo supradicte legis, nec ullumque alium dire[ctum facere, nisi tantum modo] verbis suis affatus est dicens: «Ego [nullum alium directum] faciam neque recipiam, sed si [vultis mittamus,] singulos puerulos ad iudicium Dei Omnipotentis in aqua frigida, ut inde appareat cuius di[rectum sit».*

958 Ibid.: *[Et nos], suprascripti Ermisindis comitissa et Gislaber[tus episcopus, et] Bernardus Sendredus, et Fulco [Geribertus, quan]do hec vidimus et nullum alium directum facere aut p[acificaci]onem neque amodium de hoc facere non potuimus, [fecimus] talem conveniencia inter utrosque: ut qualiscumque ex illis puerulis suscepisset aq[ua, ipse qui illum] pro se vicarium tradidit habuisset suprascripta omnia, sicut suprascriptum est vel piduatum fuit; si vero ambos suscepisset aqua, divisissent per me[dium suprascripta omnia] piduata; si autem ambobus evanuerint ut non recipuerit illos aqua, similiter divisissent*

The agreement was secured through sureties and it was on the agreed day (*statutum diem*)[959] they made the *iudicium,* in which it appeared that the water covered but did not hold back the boy who represented Sant Cugat, and that the one of Bernat remained on the surface and the water did not receive him. The judges wanted to divide the territory it in half, but for the love of the almighty God and so that there would be never any quarrels between them, they made an arrangement whereby the smaller part went to Sant Cugat and the larger part to Bernat,[960] who renounced what he unjustly held in favour of Sant Cugat, and with his own hands he placed the document stating his renunciation on the altar of Sant Cugat.[961]

This curious judicial process (*tant curiós procés*)[962] has been read since Josep Balari many times as a *Judicium Dei per albatum,*[963] which was interpreted as two dead infants by the author, however the source itself describes it simply as a cold water ordeal in which two little children represented the parties, not unlike champions in a judicial duel. I am not aware of the procedure being done through dead children anywhere in Europe. At the very least it shows that the interpretation of the outcome of any bilateral ordeal, as we will see was the

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[supra]scripta omnia per medium, sicut piduatum fuit ex ambobus partibus.

959 Ibid.: *Unde hoc firmatum et pigne[ratum inter] illos fecerunt suprascriptum iudicium ad statutum diem in quo apparuit ita: puerulum Sancti Chucuphatis co[operuit] aqua, sed non retinuit; puerum autem supradictum Bernardi nichil omni[no suscepti aqua, sed vanum d]e superstetit.*

960 Ibid.: *Deinde nos suprascripti voluimus dividere per medium suprascriptam contencionem. Et propter amorem Dei omnipotentis et precibus Bernardi [suprascripti] eo quod [umquam nulla alterkacio] aut contencio fieret inter illos, fecimus amodium inter illos ut abeat pars minima Sancti Cucuphatem et pars maior Bernardi, sicut piduavit Gisla[bertus] episcopus et Bernardus Sendredi [extremum] diem quando hunc amodium fecimus. In tale videlicet racione: ut ab hodierno die vel tempora non sit illi licitum appetere nec inquietare suprascripta omnia neque de suprascriptis omnibus, unde se iachivit in presencia suprascriptarum omnium, in potestate Guitardi abbati qui hec appetebat per vocem Sancti Cucuphati, et suprascriptus Guitardus sive supradicta Ermisindis comitissa dederunt maiorem partem supradicto Bernardo, sub tali vero conventu: ut ita stet supradicta divisio sicut supradictum est vel terminatum.*

961 Ibid.: *Bernard, qui hanc definicionem feci et firmavi et firmare rogavi, et nunc confirmo hec omnia sicut superius scriptum est, et relinquo hec omnia quod iniuste detinebam, et evacuo me de omnibus vocibus quas ibi apetebam vel apetiturus eram quocumque modo in potestate Sancti Cucuphatis, et supra sacro sanctum eius altare manibus meis hoc scriptum pono et relinquo hec omnia, sicut hic scriptum est, ad suum plenissimum proprium, sine engan, et sine ullo malo ingenio, aut ulla decepcione. Propterea ut nullus unquam mee proienie aut mei generis, aut mee propinquitatis audeat hoc inquietare aut aliquomodo apetere.*

962 Carreras i Candi, F. (1903), 'Lo Montjuich de Barcelona:. memoria llegida en la Real Academia de Buenos Letras de Barcelona los diés 7 y 21 de juny de 1902', *Memorias de la Real Academia de Buenas Letras de Barcelona*, 8, p. 345: En l'any 1046 fou dirimida la questió entre les dos parts, pactantse previament lo que deuria significar la circunstancia de restar enfonsat ó surant, l'infant mort representant de quiscuna d'elles Si un dels albats nadés en la aygua, la part que ell representaría tindria son dret segons lo demanava. Si tots dos albats sobrenadaven, se dividiría lo territori per mitat, é igualment si abdós s'enfonsaven.

963 Based on a later document from the same Cartulary of Sant Cugat dating on the 20th of March 1180. (Rius, *Cartulario*, doc. 1129: *Et ego, iam dictus Bernardus de Papiol, diffinio Deo et domui Sancti Cucufatis et tibi, Guillelmo, abbati, et tuis successoribus, et omnibus fratribus ibi habitantibus, illam alteram quadram que stat iuxta meum quam michi vos datis, que est apud circium tota integriter, sicut continetur in ipsa carta que fuit facta inter Guitardum, abbatem, et Bernardum Auger, qua fuerunt termini de Castelleto et de Caldario divisii iudicio Dei per albatum*). See: Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 383-385.

case with trial by combat, was determined beforehand. The willingness of a peaceful outcome is clearly expressed in the charter and the division of territory looks like a peace offering to Bernat, who surely had in mind that the regular outcome of the judicial decisions at the court of Barcelona when Sant Cugat brought and showed precepts could be very negative, especially with regards to the Penedès. It is hard not to see his proposal of a bilateral ordeal as a clever move to avoid an unilateral decision.

In the studied documentation cold water ordeals are a rather rare sight in Catalonia but as the cold water ordeal was also included several times within the promulgation of the results of the assemblies of Peace and Truce of God, it nevertheless drew attention.[964] As we are concerned with questions regarding the ordeal here, and the literature regarding this often-called movement in Catalonia has grown considerably over the years,[965] especially since a good edition was released by Gener Gonzalvo in 1994,[966] and also received international attention, only some short considerations seem adequate looking only at its early stages.[967] First of all around the year 2000 the intellectual crossroads of different schools of historians and the wide ranging opinions about the effectiveness of these assemblies, their meaning and their goals became

964 For example Aquilino Isglesia quickly looks to them for Catalonia as he does not have many options. Iglesia y Ferreirós, A. (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981, p. 134.

965 Ramon d'Abadal i de Vinyals (1962), *L'abat Oliba, bisbe de Vic i la seva època* (3rd edn., Barcelona: Aedos), first pub. 1948, El Guió d'Or, p. 227-241. Junyent, E. (1975), *La pau i treva* (Barcelona: Rafael Dalmau). Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (Barcelona), II, p. 109-117. Gonzalvo i Bou, Gener (1986), *La Pau i Treva a Catalunya: origen de les Corts Catalanes* (Barcelona: Edicions de la Magrana). Farías i Zurita, Víctor (1993-1994), 'Problemas cronológicos del movimiento de Paz y Tregua catalán del siglo XI.', *Acta historica et archaeologica mediaevalia*, 14-15: 9–37. Gonzalvo i Bou, Gener (1995), 'El comtat d'Urgell i la Pau i la Treva', in Bertran, Prim et al. (ed.), *El Comtat d'Urgell* (Lleida), 71–88. Aymar i Ragolta, Jaume (1999), *Les Assemblees de Pau i Treva*: *Una història en clau de pau* (Barcelona). Bowman, J. A. (1999), 'Councils, memory and mills: the early development of the Peace of God in Catalonia', *Early Medieval Europe*, 8/1: 99–129. Farías i Zurita, Víctor (2007), 'La proclamació de la pau i l'edificació dels cementiris. Sobre la difusió de les sagreres als bisbats de Barcelona i Girona (Segles XI-XIII)', in Farías i Zurita, Víctor, Martí i Castelló, Ramon, and A. Catafau (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines), 13–84. Gonzalvo i Bou, Gener (2010), 'Les assemblees de Pau i Treva', *Revista de Dret Històric Català*, 10: 95–103.

966 The corresponding literature for Catalonia is found there as well. Gonzalvo i Bou, Gener (1994), *Les Constitucions de Pau i Treva de Catalunya (segles XI-XIII)* (Textos jurídics catalans., 9, Barcelona), p. LXI-LXIX.

967 The very profitable interregional comparison published in 1992 shows how much the local responses differed, see: Paxton, F. S. (1992), 'History, Historians, and the Peace of God', in T. Head and R. Landes (eds.), *The Peace of God. Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press), 21–40. Koziol, G. (1992), 'Monks, Feuds, and the Making of Peace in Eleventh-Century Flanders', in T. Head and R. Landes (eds.), *The Peace of God*. *Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press), 239–59. Moore, R. I. (1992), 'The peace of god and the social revolution', in T. Head and R. Landes (eds.), *The Peace of God*. *Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press), 308–27.

obvious, ranging from the suppression of uncontrolled violence[968] to community building and many more.[969]

The ordeal of cold water is first found in the resolution of the 1033 assembly under the auspices of abbot Oliba as bishop in Vic. The notion is simple: someone who broke the truce has to pay double for the damage caused, and the following paragraph suggests that he first had to undergo an ordeal but is not very specific about the details.[970] The assembly at Barcelona in 1064 in comparison seems nearly obsessed with clarifying when the ordeal had to be administered, mentioning it in four chapters.[971] The accused received the option to *purget se* or *expient se* through a *iudicium aque frigide* and were threatened by excommunication if they did not want to present themselves before ecclesiastical justice.

968 As the movement protects, people, goods, holy spaces especially *sagreres* etc. against attacks, see: Gergen, T. (2004), 'La Paz de Dios y la protección de personas y de bienes', *Cuadernos de Historia del Derecho*, 11: 303–325.

969 Thomas Gergen sums up the different schools of historians and their viewpoints in his article and devides them in three main strands. Gergen, T. (2002), 'The Peace of God and its legal practice in the Eleventh Century', *Cuadernos de Historia del Derecho*, 9, p. 13: But, according to the period and the author's ideology, interpretations are starkly different. Although they are many, historically, three main schools of thought can be distinguished. See also: Goetz, H.-W. (2002), 'Die Gottesfriedensbewegung im Licht neuerer Forschungen.', in A. Buschmann and E. Wadle (eds.), *Landfrieden. Anspruch und Wirklichkeit* (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.F., Bd. 98, Paderborn: Schöningh), 31–54. The most provocative thoughts surely came from Dominique Barthélemy, esp.: Barthélemy, D. (1997), 'La paix de Dieu dans son contexte (989-1041).', *Cahiers de civilisation médiévale*, 1997: 3–35. Barthélemy, D. (1999), *L'an mil et la paix de Dieu*: *La France chrétienne et féodale 980-1060* (Paris: Fayard).

970 GONZALVO, *Pau i Treva,* doc. 3: *Si quis autem intra hanc predictam treguam aliquod malum alicui fecerit, in duplum ei componat, et prius eam per iudicium aque frigide in Sede dubliciter emendet. Si quis autem infra hanc treguam voluntarie hominem occiderit, ex consensu omnium christianorum definitum est, ut omnibus diebus vite sue exilio damnetur. Quicumque vero pracem predictam et pactum Domini preceptam quam treguam dicunt bene custodierit et servaverit Deus pacis et totius consolationis cum illo erit, et graciam sue benediccionis super illum multiplicetur, et per hanc observacionem omnium peccatorum suorum remissionem habere poterit.* [Followed that anybody breaking the truce would be subjected to excommunication.]

971 GONZALVO, *Pau i Treva,* doc. 4, XIV: *Siquis autem iuxta hanc predictam treugam aliquod malum alicui fecerit, in duplum ei componat, et postea per iudicium aque frigide treugam Domini in Sede Sancte Crucis emendet.;* XVIII: *Quod si dixerit malefactor ille illos qui secum perrexerunt non ab illo invitatos esse ad faciendum illud malum, purget se per iudicium aque frigide non ab illo esse deductos. Et postmodum illi qui interfuerunt prefate devastationi maneant sub excomunicacione donec emendetur ab eis prefatum malum. Et idem malefactor sub eadem excomunicacione maneat, donec emendetur ab illo, et ab illis quos secum duxerit malum quod ibi fecerunt.* XXI: *De omnibus illis constitutum [est] qui interfuerint malefactis quod si dixerint se non interfuisse, quod expient se per iudicium aque frigide in Sede Sancte Crucis. Quod si facere noluerint, excomunicacioni subiaceant.* XXII: *Omnes vero probaciones et expiacaiones, que iudicabuntur querelatoribus et redirectoribus pacis et treuge Domini, fiant per iudicium aque frigide in Sede Sancte Crucis. Ultimo vero de pace et treuga Domini a nemine fiat in omni Barchinonensi episcopatu, donec prius querela ad Barchinonensem episcopum et eius canonicos perveniat, et expectetur tempus fatigationis XXX diebus, quamm episcopus et canonici Sedis faciant in malefactore illo. Quod si infra hos XXX dies redirectum non fuerit, vel ita firmatum in manu episcopi et canonicorum eius per pignora quod redirigatur sine engan, malefactor ille et proprie res sue non sint in pace et treuga Domini, illo et honore suo excomunicato cum adiutoribus suis.*

There is no doubt that the movement had certain effects for Catalonia. For example, somewhere between 1098 and 1100 the count Pere Ramon del Pallars Jussa and other nobles swore an oath to Bishop Ot of the see of Urgell to observe the peace and truce of God.[972]

However, men found guilty of having broken the truce of God outside of a wider conflict are few.[973] One is Pere Arnau, who in a donation charter dating 2 days after Easter 1106 explains the motivation behind him handing over a mansion in the town of Cerqueda, in the county of Urgell in the municipality of Santa Eulàlia, to Santa Maria de la Seu d'Urgell and its sacristan Joan. He does so as he fears he has incurred the wrath of God because he had broken the truce of God and violated a *sagrera*. He went before the see for a trial (*ad emendationem*) but as he was not able to *non potui illam emendare,* he makes the donation.[974] However this looks more like a case of not having the money to pay than failing an ordeal.

Several incidents at the end of our time scope found their way into the documentation all relatively close to an assembly held on March the 10th 1131 in Barcelona, though with no attendance of the Urgellian mitre, which could be simply because former oaths like the one mentioned above already had been sworn.[975] Galceran de Pinós and Ramon II of Cerdanya were found or at least admitted to being guilty, having broken the truce of God at the town of Merengs. They made compensation through a property in the year 1130, roughly two weeks after Easter, and promised to be faithful to the see of Urgell from now on,[976] but Galceran relapsed into bad behaviour five

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972 Moran i Ocerinjauregui, Josep (1992-1993), 'Jurament de pau i treva del comte Pere Ramon de Pallars Jussà al bisbe d'Urgell. Transcripció i estudi lingüístic', *Llengua i literatura: Revista anual de la Societat Catalana de Llengua i literatura.*, 5: 147–169.

973 Nevertheless they are quite common in the lists of grievances, most probably because it was considered especially vile but also because it could lead to higher compensation payments, see: SALRACH, MONTAGUT, *Justícia,* doc. 404, 435, 503, 507, 511.

974 BARAUT, «Els documents», IX, doc. 1230: *Ego Petrus Arnalli sum timens ne inveniam iram Dei, quia fregi trevam Domini et etiam sacrarium, et veni ad emendationem ante alme Virginis Marie Sedis Urgellensis ad iuditium et non potui illam emendare. Ideo dono domino Deo et Sancte Marie et tibi Iohanni sacriste mansionem quam habeo in villa Cercheda in ipsa sacrera, et est in comitatu Urgelli, in apendicio de Sancta Eulalia. Et afrontat de I[a] parte in supradicta ecclesia, de alia in sacrario de Sinfre Guntiog, de III[a] in Petro Bernardi, de IIII[a] vero parte in ipsa cultia. Quantum inter istas afrontaciones includunt, sic dono domino Deo et Sancte Marie et tibi prenominato sacriste ab integrum. Quod si est ullus homo vel femine qui hanc cartam inquietaverit in quadruplum componat et in antea firma maneat.*

975 GONZALVO, *Pau i Treva*, doc. 10.

976 BARAUT, «Els documents», IX, doc. 1407: *Patefactum sit omnibus hominibus qualiter venerunt Gaucerandus de Pinos et Raimundus, vicecomes de Urg, in potestatem Dei et Beate Marie et domni Petri episcopi propter redirectionem de malefactis tregue Domini et de sacrariis quos in multis locis fregerunt. Isti autem prenominati promitunt Deo et Sancte Marie et domno Petro episcopo et clericis istius loci ut sint eis fideles et adiuvent a tenere et ad defendere honorem Beate Marie sine malo ingenio et esvacuant et redirigunt se de malefactis quas ipsi vel antecessores eorum fecerunt in honore quem Beata Maria habet in*

years later and together with his wife had to make amends again.[977] But none of these cases, even when put together with another a bit out of our scope of analysis, show how they were proven guilty.[978]

The only example found in the documentation that gives some insight for our purpose here lies out of our time scope but is too interesting to ignore. Two non-dated but what appear to be related documents survived regarding a case which was judged by Oleguer, archbishop of Tarragona, and the bishop of Vic, Ramon Gausfred. The origin of the conflict seems to be the inheritance of the spouses Ramon Bernat and Ermengarda, claimed on one side by the clergyman Ramon Bernat and the *miles* Pere Ricard, and on the other by a certain Arnau Pere.

An undated short list of grievances seems to be related to the case and reads like an inventory of all kind of movable goods, including livestock removed by Arnau Pere.[979] The judges selected by both sides, after examining the reasons and scriptures of the parties, ruled that Arnau Pere had to prove with [suitable] witnesses that the wrongs he did were done outside of the truce of God, but if he failed to so, then as they were committed during the truce he should pay twice.[980] If, however, he fails to prove this,

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villa que vocatur Meranegs, quod amplius nec ipsi nec illus successor eorum faciant ibi ullam toltam nec ullum adempramentum, sed quiete et libere habeat illum Sancta Maria sine malo ingenio. Iterum iam dictus Gaucerandus dimittit Deo et domno Petro episcopo alodium quod Sancta Maria habebat in Tost de artiachonat de Raimundi Bernardi ad integrum.

977 BARAUT, «Els documents», IX, doc. 1447: *Notum sit omnibus hominibus presentibus et futuris, quod ego Gauceran de Pinos et Stephania uxor mea et filius noster Gauceran, propter sacrilegia et treguas quas fregimus et alia multa mala que fecimus Domino Deo et Beate Marie Sedis, donamus pro emendacione Beate Marie Sedis et P. episcopo et canonice eiusdem Sedis mansum de Bernardo de Banat, sicut habeo et possideo, post obitum meum. Interim vero habeat tenenciam prescripta chanonica terciam partem omnium expletorum et placitorum predicti mansi. Si qua persona hoc inquietare voluerit non valeat, set in quadruplo componat et carta firma permaneat.*

978 Slightly out of our time frame, one could add the case of Guillem de Ponts having caused damage to clergy, knights, merchants, and the poor during the truce of God in 1138, following the same pattern of aggression against the mitre of Urgell. For the remedy of his souls, he ceded the rights of some mills he possessed to the bishop Pere, so that one day every week, the See could use the mills at no cost, except for the maintenance of the tools. Guillem also promised not to harm anyone who comes to use the mills. BARAUT, «Els documents», IX, doc. 1463: *Notum sit omnibus hominibus presentibus atque futuris qualiter ego Guillelmus de Ponts sum nimis involutus magnis criminibus de malefactis que feci clericis et militibus sive negociatoribus necnon pauperibus in tregua Domini.*

979 The editors date the document in the year 1132 because of the only reference of a Bernat Pere, baptised, inhabitant of a farmhouse in Sant Martí de Provençals. Since Pere Ricard was the owner of this farmhouse, it is probably the same Arnau Pere who disputed the inheritance with Ramon Bernat and Pere Ricard. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 654: *Breve vel querimonia que habuit Bernardus Pere, babtidad, de Arnal Pere. Primum, X parilios gallinas et V parilios occas; et camisas VIII de lin obtimas et unas bragas et una savana obtima et unum mantel de divit et unes pels de cabridis et guadengas III et I guat et I borac et unes mapas et unes tovaies et flads III de lin; [et] parilios I anades; et estopa de lin I cova; et caseos VIII obtimos; et quartera I et sedacos II obtimos et excudeles IIII et duos coltels; et dues goneles de fembra obtimes et una de omine et I plomac et I choreg et I borsa; et VII dineres et I tosoras et I cavadel et I una rasora et IIII fauces.*

980 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 730: *Electi super hoc iudices O[legarius], Terrachonensis*

Ramon as a cleric and Pere as a *milites* would have to expiate themselves through an oath and if they succeed Arnau should make amends for the wrongs he did outside the truce.[981] Leaving the inheritance issue that was settled afterwards aside, it becomes clear that these documents were interim documents created in the middle of the judicial process and most probably did not need any dates. for that reason

The documentation regarding the cold water ordeals is meagre as are the individual cases explicitly transgressing the peace and truce.

archiepiscopus, et R[aimundus], Ausonensis episcopus, discussis utriusque partis rationibus et scripturis, iudicaverunt ut si A[rnallus] Petri probare posset per ydoneos testes quod se fatigasset in eis de directo quicquid mali eis fecit extra trevam, ipsi in pace se deportarent. Quod autem per trevam eis fecisset malum, emendaret in duplum et Sedi satisfaceret.

981 Ibid.: *Quod si in probatione defficeret, expiarent se per sacramentum Raimundus, sicut clericus, et P[etrus], sicut miles, de predicto fatigamento et A[rnallus], si hoc facere possent, emendaret eis etiam ipsum malum quod fecerat eis extra trevam.*

IV.2.3.3. Conclusion

The ordeal fits into the legal tradition of the 11th Century, or as Bartlett put it the "heyday of ordeals", especially if one considers it as a phenomenon that goes beyond the borders of the Catalan counties and was understood as a universal practice accepted in wider areas of Europe.[982] The existence of more source material is not necessarily proof of it happening more regularly than before the turn of the millennia, but as it is embedded as an integral part of legal thought and action, it leaves no doubt that it was considered an exceptional but established procedure in the second half of the 11th Century.

The use of ordeals in the Catalan documentation can be summarised in three words: exceptional, widespread, and distinct.

Exceptional as it was only used under very specific legal circumstances. Roger Collins looking at the early evidence saw a difference between the Leonese kingdom and Catalonia where the ordeal was supposedly only used in criminal accusations. The later evidence from Catalonia presented here, though, suggests otherwise as the ordeal was universally used "to confirm the veracity of the oath" and therefore would not be any different to the cases he looked at.[983] However, the ordeal does not substitute the ways judges found truth in any way. Its rather exceptional use attested to in the sources should rather be explained through the legal culture found in Catalonia which reduces its need to be performed and thus rather shows the prevalence of the written word as a means of finding truth.[984] As has been shown the

982 Bartlett, R. (1990), *Trial by Fire and Water*: *The Medieval Judicial Ordeal* (Oxford: Clarendon Press), p. 13-33.

983 Collins, R. (1986), 'Wisigothic law and regional custom in disputes in early medieval Spain', in W. Davies and P. Fouracre (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge), p. 87: What then followed marks a clear divergence in procedure between the two regions: in the Leonese kingdom one of the witnesses was obliged to submit to the ordeal of the *pena caldaria* in order to confirm the veracity of the oath they had all just taken. This too was supervised by the *saio,* and involved the witness who had volunteered in extracting two or three stones from a cauldron of heated water and then having his hand bandaged. Delivered into the custody of someone nominated by the opposing party, he was brought back three days later before the *saio* and another set of independent witnesses to show whether or not his hand was 'clean' *(limpidus),* that is unmarked. In Catalonia no such process of ordeal was employed other than in criminal accusations, the only role envisaged for it in the *Forum Iudicum.*

984 In comparison the sporadic register of the cathedral chapter of Várad (today's Oradea, in Romania), the *Regestrum Varadinense*, compiled between 1208-1235, but only preserved from a 16th century edition, contains the regests of 389 ordeals. It is an extreme example but it makes clear to us the very probable loss of sources or their lack of constancy. Comp. Kandra Kabos, *A Váradi Regestrum*, Budapest, 1898.

judges also relied on testimony to validate scriptures if the decision between litigants was difficult, and because of this the ordeal nevertheless found its limited place within procedure.[985]

Rather than seeing it as a sign of decadence in regards to the traditional methods of investigation used by the judges, it could instead be seen as an additional tool that allows flexibility and achieves the ultimate goal: establishing the truth. In my opinion it is therefore problematic to consider ordeals as extrajudicial as they are deeply connected to the oath and thus to one of the centrepieces of judicial validation.

Regarding the triad of Deuteronomic offences, as far as the consulted documentation goes there is no preserved case in which the judges suggested or the defendant pleaded for an ordeal to prove their innocence in regards to adultery. From the rather small sample size of attested cases of adultery within the source material,[986] one learns nothing about the trial as such. Three individual cases, for example, are known of through donations or sales of the hitherto confiscated property but neither the adulterous priest Radulf,[987] nor the Jew Isaac who was convicted of having had intercourse with a Christian women[988] really fit into cases where one would expect an ordeal.[989] This leaves us with a singular case of an adulterous women named Igulo who had been convicted of adultery that she had committed with a man named Planquer. Again this case is only recorded as her husband Pere donated half of what he received as a result of her conviction to Sant Cugat.[990] While in the last case an ordeal could

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For more literature, see: Curta, F. (2006), *Southeastern Europe in the Middle Ages, 500-1250* (Cambridge medieval textbooks, Cambridge, New York: Cambridge University Press), p. 8-9. See also: Zajtay, I. (1954), 'Le Registre de Varad. Un monument judiciaire du début du XIIIe siècle', *Revue historique de droit français et étranger (1922-)*, 31: 527–562.

985 Comp. White, S. D. (1995), 'Proposing the Ordeal and Avoiding It. Strategy and Power in Western French Litigation, 1050-1110', in T. N. Bisson (ed.), *Cultures of Power. Lordship, Status, and Process in Twelfth-Century Europe* (The Middle Ages Series, Philadelphia, Pa.: University of Pennsylvania Press), p. 122: In any event, it seems clear that in those cultures where access to the ordeal was more restricted and more closely regulated, the ordeal process must have assumed different forms and taken on different meanings.

986 SALRACH, MONTAGUT, *Justícia,* doc. 52, 131, 195, 366, 485, 507.

987 SALRACH, MONTAGUT, *Justícia,* doc. 52: *Ideo nobis iam supradictos donamus nos ipsum supradictum alaude cum ipso solero et cum ipso columbario et cum ortis, arboribus, ereis, palеariis, cum exiis vel regressiis earum suarum, qui nobis advenit de Randulfo presbitero per adulterium.*

988 SALRACH, MONTAGUT, *Justícia,* doc. 195: *Per hanc scripturam venditionis nostre vendimus vobis alode nostrum proprium, terras et vineas, domos cum curte. Quod habemus in comitato Barchinonensi, ad radicem Montis Iudaici. Advenit nobis per principalem vocem sive per aliquas quascumque voces. Accidit etiam uni hebreorum, cui nomen Isaac, filio Gento hebrei, ad adulterium exercere cum quadam christiana, habente viro superstite, pro quo advenit nobis.*

989 As ordeals were dependent on Christian belief and thus not used for Jews. Comp. Leeson, P. T. (2012), 'Ordeals', *The Journal of Law & Economics*, 55/3, p. 708.

990 SALRACH, MONTAGUT, *Justícia,* doc. 131: […] *ud a predicto Sancto Cuchufati cenobii cartam*

have proven Igulo guilty, it is still in the realm of speculation but as the source material is very meagre one could argue that this does not prove the non-usage of ordeals in that regard either.[991] This situation makes differentiated statements, for example, regarding the gender of the individuals undergoing ordeals, and at least for the charter evidence it is nearly impossible.[992]

The same goes with individual cases of homicide where the crime was confessed right away,[993] or individuals were proven guilty[994] or innocent[995] but we do not know by which means, and in the very same fashion it was not considered of importance for donation charters how the guilty were convicted.[996]

Within the charter material, submitting someone to an ordeal on the accusation of theft seemed to have been a quite common; at least, if we compare this with all the other cases of theft with no attested ordeal being involved that I am aware of. However, again the sample size in comparison to the charter material preserved in Catalonia as a whole is astonishingly small.[997] But if we assume that it was a rather common practice it could at least explain the interest in the ordeal by bread which was

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donacionem fecissemus de terras et vineas infra terminum de Laurona vel de Muiale, qui mihi advenit per vocem de uxori mea, qui fuit nomine Igulo, qui mihi fuit tradita in placito pro suo culpa per adulterium quod illa fecit cum omo nomine Planchero.

991 The same goes with the fate of the *adulter* Planquer, as we do not know if he was handed over to the cuckold as Visigothic Law would suggest. LV. III.4.3: *De adulterio uxoris. Si cuiuslibet uxor adulterium fecerit et deprehensa non fuerit, ante iudicem competentibus signis vel indiciis maritus accuset. Et si mulieris adulterium manifeste patuerit, adulter et adultera secundum superioris legis ordinem ipsi tradantur, ut quod de eis facere voluerit in eius proprio consitat arbitrio.*

992 Compare in contrast: Tuten, B. S. (2003), 'Women and Ordeals', in W. Brown and P. Górecki (eds.), *Conflict in medieval Europe*. *Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 163–74.

993 SALRACH, MONTAGUT, *Justícia,* doc. 96.

994 SALRACH, MONTAGUT, *Justícia,* doc. 115, 219, 272, 384, 522. BARAUT, «Els documents», IX, doc. 1318.

995 SALRACH, MONTAGUT, *Justícia,* doc. 259.

996 SALRACH, MONTAGUT, *Justícia,* doc. 380, 450, 490.

997 SALRACH, MONTAGUT, *Justícia,* doc. 97, 113, 221. One may add an earlier case dating in the year 899 or 900 in which a man named Placià gave a vineyard that he had inherited from his parents next to the castle of Aulet to the abbot Alfons and the monks of the monastery of Alaó, as a compensation for a theft that he had committed. Most probably he also evaded more severe punishment pleading for mercy. ABADAL, CC, III, doc 94: [...] *Ego Placianus [vobis] Adevonso abbati, Egilani preposito, Amorato et Domario merchat[a]rii, Tasiono, Joani, Deodato, Datoni et aliorum monachorum qui ibidem sunt aut adveniendi sunt in monasterio Alaone, servientes Deo et sancta Maria et sancto Petro apostolo. Certum quidem et manifestum [est] enim quia peccatto [impellente] consencii [...] furtuum, propterea exivi meus in pres[en]cia bonorum hominum et abu[i]t misericordia super mee; ego facio charta de mea vinea in chastro Advileto quod michi advenit per parentum meorum. Est ipsa vinea suptus via qui discurit uc et illuc et infrontat vinea de vos monacos et de parte orientis churit r[i]vo; ipsa vinea superius nomenata com exio et erregresio conpono vobis pro ipsa culpa que vobis feci, que de meo jure in vestro trado dominio et potestate ut ab hodierno die et tempore ipsa vinea cum vobis conpono abeatis, adeatis ex teneatis posideatia et quidquid ex exin(e)de facere vel judicare volueritis libera(t) et firmisima abeatis potestate. Si quis sane quod […].*

added to the *Liber iudicum popularis* but as we lack a case of theft committed by a monk the absence of this type of ordeal seams as reasonable, as is the absence of an recorded case of an ordeal for adultery.

The word widespread can be used as it was administered by different judges, demanded by defendants and thus completely incorporated in legal thought. At least ten different judges[998] supervised the ordeal of the cauldron but most of them used terms like *per iudicum aque ferventis*[999] close to the *Aqua fervens* terminology used north of the Pyrenees and in the cases analysed here, two refer to it as *iudicium aque calide* which is close to the phrasing used in the annex,[1000] but only the one actually administered by Bonfill himself is the one in which the wording corresponds exactly to the *Liber Iudicum Popularis*.[1001] This suggests that the judges knew about the procedure and used the adequate vocabulary and thus most probably had access to the rituals surrounding the ordeals from different manuscripts.

We must assume that it was an acknowledged method of finding the truth; otherwise, it would be difficult to imagine that in cases where one party had to prove its innocence they actively sought this remedy, as people seemed aware of their right to ask God himself to judge them as a kind of a last resort. In contrast the ordeal of cold water found its way into the promulgations of the peace of God, using the vocabulary found in the rituals as *iudicium aque frigide,* and stayed there but actual cases of individuals breaking the truce and having to undergo an ordeal are exceptional and rather late. In the rare cases of an individual admitting that he broke the truce one is usually presented with the end result, which meant making up for the damage caused but not detailing how the individual was convicted.

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998 Namely Bonshom, Guillem, Ansefredo, Geribert, Miró Guillem, Ramon Bonfill, Ramon Guillem, Bernat, Albertí and Guillem Guitard.

999 SALRACH, MONTAGUT, *Justícia*, doc. 167: […] *proclamavit se examinare per ferventi aqua ad Dei iudicia.* Ibid.: 358: […] *per iudicum aque ferventis.* Ibid.: 396: […] *per iudicum aque ferventis.* Ibid.: 396: *Et hoc predicti testes aprobare volentes iuramento seu ferventis aquæ iudicio.* Ibid.: 422: […] *ut si per iudicium ferventi aquae non possent se expiare quod baudiam et tradiccionem non habebant factam de suo seniore abbate, omnia integra et inconvulsa essent cum propriis corporibus praenominati comitis.* […] *si non possent per iudicium ferventis aquae quod negabant eripere.* One example is to descriptive to be used in that sense. Ibid.: 545: *Et postea fuit paratus Arbert per suum corpus quando habuit missa dicta, ut misisset suam manum in ipsa caldaria qui calefiebat ante ostium ecclesie Sancte Eugenie et istos clamantes supradictos noluerunt recipere.*

1000 SALRACH, MONTAGUT, *Justícia*, doc. 428: *Et illud quod recognoverit dimittat [...] quicquid probatum aut escundictum fuerit per pagenses fiat per iudicium aque calide* […]. Ibid. doc. 525: *Hac deinde iudicavit quod Miro Isarni monstrasset, per sacramentum et per iudicium aque calide* [...].

1001 Comp. García López, Y. (1993), 'La tradición del Liber Iudiciurum. Una revisión', in Fundación Sánchez-Albornoz (ed.), *De la antigüedad al medievo, siglos IV-VIII: III Congreso de Estudios Medievales* (Santiago García), p. 391, 398.

And lastly the word distinct as the ordeal had been adopted into the legal culture and apparatus of Catalonia. Its appropriation into the legal culture in situ if compared to other places in Europe can be found in its administration and supervision by the legal professionals, the judges. As the judges used the written law code in their daily work it is only rational to find the rituals regarding ordeals added to the annex of the *Liber iudicum popularis* but, as was pointed out, this is exceptional in Europe.

Unilateral ordeals like the one of hot or cold water included certain preparations in some of the analysed cases, which are mentioned on some occasions and left out on others. These could include rituals for the purification and preparation of the participant, solemn mass being celebrated beforehand and so on, which allowed for negotiations along the way. Arranging the court session for a later date allowed the defendant to reconsider and find a solution to avoid the possibility of perjury.

There is, however, an unsolvable conundrum. Everyone who actually performed a unilateral ordeal in the Catalan documentation lost, but at the same time the willingness to perform the ritual could convince the other side to step down and accept the truthfulness of the oath. In my opinion this suggests that there was some lived experience, that some ordeals must have had a positive outcome for the defendant and that these cases are not documented. Though at the same time this could also be interpreted that there was a certain mistrust about the way ordeals were conducted. Such a mistrust could never be articulated in the sources as it would go against the narrative of the ordeal itself. A comparison with other places in Europe suggests that both may well be true, but this does not solve the problem with regards to the Catalan charters. In any case, one could definitively state that all ordeals were successful in the sense that they established truth and forced all involved parties to accept the outcome, while at the same time facilitated the performance of acts of mercy.

Ordeals in Catalonia thus were widespread, exceptional but distinct, especially if compared to other places in Europe, and the same can be said for the pre-eminent bilateral ordeal suggested by the judges, the judicial duel, at which we will take a closer look at in the following pages.

IV.2.3.4. Trial by combat

And then God gives the right to the one who has it.[1002]

The bilateral ordeal *par excellence* in the Catalan sources is the encounter of two armed men in single combat in the course of a trial, leaving one vanquished and one victorious. The history of duels received early attention particularly in debates regarding the abolishment of the practice during the 19th century in Spain[1003] and elsewhere,[1004] as duelling was still practised and was by some idealised as a legitimate defence of honour, while seen as something archaic and barbaric by others. Historical evidence was used to demonstrate its long existence and to justify its contemporary use by saying it had become more civilised over the centuries.[1005] For some it was still considered the right means to defend one's honour when the legal apparatus failed to do so.[1006]

As central as questions of honour were for the gentlemen of the 19th century, the legal abolition of the duel meant they were not as important for later generations, who looked at the sources with different goals but still kept the notion of the duel's per se Germanic character and its thus 'barbarian' trope intact.

1002 Bohigas, *Tractats*, p. 91: *E puys Déus don dret a aquell qui·l ha.*

1003 Comp. Sánchez, R. (2020), '«El duelo es una necesidad de los tiempos presentes»: opiniones sobre el carácter civilizador del duelo en la España del siglo XIX', *Memoria y civilización*, 23.

1004 For example in Germany in the figure of the historian Georg von Below, see: Schlürmann, J. (2012), 'Entwicklungslinien der „deutschen" Fechtschule im Kontext der spätmittelalterlichen und frühneuzeitlichen europäischen Fechtkunst', in J. Court, Kremer H.-G., and Müller A. (eds.), *Jahrbuch 2011 der Deutschen Gesellschaft für Geschichte der Sportwissenschaften e. V.* (Berlin: LIT Verlag), p. 24: Es war der Historiker Georg von Below, der um 1890 zu einer Leitfigur der Antiduellbewegung in Deutschland wurde und dem die Fechtgeschichte wichtige Arbeiten verdankt. Below traf seine Gegner an ihrer empfindlichsten Stelle, dem Nationalismus. In seiner 1896 erschienenen Schrift „Das Duell und der germanische Ehrbegriff" vermochte er es schlüssig nachzuweisen, dass der germanische Zweikampf – er meinte damit den mittelalterlichen Gerichtskampf – bei Fällen von Ehrabschneidung im germanischen Recht als unzulässig galt. Der Ehrenhändel, so Below, sei eine welsche Verfälschung, etwas völlig „Undeutsches" und schädlich, denn es gelte doch, alle Kraft in Kampf gegen andere Nationen zu investieren und nicht in den Brudermord.

1005 Álvarez Martínez, C. (1847), *Ensayo histórico filosófico y legal sobre el duelo.* (Madrid), p. 12-13: El duelo sin embargo no es ya lo que en los días de su aparicion. Nuestros desafios no son los de los bárbaros, ni los de ia edad media; porque con el duelo ha sucedido lo que con todas las cosas é instituciones humanas sucede, que nacen, se desenvuelven, crecen llegan á su apogeo, y al pasar por cada uno de estos periodos se van modificando hasta que por fin pierden su primitiva exageracion, y vienen á madurar y regularizarse.

1006 Sierra Valenzuela, E. d. (1878), *Duelos, rieptos y desafíos. Ensayo filosófico-jurídico sobre el duelo.* (Madrid: J. C. Conde y compañia), p. 180-181: «Mientras no bastan las leyes á defender al hombre de todos los agravios, el duelo no es más que la legítima defensa del honor.» Así se expresaba el citado Sr. D. Cirilo Alvarez, para proponer la tesis desarrolladaen su magnífico estudio sobre el duelo.

A certain anthropological viewpoint was added in considering that the ordeal "brought about by the barbarians was not, however, exclusive of these, it constitutes a universal custom [...] not at all characterizes by a certain race, but by a certain inferior degree of civilization: it is found in Greek antiquity and old India, and still works today at a great number of savage people."[1007] Valls i Taberner published his views in 1929 and only took a short look at its origins in Catalonia, but in some studies there is the background notion of an evolution of law moving from tribal Germanic organisations, to which the ordeal was originally attributed, to a more advanced law so that under the "superficial layer of Christianity, abundant pagan reminiscences" could still exist.[1008]

Since then the debate focused upon whether the origin of the practice was Gothic or not, and it was convincingly argued for the latter,[1009] or as a sign of a final shift to feudalism.[1010] Compared to other places in Europe, Catalan sources received relatively

1007 Valls i Taberner, Ferran, *Notes sobre el duel judicial a Catalunya*, in Valls i Taberner, Ferran i d'Abadal i de Vinyals, Ramon (eds.), *Obras selectas de Fernando Valls-Taberner*, 4 vols. Barcelona 1952-1961, p. 247: El sistema de les proves judicials [judicis de Déu] portades pels bàrbars no era, però, exclusiu d'aquests, constitueix un costum universal, [...] no caracteritza pas una raça determinada, sinó un cert grau inferior de civilització: hom el troba a l'antiguitat grega i a la vella Índia, i encara funciona avui a gran nombre de pobles salvatges.

1008 Luisa Ledesma, M. (1986), 'Acerca de las ordalias y del duelo judicial "de escudo y bastón" en el Aragón medieval.', in , Estudios en homenaje al Dr. Antonio Beltrán Martínez, A. Beltrán Martínez (Zaragoza: Facultad de filosofía y letras, Universidad de Zaragoza), p. 999–1000: No olvidemos que la civilización europea altomedieval, con sus profundas contradicciones, ocultaba bajo una capa superficial de Cristianismo abundantes reminiscencias paganas, por lo que una fuerte dosis de elementos mágico-supersticiosos informaba no sólo la vida individual cotidiana sino también los ritos y las instituciones de la colectividad. […] El sistema procesal de la Edad Media se hallaba pro lo tanto presdido por la necessidad de purificación del acusado, ya sea por medio del juramento o mediante el bárbaro procedimento de los "juicios de Dios".

1009 The only argument in favour is in the case of a judicial duel that stems from the *Vita Hludovici Imperatoris* that was fought between Sanila and the first count of Barcelona Bera at the court in Aachen. H Valls i Taberner, Ferran (1952-1961), 'Notes sobre el duel judicial a Catalunya', in Valls i Taberner, Ferran and d'Abadal i de Vinyals, Ramon (eds.), *Obras selectas de Fernando Valls-Taberner*, 4 vols. (Barcelona), p. 249: S'equivoca, doncs, Balari, quan diu: «El duel, caracteristic dels costums feudals, no fou conegut dels visigots. Indubtablement va introduir-se a la Marca Hispànica, a imitació dels costums francs». El passatge de la Vita Hludovici, referent al duel entre Bera i Sanila, és un argument prou clar en contra d'aquesta opinió. Comp. Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 420-422. Iglesia y Ferreirós, A. (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981, p. 3-4: Por nuestra parte, al ocuparnos tanto del derecho visigodo como el derecho catalá pusimos ya de relieve que los testimonios aducidos sobre el proceso del conde Bera manifestaban exclusivamente la existencia del dulo judicial entre los francos; la afirmación de que, al ser godos ambos contendientes, la lucha se realiza a caballo y con las armas propias de los mismos, testimonia únicamente la costumbre visigoda de combatir a caballo. For literature and context regarding the topic, see: Chandler, C. J. (2019), *Carolingian Catalonia*: *Politics, culture, and identity in an imperial province, 778-987* (Cambridge studies in medieval life and thought. 4th series, Cambridge: Cambridge University Press), p. 60-96; esp. p. 71-74.

1010 Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI)*., 2, p. 177-181.

little attention,[1011] most likely because the sources are quite scattered within the documentation and were largely only looked at as a means for an argument. The notion was that trial by combat can be seen as a sign of social change towards feudalism.

Before looking at the evidence it is useful to make a modern distinction between the terms 'trial by combat' and 'judicial duel'.[1012] The first is employed here to describe the process as a whole, while the second refers to the fight itself. Only a small part of trial by combat, with its preludes, arrangements and the aftermath, was the judicial duel in itself. Nevertheless that clash between two fighters, when it finally happened, was surely the climax of a trial by combat in its entirety.

In the charters analysed here, from its first appearance in 1018 up to the year 1131, trial by combat is mentioned 28 times. Looking at roughly the same time frame that means lesser mentions than in some other regions in Europe,[1013] but it is still a substantial number. At the same time the execution of the actual judicial duel is rarely attested to in Catalonia.[1014] Of these examples, 13 can be classified as judicial documents with a clear reference to a trial.[1015] There are 11 instances in which trial by combat is mentioned in agreements.[1016] Besides these, there are two sales[1017], a testament[1018] and a donation[1019] in which there are clear references to trial by combat.

1011 An exception is the short study by José Enrique Ruiz-Domènec about the mentality routed in a "sociedad feudal". Ruiz-Domènec, J. E. (1982), 'Las prácticas judiciales en la Cataluña feudal', *Historia. Instituciones. Documentos.*, 9: 245–272. See also: Udina i Abelló, A. (1992), 'L'Administració de Justícia en els Comtats Pirinencs (Segles IX-XII)', in J. Lladonosa and J. Alturo i Perucho (eds.), *Miscel·lània*. *Homenatge a Josep Lladonosa.* (Lleida: Institut d'Estudis Ilerdencs), esp. p. 140-141.

1012 Ariella Elema distinguishes between trial by battle and judicial duel. I prefer trial by combat as it, in my opinion, describes armed hand to hand combat better and makes the term distinguishable from open field battles which could be interpreted as an intervention or judgment of God. Comp. Elema, A. (2012), 'Trial by Battle in France and England', PhD (Toronto, Centre for Medieval Studies), p. 12.

1013 For the example of Gascony up to the middle of the 12th Century, see: Couderc-Barraud, H. (2000), 'Le duel judiciaire en Gascogne d'après les cartulaires', *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public*, 31: p. 98: Il est possible de relever 43 mentions de duels dans les cartulaires de la région. Elles correspondent à 37 duels, au moins proposés au cours d'un conflit, et concernent 33 affaires différentes. Les six autres mentions sont d'une nature différente.

1014 In contrast comp. Ibid. p. 101: Une zone ressort clairement: les cartulaires de l'Adour et de ses affluents connaissent non seulement le plus grand nombre de mentions de duels, mais aussi le plus de duels réalisés.

1015 Salrach, Montagut, *Justícia,* doc. 178, 334, 392, 398, 404, 409, 425, 482, 491, 541, 543; Baiges, Feliu i Salrach*, Els pergamins,* doc. 1056; Rodríguez, *Col·lecció*, doc. 356.

1016 Unless otherwise indicated, when speaking about agreements we always refer to the *convenientia* document type. Baiges, Feliu i Salrach*, Els pergamins,* doc. 60, 126, 595; Feliu, Salrach, Els pergamins, doc. 177, 588, 589, 700; Salrach, Montagut, *Justícia,* doc. 330, 390, 437; Miquel, *Liber Feudorum*, doc 821.

1017 Feliu, Salrach, *Els pergamins*, doc. 177; Miquel, *Liber Feudorum*, doc 823.

1018 Feliu, Salrach, *Els pergamins*, doc. 66.

1019 Salrach, Montagut, *Justícia,* doc. 406.

The most distinguishable and common word to describe trial by combat is *batalla,* but *pugna*, *tornas* or *duellum* were also in use.[1020] In a figurative sense, every judicial confrontation is a struggle, therefore the vocabulary applied in the documentation can have allusions to conflict and contest. Like in our modern terminology, one party figuratively fights for their right or defeats the other in court. Nevertheless trial by combat can be distinguished clearly by the close relationship with the oath that it enforces, and if the meaning is to be kept then the two cannot be used separately. For example the term *bellum* is used in the sense of waging war,[1021] but when put together with an oath it clearly meant trial by combat.[1022] It is the combination of both the oath and the fight – *sacramento et pugna* – that describes this judicial procedure. The phrase – *per sacramentum et per bataliam* – and its variations becomes a standardised formula and the word *batalla* is used in this context quasi-exclusively as describing two individuals engaging in a judicial duel.[1023]

The first charter that mentions trial by combat is a court case that dates on the 28th of August 1018, between the Countess of Barcelona, Ermessenda of Carcassonne and Hug I, count of Empúries, regarding the allod of Ullastret. In the first trial regarding the case the countess rejects a proposal by Hug, who wants the case decided by *facere bellum per militum suum cum altero milite*. The Countess argues that the Gothic law does not accept *per pugnam discutiantur negotia,* but Hug, without "any authority by the Gothic law," violently takes what he believes is his.[1024] As far as we can tell the Countess was correct; trial by combat was not yet a common judicial practice

1020 The word *batalla* is almost exclusively used to describe trial by combat. Salrach, Montagut, *Justícia*, doc. 330, 334, 390, 392, 398, 404, 409, 425, 437, 482. Other words like *pugna* – to fight – could also be used to describe trial by combat (Ibid, doc. 178, 543.). Another option is the word *tornas* (pl.) (Ibid, doc. 330; 334, 390, 392) or as a verb *tornare* (Ibid, doc. 541). In the 12th Century *duellum* becomes more common but is translated to *batalla* when the text is in Catalan in the 13th Century. The first case in which an oath is "*defendat per duellum"* dates to 1131 comp.: BAIGES, FELIU i SALRACH*, Els pergamins,* doc. 1056. An exception is *facere bellum,* Ibid, doc. 178: […] *facere bellum per militem suum cum altero milite* […].

1021 Ibid, doc. 239: […] *reclamantibus autem et repugnantibus bellum inferret* […].

1022 Ibid, doc. 491: […] *per sacramentum et bellum* […].

1023 SALRACH, MONTAGUT, *Justícia* doc. 392 *per sacramentum et bataliam convincere* […] *per unum militem per sacramentum et per bataliam.* Ibid: 482: […] *expurget se per sacramentum et per batallam per unum militem* […].

1024 SALRACH, MONTAGUT, *Justícia* doc. 178: […] *dicens facere bellum permilitem suum cum altero milite domine Hermesendis ut utrisque decertantibus unus victor effectus patuisset cuius iuris debebat esse quod requirebat. Cumque hoc noluisset recipere iam dicta Ermesendis eo quod lex gotica non iubet ut per pugnam discutiantur negocia, Ugoni prefatus sine ulla auctoritate legis gotice violenter invasit omne quod Ermesendis possidebat* […]. The use of the words *facere bellum* and *pugna* instead of *batalia* strengthens the argument that trial by combat was not common yet.

but her insistence upon the prevalent law did not hinder this custom from spreading, especially from the middle of the 11th Century onwards.[1025]

Most of the documentation regarding trial by combat that is not agreements is the result of a trial, when there was no clear evidence through scripture or witnesses to support one claim. In certain cases a litigant had to make an oath either through one of his knights or by his own hand to strengthen his testimony. Proceeding with trial by combat was an option recommended by the judges when this oath was challenged by disbelief. The logical conclusion that can be drawn from this is that if one party accepts an oath from the litigant himself as sufficient, combat was considered unnecessary and could therefore be avoided.[1026] In that sense trial by combat was not overtly different to other ordeals but "was an extension of the oath by material means, not an alternative to it."[1027]

The close link between oath and ordeal makes trial by combat an ideal procedure for use as a last resort in agreements and as a measure to ensure that both sides stick to the agreed-upon terms and conditions. The flexibility of the new *convinentiae* charter type, together with this new custom, allowed trial by combat to be used as a tool to ensure peace after escalated feuds,[1028] in agreeing on coordinated war efforts,[1029] or to press rebellious nobles into submission.[1030] In that sense it was not only an extension of the oath by material means, but also by martial means, as the act of breaking an agreement of such utmost importance could result in trial by combat. In

1025 In my opinion the reference to the visigothic law shows that the legal experts were well aware, and expressed it using the term *per pugnam probare,* that it was a frankish practice and it is hard to believe that they were not aware that it was practiced in Italy at this time. Comp. Werkmüller, D. (1993), 'Per pugnam probare: Zum Beweisrecht im fränkischen Prozeß', in S. Buchholz, P. Mikat, and D. Werkmüller (eds.), *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung* (Rechts- und Staatswissenschafliche Veröffentlichungen der Görres-Gesellschaft, 69, Paderborn), 379–90. For italy and the impact of the *Liber Papiensis*, see: Bougard, F. (2003), 'Rationalité et irrationalité des procédures autour de l'an mil: le duel judiciaire en Italie', in C. Gauvard (ed.), *La justice en l'an mil*. *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française), 93–122.

1026 A very clear example, SALRACH, MONTAGUT, *Justícia* doc. 334: *Et si predicti comes Remundus et comitissa noluerint credere ac recipere sacramento de manu propria iam dicto Remundo, ipse predictus Remundus Mironi faciat facere predictum sacramentum per unum suum caballarium qui non se devetet inde tornas et qui umquam non fecisset batalla iurata cum scuto et baston.*

1027 Niles, J. D. (2009), 'Trial by ordeal in Anglo-Saxon England: what's the problem with barley?', in S. Baxter, C. Karkov, J. L. Nelson et al. (eds.), Early Medieval Studies in Memory of Patrick Wormald (Studies in Early Medieval Britain and Ireland, Florence: Taylor and Francis), 372.

1028 SALRACH, MONTAGUT, *Justícia,* doc. 404, 437; FELIU, SALRACH, *Els pergamins*, doc. 700.

1029 FELIU, SALRACH, Els pergamins, doc. 588, 589.

1030 SALRACH, MONTAGUT, *Justícia,* doc. 330.

all cases the void in the Gothic law code dealing with such agreements was filled with this new method of resolving conflicts.

In contrast to other ordeals, trial by combat could not be performed in an ad hoc fashion on the same day, as could be the case in an ordeal by the cauldron. This is because certain practicalities made this difficult. For a judicial duel combatants had to be found, and probably measured to ensure a certain equality in stature and strength to even the odds. This procedure is rarely explicitly mentioned but can be considered inherently logical for a bilateral ordeal. Finding two combatants willing to step in also limits this procedure to a smaller circle of individuals, relying on armed men and the group mentality and ties surrounding them. Thus it is not a surprise that in Catalonia, trial by combat was in most cases never considered an option, and only rarely in quarrels with monastic communities.[1031]

As mentioned above, most of the charters that are not agreements are a resolution of a previous trial with an open outcome. Many of these interim documents created for this occasions lack signatures and dates and thus have to be dated through context. It can reasonably be argued that right the way up to the very encounter of the judicial duel itself, the parties would be encouraged to solve the case through arbitration instead and find a solution that does not involve bloodshed.[1032] The judicial hiatus created in closing one chapter of the court case and defining possible legal routes to pursue left both sides with some time to reconsider and find a solution.

At the same time this implies that if the moment comes, determination and strong will to bring the case to an end by definitively triumphing over the other side would be key. Procedure and martial culture are certainly entwined in this method of

1031 Bruno Lemesles made a detailed study of a charter from the Abbey of Saint-Aubin d'Angers between the viscount and the monks about whether to solve the conflict through *calidi ferre juditio* or *scuto et baculo*. Lemesle, B., 'La pratique du duel judiciaire au XIe siècle, à partir de quelques notices de l'abbaye Saint-Aubin d'Angers', in , *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public, 31e congrès, Angers, 2000. Le règlement des conflits au Moyen Âge.*, 149–68; p.: Si nous reprenons l'exposé du rédacteur de Saint- Aubin, nous voyons que l'abbé présente l'alternative au vicomte entre le duel et l'ordalie, avant que ce dernier ne fasse le choix du duel. Puis ce sont les chevaliers de l'entourage d'Aimeri qui infléchissent leur seigneur. Que disent-ils? Que la coutume n'est pas bonne et que faire un duel est injuste. Le rédacteur leur prête une argumentation qui ressemble trop à celle des moines pour qu'elle ne leur ait été soufflée par ces derniers. Probablement l'alternative leur était-elle pour une part destinée, c'est-à-dire faite pour les influencer. Autrement dit, le clivage évoqué était rien moins que conjoncturel. À l'évidence les chevaliers de Thouars l'ont découvert, et certainement nombre de moines avec eux d'ailleurs!

1032 Comp. White, S. D. (1995), 'Proposing the Ordeal and Avoiding It. Strategy and Power in Western French Litigation, 1050-1110', in T. N. Bisson (ed.), *Cultures of Power. Lordship, Status, and Process in Twelfth-Century Europe* (The Middle Ages Series, Philadelphia, Pa.: University of Pennsylvania Press), 89–123.

conflict resolution.[1033] Brothers in arms are more likely to step forward and agree to fight, and someone that has lead men into battle and is admired and respected by his men would have less trouble finding a suitable candidate. Nevertheless in all cases the opposing parties first met in court and the judges then decided that the issue could be resolved through trial by combat. In the few documents that are preserved a common procedure seemed to be that that one side could perform an oath and, if accepted as sufficient by the other side, this would close the case. If not, trial by combat was explicitly recommended.

A prerequisite of a trial by combat was the exchange of pledges and guarantees to ensure that the parties would accept the outcome. This would also secure the payment of the court. One of the clearest examples of this procedure can be seen in a complicated case that was judged on the 16th of October in the year 1072 *in villa qui vocatur Tolo ante dominum comitem* Guillem I of Cerdanya.[1034] The long-time bishop of Urgell, Guillem Guifré, had a complaint against Hug Dalmau.[1035] The bishop maintained that Hug's father gave him the church of Sant Vicenç de Rus[1036] as inheritance but that Hug *tollebat eam ei per forçam et iniuste*. Hug replied that his father-in-law, Arnau, acquired it from the bishop during his lifetime and that he then received it from Arnau with the help of the bishop himself, which Guillem Guifré denied, claiming that he never acquired him as his man.[1037] The judges distinguished between two legal acts, the first being the donation of the church as a fief from the hand of the bishop and the second the donation of Arnau to Hug. Regarding the former, the decision of the judges was to lay out several options. Hug should deliver the according scripture if he has it or is able to obtain it. If not, he should swear that he does not have it or could not have it *per militem,* or through *sacramentum et per batala* if the bishop does not accept the oath of the knight. Regarding the latter, the court demanded that Hug present *duos*

1033 For the symbolic order inherent in a duel see: Friedrich, U. (2005), 'Die ‚symbolische Ordnung" des Zweikampfs im Mittelalter', in M. Braun and C. Herberichs (eds.), *Gewalt im Mittelalter. Realitäten, Imaginationen* (München: Fink), 123–58.

1034 SALRACH, MONTAGUT, *Justícia*: doc. 398. The composition of the tribunal included the abbot of Sant Miquel de Cuixà, the viscounts of Cardona, Cerdanya and Berga, and the noblemen Miró Ricolf and Berenguer Ramon.

1035 Because of the proximity to the counts of Cerdanya we are probably dealing with Hug I Dalmau of Berga, or we are seeing one of the first appearances of his son Hug II, comp. Bertran i Roigé, P. (1992), 'Els senyors de Mataplana', *Revista de Girona*, 1992: p. 58.

1036 Close to today's town of Castellar de n'Hug in the comarca Berguedà.

1037 SALRACH, MONTAGUT, *Justícia*: doc. 398: [...] *adquisivit eam de iam dicto episcopo et tenuit dum vixit, et isdem Hugo acaptavit eam, scilicet ecclesiam, de iamdicto Arnallo per consilium eiusdem episcopi. Sed predictus episcopus respondit se nunquam hoc consilium dedisse ut predictam ecclesiam Ugode nullo homine adquireret.*

visores et auditores, two witnesses, that confirm that he obtained the church with the assistance of the Bishop. If he cannot present them, then Guillem Guifré swears an oath through a knight that he did not gave his consent, and if Hug does *credere noluerit mitat ei tornes per I suum militem*. Next, the charter describes the two possible outcomes in the case of trial by combat being conducted. First, if the *miles* of Hug *victus fuerit*, Hug and his offspring would hand back the church and in addition would have to pay all that he earned while it was his. If the bishop *victus fuerit* Hug would retain the church but *ad suum servicium*. Finally, it is mentioned what both have to do *antequam faciant batala,* that is, to ensure the pledges and guarantees for the trial.[1038]

In the agreement between the two counts Ramon Berenguer I and Ermengol III, they agree that if conflict arises between them over the hostages that they agreed to exchange as sureties, then they would solve those issues in a trial.[1039] They agree that they would "choose judges between them which would judge"[1040] the case, and only if "the judges of the two parties would not agree"[1041] would they proceed with a judicial duel. In the case of such a judicial duel happening the two parties would provide and consult with *duobus bonis hominibus* from each side in order to proceed with the duel.[1042]

The concept of appointing judges from both sides on these occasions seemed to be common procedure. In the case of the conflict that occurred over the office of seneschal between the counts Ramon Berenguer I, of Barcelona and Almodis, and Ramon Miró de l'Aguda[1043] the document clarifies that the counts had appointed five

1038 Ibid: *et antequam faciant batala donet episcopus fidanca Ugoni de ipso directo quod exide debet de ipsa batala, et Ugo similiter ipsi, et ambo donent fiduciam comiti de ipso dret quod exiret ei debet de ipso placito.*

1039 The agreements of both sides survived. FELIU, SALRACH, *Els pergamins,* doc. 588, 589.

1040 FELIU, SALRACH, *Els pergamins,* doc. 588: [...] *eligamus iudices inter nos qui iudicent illud placitum per directum.* Ibid, doc. 589: [...] *eligamus iudices inter nos qui iudicent illud placitum.*

1041 FELIU, SALRACH, *Els pergamins,* doc. 588: *Et si iudices ex utraque parte non concordaverint de predicto iudicio, nos ambo predicti Reimundus et Ermengaudus et hostatici nostri credamut et auctoridemus et faciamus illud iudicium quod iudices unius partis guarran per sacramentum et per bataliam, et hoc totum sine engan.* Ibid, doc. 589: *Et si iudices ex utraque parte non concordaverint de predicto iudicio, nos ambo, predicti Ermengaudus et Reimundus, et hostatici nostri credamus et auctorizemus et faciamus illud iuditium quod iudices unius partis guarran per sacramentum et per bataliam, et hoc totum sine engan.*

1042 FELIU, SALRACH, *Els pergamins,* doc. 588: [...] *et veniant in potestatem de duobus hominibus bonis predicti Reimundi comitis et de aliis duobus predicti Ermengaudi comitis propter hoc ut faciant ipsam predictam bataliam.* Ibid, doc. 589: [...] *et veniant in potestate de duobus bonis hominibus de Reimundo comite predicto et de alios duos de Ermengaudo comite, propter hoc ut faciant ipsam predictam batalam.*

1043 Also named Ramon Miró of Hostoles. Homs Brugarolas, M., and Cingolani, S. M. (2017), 'Els orígens familiars dels Cartellà al llarg de deu generacions (s. X-XIV)', *Butlletí de la Societat Catalana d'Estudis Històrics*, 28, p. 290: Una anotació important, respecte a la bibliografia precedent, és la possibilitat

judges and the seneschal Miró three more. The judges ruled that as a solution a judicial duel would be held between two knights representing the parties.[1044]

In a similar fashion in an agreement regarding several castles between Ramon Berenguer I and Ermengol IV, dating somewhere between 1066 and 1076[1045], they agree that if the count of Urgell breaks the agreement, he would amend, here specifically meaning compensate for, it within 60 days and they each would select four men for this trial.[1046] If these men did not agree on common terms they would have a trial by combat and the judgment of the judges of the winning side would be the valid one.[1047] The goal of the judges as mediators in the conflict is specified at the end of the document: they should be *bonos homines qui voleant bene et pacem de hoc inter eos sine engan.*[1048]

On some occasions regarding rights over territory surrounding castles or the castles themselves, trial by combat was considered an option by the judges with the goal that one side issues a solid legal document giving up further possible claims.

In another undated charter[1049] of these previously mentioned interim documents between trials, the viscount of Urgell, Miró II, Ramon de Calders and other judges[1050] established a basis for resolving the contention between Bishop Guillem d'Urgell and

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d'establir la identitat de persona entre l'anomenat Ramon Miró d'Hostoles/Sentmenat i Ramon Miró d'Aguda o de les Agudes, segon senescal, fins ara reputats com dues persones diferents.

1044 Salrach, Montagut, *Justícia* doc. 334: *Iudicaverunt iudices quos elegerunt domno Reimundus comes et domne Almodis comitisse sive Remundus Mironi, id sunt, ex parte comitis et comitisse, domnus Guilabertus episcopus et Amatus Eldrici et Bernardus Amati et Berengarius abbas et [M]iro Riculfi, et ex parte iam dicti Remundi Mironis, Artallus comes et Petrus Mironi et Dalmacius Isarni.*

1045 The document is dated as between the beginning of Ermengol IV's rule and the death of Ramon Berenguer I.

1046 Baiges, Feliu, Salrach, *Els pergamins*, doc. 66: *Et si iamdictus [E]rmengaudus, Urgellensis comes, passat aud fregit istam supradictam convenientiam aud aliquid de predictis conveniencíis ad iamdictum Raimundum, Barchinonensem comitem, emendet hoc illi infra primos sexaginta dies quod iamdictus Barchinonensis comes mandaverit hoc illi per se ipsum aud per suos nuntios vel nuncium, ad iudicium de quatuor homines quos iamdictus comes Barchinonensis eligat et de alios quatuor quos iamdictus Urgellensis comes eligat.*

1047 Ibid: *Et si non concordant ipsi homines ex utraque parte de ipso iudicio, sit factum et creditum ipsum iudicium quod fuerit factum et ereptum per bataliam inter eos per duos caballarios* […].

1048 Ibid: *Et si surrexerit placitum de istas supradictas convenientias inter predictos comites et de istas supradicta[s] batalias, fuit ipsum placitum infra terminos predictorum comitum in convenienti loco ad laudamentum de illorum bonos homines qui voleant bene et pacem de hoc inter eos sine engan, et sint tanti de una parte ad placitum vel ad placitos quanti de alia.*

1049 Somewhere between 1041-1075. Salrach, Montagut, *Justícia*, doc. 409. For a linguistic analysis, see: Russell-Gebbett, Paul S. N. (1973), 'Mossèn pere pujol's documents en vulgar dels segles XI, XII, & XIII (Barcelona, 1913): A partial retranscription and commentary.', in W. Rothwell, W. R. J. Barron, D. Blamires et al. (eds.), *Studies in Medieval Literature and Languages: In Memory of Frederick Whitehead* (Manchester: Manchester University Press), 258–62.

1050 Salrach, Montagut, *Justícia*, doc. 409: […] et alii iudices qui ibi fuerunt […].

Ramon Gombau[1051] over the boundary between the castles of Guissona and Ribelles. The judges sentenced that the bishop must show Ramon Gombau the documents that guarantee his rights over the district of Guissona through the possessions and taxes that he or his former bishops received.[1052] Meanwhile, Ramon Gombau had to present those that demonstrate the limits of his rights over Ribelles on the river Sió and beyond.[1053] If the dispute were to be settled by a duel, the losing party would have to accept the limits set by the winners. The loser had to make an evacuation or definition charter for the other side thus putting an end to the quarrel.[1054] Again the *cavalers* would be handed over to entrusted men in case of a judicial duel.[1055]

The rights to the castle of Orcau were the centrepiece in the conflict between Ramon V and Valença de Tost, counts of Pallars Jussà, and Tedball.[1056] The tribunal established the outcome of possible judicial duels. In the previous case we at least know who presided over the trial, but in this case not even that seemed to have been of importance as we have no documented final decision but only an interim document that establishes how to proceed.[1057] It considers several possible judicial duels. Tedball claims that his *scripturam de potestate* was made by willing spirits, freely and without force. If he could prove this, most likely through witnesses, they would proceed with a judicial duel and if the counts' *miles* were vanquished then the castle with all its appurtenances would be his. If, however, Tedball's fighter was vanquished he would *definiat* the castles with its appurtenances, probably through a charter, for the counts.

1051 For Ramon Gombau, see: Domingo i Rúbies, D. (2014), *Una frontera interior: Montgai i Butsènit a l'edat mitjana* (Lleida: Universitat de Lleida), p. 64-71.

1052 SALRACH, MONTAGUT, *Justícia*, doc. 409: *Que monstre predicto episcopo [instrumenta] ad Raimundo Gonball per qualeque loco se volet et dicat per ipsas aprisiones et per ipsas tenezones quod fecerunt ipsos episcopos antecessores suos qui fuerunt ante Gilelmo episcopo et per ipsos akaptes quod illi fecerunt per dret et domno Guilelmo quod melius est suo diritto de iam dicto episcopo per ipso termine de Gissona, quod non est de predicto Remon Gombal per aprissionem per tenezonem quod fecissent sui antecessores qui fuerunt ante predicto Raimundo neque per ipsos nec illis neque iam dicto Raimundo per ipso termino de Ribeles.*

1053 SALRACH, MONTAGUT, *Justícia*, doc. 409: *Et monstre Remon ipso termino ke per clam e per Ribeles quod est de Cion ad enlà, che ag tan ample lo monstre delà kom lo te dezà ad riba de Sció.*

1054 Ibid: *Et si i venz ipso suo omine de domno episcopo, quod Remon Gonball li o iakescha e li o defenescha per escrito. Et si ipso suo omme i venz de Remon Gomball similiter feneschat et iakescat ipso episcopo per escrito.* For *iakescha* and *iakescat* see: Martines, J., and Montserrat, S. (2014), 'Subjectivació i inferència en l'evolució semàntica i en l'inici de la gramaticalització de Jaquir (ss. XI-XII)', *Caplletra*, 2014: 185–211. For *feneschat* see, GMLC, F, p. 114, *finire*: finire aliquod ad aliquem – lliurar a algú els drets sobre alguna cosa, posant fi a un litigi.

1055 Ibid: *Et ipso die que metrant illorum cavalers in potestate de ipsos omnines quin faciant ipsa batalla dicat ipso episcopo si pharà el primers ipso fromiment o·l rechulirà de Remon Gonball.*

1056 SALRACH, MONTAGUT, *Justícia*, doc. 541. Some time between 1071-1099. Probably in year 1088.

1057 Missing all the formalities of listing the judges. Ibid: *Iudicium placiti quod actum est inter Reimundum comitem et Valenciam comitissam et Tedballum de castello Orcalli sic est.*

If Tedball could not prove that his scripture was made willingly, Ramon and Valença would have to *espient se per sacramentum unius militis* that they did not issue the charter *libentibus animis*. Again, the loser loses the castles and defines it for the winning side. The third and last potential fight the judges consider is that if Tedball could prove that the castle was in possession of the counts when they issued the charter, their spouse would have to make an oath through a knight as well. The winner would have the castle, but if Tedball won he would have it *exceptus comitali senioratu*.

Through the propositions of the judges one can deduce some of the details about what happened during the trial. The simplest and most logical assumption would be that Tedball had a document from Ramon V and Valença de Tost that he presented in court. The count and countess must have stated that they didn't issue the charter willingly and Tedball must have insisted that they were in full control of the castle when they handed it over. As the several statements contradicted each other several oaths were contemplated and at least one judicial duel was inevitable. The losing side would have to define the rights of the castle to *ipsi parti que potuerit conquirere eum per hoc iudicium* and moreover *sit illis bene firmatum ut possint hoc perducere ad plenum effectum.*[1058]

Another undated charter concerning the first resolution of a trial shows a certain affinity of the counts of Pallars Jussà for trial by combat. This time the gathering took place at the monastery of Santa Cecília d'Elins where Count Ermengol IV of Urgell and Ramon and Valença, together with their son Arnau, disputed the rights of an allod situated *infra terminos* of the castle of Tost.[1059] The testimony of witnesses and the recourse to a judicial duel with a *milites* are present as well, on this occasion to determine a fief.[1060] Also in this case, after the definition of what happens *si fuerit victus* one fighter or the other, the documents end by clarifying: *Et hoc fuit iudicatum per melius directum per usum de Barchinona et de Urgello sine enganno*.

1058 SALRACH, MONTAGUT, *Justícia*, doc. 541: *De his, autem, omnibus sacramentis, uno facto et victo, sit de supradicto castello diffinicio et securitas facta ipsi parti que potuerit conquirere eum per hoc iudicium, et ipsi, in quorum potestate hoc erit factum, teneant potencialiter ipsum castellum; et insuper sit illis bene firmatum ut possint hoc perducere ad plenum effectum.*

1059 Probably the trial took place around the year 1071, after the death of Arnau Mir of Tost. SALRACH, MONTAGUT, *Justícia*, doc. 392: […] *quod advenit eis per Arnallum Mironis*

1060 SALRACH, MONTAGUT, *Justícia*, doc. 392: *Et postea si dixerit ipse comes de Urgello quod plus debeat abere per fevum in alodio, quod predictus comes Reimundus et uxor eius hac filius demonstraverant ei et potuerit probare hoc per testes legitimos aut per unum videntem qui non se devetet tornas aut si ipse videns debilis fuerit et unum militem pro se ad hoc miserit. Si ita potuerit hoc prefatus comes probare aut taliter per sacramentum et bataliam convincere, perdat ipse Reimundus et uxor eius hac filius ipsum fevum quod antea negaverant et abeat eum ipse comes Urgellensis.*

The implications of this statement are wide as it could be considered to be the earliest mention of which I am aware of what would later become the customs of Barcelona, but it would also show its broad spread early on. It is most probably explicitly mentioned here because of this geographical distance, and the connection with trial by combat as a means of conflict resolution is not a coincidence. In a certain manner this would allow the assumption that already by the seventies of the 11th Century judicial duels had become a custom that had enough legal authority to be cited. However its context could also point into another direction. *Per usum de Barchinona et de Urgello* could also refer to a trial by combat according to the customs of the two counties. Therefore this passage would not refer to the later law code but rather show that trial by combat was a new custom done under certain rules that needed to be agreed upon beforehand.

The latter seems more plausible, bearing in mind that the *Usatges* are not mentioned elsewhere and one of its new features would be legislating trial by combat. As laws follow customs and rarely the other way around, one would expect the custom to appear first and the law to become fixed later.

In the *vera relacio iudicii*[1061] of the conflict between the Archbishop of Tarragona and Pere Ramon de Tous,[1062] after introducing the judges, with the seneschal Guillem Ramon presiding over the tribunal,[1063] the charter gives their resolutions in three points that appear to be a judicial response to certain complaints presented in court by the archbishop, acting as one of the most potent magnates in the region, namely as the bishop of Vic.[1064] The first deals with a claim to the right of accommodation owed to the archbishop by the peasants of Tous, while the second deals with certain demesnes – *dominicaturis* – he has in the castle and the honour of Tous.[1065] The third point is about the fulfilment of an agreement regarding the nearby fief of L'Espelt.[1066]

1061 SALRACH, MONTAGUT, *Justícia*, doc. 543.

1062 Son of Bernat I of Tous. Pladevall i Font, Antoni (1981), *Tous, mil anys d'història* (Biblioteca Abat Oliba, 21, Barcelona), p. 34.

1063 Because of the presence of Arbert *frater eius* we are certainly dealing with Guillem Ramon of Hostoles, father of Guillem Ramon I of Montcada, often referred to as the "gran senescal". See: Canyameres i Ramoneda, E. (1991), 'Els orígens familiars de Senescal de Barcelona, Guillem Ramon (I)', *Paratge*, 2: 7–18. See also: Homs Brugarolas, M., and Cingolani, S. M. (2017), 'Els orígens familiars dels Cartellà al llarg de deu generacions (s. X-XIV)', *Butlletí de la Societat Catalana d'Estudis Històrics*, 28, p. 290-293.

1064 The charter can be roughly dated between 1090-1099, through the archbishop Berenguer Sunifred, see ORDEIG, *Diplomatari*, doc. 1666.

1065 Today at Sant Martí de Tous.

1066 The structure is straightforward. SALRACH, MONTAGUT, *Justícia*, doc. 543: Primitus iudicaverunt […]; Item iudicaverunt […]; Item iudicaverunt […].

For the first two points judicial combat is considered an option but instead of doing two separate fights the judges rule that if it pleases the archbishop the issue could be settled in one *sacramento et pugna*.[1067] The last complaint of the bishop of Vic suggests that the confrontation between the two has been ongoing for a while. The agreement they had about the fief of L'Espelt included the stipulation that the oldest son of Pere Ramon de Tous would become a cleric serving in Vic and thus was probably already the resolution agreement of an earlier dispute.[1068] At some point Pere Ramon de Tous must have bailed out of the agreement, shutting the Bishop out of the area he controlled. These are signs of rising tensions and explains the involvement of external judges that both parties had probably agreed upon prior to the trial.[1069]

Common preliminary features like the selection of judges by both sides or guarantees and pledges can thus be found in the documentation and point towards an accepted and general approach that became established in the middle of the 11th Century in cases that could lead to a judicial duel. Many of the documents are generated in this process. They appear to be resolutions of a meeting in court and some start with the same phrasing – *Hoc est iudicium*[1070] – and do not contain final court resolutions as they are still open cases thus still leaving space for possible negotiations and amicable settlements.[1071] They have certain similarities to grievances, which they sometimes seem to be counterparts of. The grievances presented in court were addressed by the judges. If written evidence was lacking the parties were required to present witnesses for the next session and to validate their claims through

1067 Ibid: *Iudicaverunt etenim prefati iudices quod si placuerit domno archiepiscopo hoc totum superius comprehensum sit in uno sacramento et pugna.*

1068 Ibid: *Item iudicaverunt de ipsa querela quam domnus archiepiscopus facit de ipso fevo ipsius Espeut, quod idem Petrus ostendat ipsam convenientiam cum qua adquisivit ipsum fevum et attendat eum ex toto. Quod si facere non potuerit vel noluerit, non habet ullum directum in eodem fevo iamdicti Espeut, nisi domno archiepiscopo placuerit propter filium suum maiorem quem convenit facere clericum et non fecit, sed eiecit eum de ipso clericatu qui puer adquisivit iamdictum fevum ut ipse esset clericus et serviret eum in sede Sancti Petri.*

1069 Eventually Pere of Tous, son of Pere Ramon, will swear fidelity to the Bishop of Vic Ramon Gaufred. For the strong bond between future bishops and the noble family Tous, see: Roca i Pascual, B. (2011), 'Els Tous: ascens i caiguda d'un llinatge nobiliari català (segles XIII, XIV i XV)', *Miscel·lània Aqualatensia*, 14: 41–77.

1070 SALRACH, MONTAGUT, *Justícia*, doc. 392, 409, 425. Compare, Ibid, doc. 541: *Iudicium placiti quod actum est* […]. Compare the similarities with a charter that can be dated in the year 1044, and the rebellion of the viscounts of Barcelona that is comprised of two parts and probably the copy of two interim documents related to the same trial, the first starting with *Hoc est iudicium* and the second with *Hoc est pactum vel placitum*. Ibid, doc. 289.

1071 Some are original charters leaving no doubt that the missing eschatochol in later copies is not due to incomplete copies by the scribes. SALRACH, MONTAGUT, *Justícia*, doc. 392, ACA, Cancelleria, pergamins Ramon Berenguer II, num. 76. SALRACH, MONTAGUT, *Justícia*, doc. 425, ADB, Fons de Santa Anna, carp. 3B, perg. 369.

oaths. Given certain circumstances the judges had already foreseen a potential judicial duel occurring.

IV.2.3.4.1. The Judicial Duel

A duel is a single combat between some [men] for the proof of truth.[1072]

Most documents just mention trial by combat without clear specifications about how the actual judicial duel had to be conducted. There are minor regulations but we cannot know if these were either local customs, the general rule, or the exception. Nevertheless they do give some clues about how it was done.

In five occasions weapons are mentioned and the fixed expression *cum scuto et bastone* was employed in four of these.[1073] The fact that there is only one occurrence where another weapon was employed probably means that the *scuto et bastone* was the common practice in these encounters. This would align with a common change in procedure that took place in several regions of the former Carolingian Empire.

The early laws of the Ripuarian Franks had judicial combat resolved *cum gladio* and the *Lex Alemannorum* also mentions a legal procedure involving *spata tracta,* while the Burgundians still conducted duels with spear and swords (*telis et gladiis*) in the early 9th century.[1074] This changed throughout the Carolingian Empire during the 9th Century. Charlemagne issued a capitulary in 803 that had "*nova legis* [...] *qua in lege Ribuaria mittenda est"*, which allowed judicial duels to be conducted by *scuto et fuste.*[1075] Consecutively in 818 or 819 Louis the Pious followed with an additional *Capitula legibus addenda* to convict false witnesses through trial by combat.[1076] The

1072 Ramon de Penyafort, *Summa Iuris canonici.* See: Browe *De ordaliis*, II, p. 81: *Duellum est singularis pugna inter aliquos ad probationem veritatis* […].

1073 Baiges, Feliu, Salrach, *Els pergamins*, doc. 126; Salrach, Montagut, *Justícia,* doc. 330, 334; Miquel, *Liber Feudorum,* doc. 821. The exception, Feliu, Salrach, *Els pergamins,* doc. 177: *cum fuste et scuto*.

1074 Elema, A. (2019), 'Tradition, Innovation, Re-enactment: Hans Talhoffer's Unusual Weapons', *Acta Periodica Duellatorum*, 7/1: 4-5.

1075 Boretius, *Capitularia regum Francorum,* num. 41, 4: *Item in eodem capitulo. De soniste aut sexcentos solidos conponat aut cum duodecim iuret aut, si ille qui causam quaerit duodecim hominum sacramentum recipere noluerit, aut cruce aut scuto et fuste contra eum decertet.*

1076 Boretius, *Capitularia regum Francorum,* num. 136, 10: *Quod si ambae partes testium ita inter se dissenserint, ut nullatenus una pars alteri cedere velit, eligantur duo ex ipsis, id est ex utraque parte unus, qui cum scutis et fustibus in campor decertent, utra pars falsitatem, utra veritatem suo testimonio sequatur. Et campioni qui victus fuerit propter periurium quod ante pugnam commisit dextra manus amputetur; ceteri vero eiusdem partis testes, quia falsi apparuerunt, manus suas redimant, cuius conpositionis duae partes ei contra quem testati sunt dentur, teria pro fredo solvatur.*

impact and workings of the capitularies is discussed on many levels[1077] but there is no doubt that the *"enormous distribution"* of the capitulary collection of Ansegisus during the 9th Century was responsible for this practise becoming at the very least known in many areas of the former Carolingian Empire.[1078] Clubs or sticks became the normal weapons of choice in a judicial duel, making bladed weapons the exception.

However, there are no surviving manuscripts of Ansegisus' collection from the region we are concerned with leading up to the 11th Century.[1079] The only one stemming from Ripoll can be dated to the first half of the 11th Century[1080] and is embedded within a series of other texts not specifically related to the spectrum of the law.[1081] The collection is "an extremely special case"[1082] and could not be identified as belonging to any specific manuscript group. It definitely does not belong to any Spanish transmission but probably had its origins in the western Frankish kingdom; Schmitz considers Fleury or Saint-Germain as options.[1083] The version of the Collection of Ansegisus from Ripoll had no further impact on any of the surviving manuscripts and stands alone as a "Unikum".[1084] Both sections of the above mentioned capitularies, the *De his qui de furto accusati fuerint*[1085] and *De falsis testibus convincendis,*[1086] are compiled there and may be where in the famous case of the year 1018 took place in which, under the jurisdiction of Oliba, Ermessenda rejected the offer of Hug; or alternatively this case may have inspired someone to copy part of the material selected here.

1077 Hubert Mordek wrote in 1986 that nothing is "*as undisputed as the divergence of opinions*" about the state of research and the discrepancy within the scholarship. Mordek, H. (1986), 'Karolingische Kapitularien', in H. Mordek (ed.), *Überlieferung und Geltung normativer Texte des frühen und hohen Mittelalters* (Quellen und Forschungen zum Recht im Mittelalter, 4, Sigmaringen), p. 25. For a summary of the state of research with further literature, see: Mischke, B. (2013), 'Kapitularienrecht und Urkundenpraxis unter Kaiser Ludwig dem Frommen (814-840)', PhD (Bonn, Friedrich-Wilhelms-Universität), p. 4-23.

1078 With a total of 61 manuscripts from the 9th Century alone. Schmitz, *Collectio capitularium,* p. 189: *Diese beträchtlichse Zahl alter Codices zeigt, mit welcher enormen Verbreitung wir der Collectio capitularium Ansegisi wir im 9. Jahrhundert rechnen müssen.*

1079 There is a total of 26 manuscripts up to the 11th Century. Schmitz, *Collectio capitularium,* p. 189-191.

1080 ACA, Collecciones, Ms, Ripoll, 40. Treated in detail: Schmitz, *Collectio capitularium,* p. 75-77, 245-49.

1081 Like the material concerning the two Hinkmars: ACA, Collecciones, Ms, Ripoll, 40, fol. 53v-63r.

1082 Schmitz, *Collectio capitularium,* p. 245: "ein extremer Sonderfall".

1083 Ibid, p. 246: "Der Inhalt dieser Handschrift weist durch die Überlieferung der Capitula Walters von Oréans und durch Materialien der beiden Hinkmare eindeutig auf das westfränkische Reich als Heimat der hier versammelten Texte, von einer »spanischen« Überlieferung des Ansegis kann man insofern nicht sprechen."

1084 Ibid, p. 249: "Insgesamt paßt sich Bc nirgendwo ein, der Codex kann keiner Handschriftengruppe mehr zugeordnet werden, auf die weitere Ansegis-Tradition hat dieser Text nicht mehr eingewirkt, in seiner Eigentünlichkeit blieb er folgenlos."

1085 ACA, Collecciones, Ms, Ripoll, 40. f. 24v.

1086 ACA, Collecciones, Ms, Ripoll, 40. f. 24r.

The expression *scuto et bastone* instead of *fustis* becomes the regular phrasing to determine this type of combat and its practice must have been generally understood by both sides that were agreeing upon it.[1087] The question of whether settling on a judicial duel meant that such an agreement came with set rules of combat or if the rules were negotiated beforehand cannot be answered. Regardless, judges proposing the local customs or rules and the parties agreeing to them seems reasonable. Nonetheless all evidence points towards the notion that standardised customs were already in place in the middle of the 11th Century in Catalonia and probably also in the neighbouring regions.[1088] The suggestion that these duels were done both on foot and on horseback[1089] is, as far as one can tell, based only on the fact that the word *cavaller* was used early on to describe the fighters.[1090]

A possible exception is found in the execution of a will of a certain Ermengol of Oló dating on the 3rd of January 1024. He had his will drafted and sworn at the altar dedicated to Saint Mary in the castle of Oló before going on a pilgrimage to Santa Maria del Puig. After many days had passed, in August 1023 he was called upon for a trial by his cousins in which he was deadly injured by a lance. His wife was pregnant at the time and gave birth to his son after his death, and due to the circumstances the executors decide to share the inheritance with the posthumous son of the deceased

1087 The earliest example (1018-1026) uses *cum fuste et scuto,* see: FELIU, SALRACH, *Els pergamins,* doc. 177. The change in vocabulary could indicate a local adaption as *fusta* in the 11th already referred to wood in general and still does in modern Catalan. For the earliest document dating into the year 986, see: RIUS, Cartulario, doc. 188. RUSSEL-GEBBET, *Medieval Catalan*, doc. 5. The Visigothic codes uses *fuste vel gladio* in the law defining first strike as self defence when the clear intention of attack is imminent. LV VI.4.6: *Ne sit reus qui percutere volentem ante percusserit.* […] *Quicumque ergo incaute presumptiosus fuste vel gladio seu quocumque ictu aliquem iratus percutere voluerit vel percusserit et tunc idem presumptor ab eo, quem percutere voluit, ita fuerit percussus, ut moriatur, talos mors pro homicidio computari non poterit nec calumpniam paciatur qui pressummentem percusserit, quia commodius erit irato viventis resistere quam sese post obitum ulcisendum relinquere.*

1088 For Aragón and Navarra, comp. Ledesma y Rubio, María Luisa (1986), 'Acerca de las ordalias y del duelo judicial "de escudo y bastón" en el Aragón medieval.', in , Estudios en homenaje al Dr. Antonio Beltrán Martínez, A. Beltrán Martínez (Zaragoza: Facultad de filosofía y letras, Universidad de Zaragoza), 999–1006. Gijón, J. M. (1961), 'La prueba judicial en el derecho territorial de Navarra y Aragón durante la Baja Edad Media', *Anuario de Historia del Derecho Español*, 1961: 17–54. For the Languedoc: Débax, H. (2003), *La féodalité languedocienne*: *XIe-XIIe siècles: serments, hommages et fiefs dans le Languedoc des Trencavel* (Tempus, Toulouse: Presses Universitaires du Mirail), p. 263-67.

1089 Iglesia i Ferreirós, Aquilino (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981: p. 177: "En Cataluña, al menos en los primeros tiempos, el duelo podía realizarse a pie o caballo; este último era el duelo propio de los caballeros, mientras el duelo a pie, del que no existe información alguna para el siglo XI, lo debían practicar los habitantes de las ciudades y algunas categorías marginales de la aristocracia; en ambos tipos de duelo se combatía únicamente con escudo y bastón."

1090 FELIU, SALRACH, Els pergamins, doc. 177: *facta ex hoc per sacramentum et per batala de duobus cavallaris*. SALRACH, MONTAGUT, *Justícia*, doc. 409: *Et ipso die que metrant illorum cavalers in potestate de ipsos omnines quin faciant ipsa batalla* […].

testator.[1091] While this could be a standard result of a trial by combat the phrase *in ipsa invitacione placiti dolose deceptus* could indicate foul play, as in later duels pointed lances were forbidden. The circumstances of the trial are given and homicide is not explicitly mentioned, but one should take this account with a grain of salt as it would be a very early case of a trial by combat.[1092] Be that as it may, the source is not specific enough to be a definite reference to trial by combat. The consequences could have been grave, as another source in which certain Ramon who was wounded to death in the field (*Dei iudicio in prelio vulneratus interriit*) mentions a Judgment of God but also lacks certainty in its credibility as a definite case of trial by combat.[1093] The idea that one can generally differentiate between *miles* as a fighter on foot and a *cavaller* as a fighter on horseback is far-fetched. It is probable that both modes existed early on, or possibly that fighting on horseback became optional very soon afterwards. The *Usatges* distinguish between the pledges to be paid when the judicial duel was to be conducted on horseback or on foot.[1094]

1091 UDINA, *La successió*, doc. 129: *Hec omnia ordinavit atque constituit predictus condam Ermengaudus, sicut suprascriptum est, in sua sanitate vel memoria, postea ad dies plurimos vocatus est ad placitum per suos proprios consanguineos, id est: Guitardum vel Geribertum, et in ipsa invitacione placiti dolose deceptus gravi preiculo immenente et casu mortis interveniente, ibi crudeliter vulneratus atque lanceis vulneratus subito in ipso placito ex hoc migravit seculo in mense isto preterito Augusto, ante quam hac rem suam permutasset voluntatem, sed in hac ordinacione aliquid restat quod hic emendare necesse est; videlicet quod post obitum defuncti, fetu gravidam reliquid uxorem quam lex posthumum apellat, et cum ceteris qui nati sunt fieri debere confirmat heredem; in aliis vero in quibus suam dividit facultatem videmus congruum ut ipsum cui dimisit alodem suum in termino castrum Olone ut eum plenitum habent ceteris vero fratribus vel sororibus quibus amplius alium minus retulit elemosinam ut equaliter dividant paternam hereditatem. [...] Signum Isarno. + Vuisadus, sacerdos. Signum alio Guisado. Testes sumus de hac causa et hunc testi legaliter confirmavimus, ordinante iudice per supradnixum iuramentum in Domino.*

1092 Comp. Kosto, A. J. (2001), 'The limited impact of the "Usatges of Barcelona in twelfth-century Catalonia', *Traditio*, 2001, p. 79: Bonnassie interprets this as evidence for his death in a judicial duel, but the text suggests that he was simply ambushed.

1093 SALRACH, MONTAGUT, *Justícia*, doc. 323: *Sucessit autem in eius loco Remundus, filius eius, qui, quandiu vixit, paterno corruptus errore, eandem violenciam, sicut eius pater, retinuit, sed et ipse antequam ad perfecte aetatis perveniret annos, Dei iudicio in prelio vulneratus interriit.*

1094 BASTARDAS, *Usatges*, Us. 23 (27): *Bataia iudicata antequam sit iurata, si per milites debet esse facta per .cc. Uncias auri Valencie sit per pignora firmata; et si per pedones, sit fimrata per .c., propter hoc ut ad illum qui vicerit sit emendatum malum quod in bello acceperit, tam in corpore quam in cavallo sive in armis, et assequatur hoc por quo bellum factum erit et omnes missiones quas per illud bellum fecerit; et diffinitum illud quos acceperit ille qui victus fuerit.*

Capital 75 in the Cloister of the Monastery of Sant Cugat showing two Men fighting with Clubs[1095]

One of the common features in bilateral ordeals is the idea of evening the odds by all means possible to ensure that it is only through God's justice that one of the combatant wins.[1096] In most of the cases analysed in this work champions were chosen to represent each side. According to the *Usatges* judicial duels between magnates and their knights, "*may not be carried out by their own hands but only through that of a loyal man chosen by each side*."[1097] Only in a few cases we can be sure that we are not dealing with a conflict between *magnates*[1098] and thus the selection of champions is the most common decision made by the judges. Skilled duellists, fighters who were already experienced with the pressure of performing in front of a crowd and that

1095 For similar images put into the context of trial by combat in medieval Iberia but focusing on northern Spain and thus not dealing with the Crown of Aragón, comp.: Powers, J. F., and Attreed, L. C. (2018), 'Justice, Conflict, and Dispute Resolution in Romanesque Art: The Ecclesiastical Message in Spain', *Gesta*, 57/1: 5–22; Especially p. 19: Confronted foot warriors, 1200–1215, capital, west side of south portal, San Esteban. See also: Powers, J. F. (2015), 'Judicial Combat in Medieval Iberia During the Twelfth and Thirteenth Centuries: Evidence in Law and Image', *Viator*, 46/3: 123–153.

1096 SALRACH, MONTAGUT, *Justícia*, doc. 491: [...] *et Dei iusticia auxiliante fuit superatus atque convictus bellator* [...].

1097 Bastardas, *Usatges,* usat. 43 (46): *Similiter sit inter magnates et eorum milites, excepto quod bataia non sit in illorum manu facta, set tantum in manu fidelis ab utraque parte electi.*

1098 A clear exception that does not directly involve magnates: SALRACH, MONTAGUT, Justícia doc. 491.

would not get sweating hands from nerves during the preparations, would have had a clear advantage.

The easiest way to avoid hiring established champions on these occasions was to ensure that the selected representative had never fought in a judicial duel before. So Ramon Miró would make *"the aforesaid oath through one of his knights (caballarium)* [...] *which never had done sworn combat with shield and stick before*" and the count and countess would make the same oath.[1099] This was a common formula that, with slight variations, can mostly be found next to every regulation to do with hand to hand combat with shield and stick.[1100] In the charters for Catalonia the context allows one to determine that 'torna' referred to trial by combat and not to other types of ordeals.[1101]

In an undated charter Guillem Bernat of Queralt[1102] made an agreement with the counts of Barcelona, Ramon Berenguer I and Almodis, that he would return all the charters in which the former count Berenguer Ramon granted the castles of Gurb and Sallent to his father as an allod.[1103] If he does not find them he assures that he will swear through a "*caballarium qui non vetet se inde tornare per bataliam"* that he does not have them "*nec tenet eas celatas vel sufocatas vel opressas ad ullum damnum iam dicti comitis et comitisse, nec sapit ullum hominem vel feminam qui teneat eas furtim vel presentiarum absconsas vel suffocatas"*.[1104] The charter clearly starts with *hec est convenientia* between the two sides and then states the terms agreed upon (*convenit namque* etc.). The document looks like the interim documents issued in between trials

1099 SALRACH, MONTAGUT, *Justícia*, doc. 334: […] *faciat facere predictum sacramentum per unum suum caballarium* [qui non se devetet] *inde tornas et qui umquam non fecisset batalla iurata cum scuto et baston. Et si predicti comes Remundus et comitissa miserint tornas, faciant hoc per unum illorum caballarium qui umquam non fecisset batalla iurata cum scuto et bastone.*

1100 FELIU, SALRACH, *Els pergamins*: doc. 177: [...] *per batala de duobus cavallaris qui umquam non fecissent batala cum fuste et scuto.* SALRACH MONTAGUT, *Justícia*: doc. 330: *Et supradicta batalla siat facta cum scuto et bastone. Et ipsa batalla siat facta per duos caballarios que unquam non combatessen batalla iurada cum scuto et bastone.* SALRACH, MONTAGUT, *Justícia*, doc. 392: […] *et potuerit probare hoc per testes legitimos aut per unum videntem qui non se devetet tornas aut si ipse videns debilis fuerit et unum militem pro se ad hoc miserit. Si ita potuerit hoc prefatus comes probare aut taliter per sacramentum et bataliam convincere* […]. MIQUEL, *Liber Feudorum*: doc. 821: [...] *ut excondigant per sacramentum et per bataliam per unum caballarium, qui numquam fecisset bataliam iuratam cum scuto et bastone,* [...].

1101 Iglesia i Ferreirós, Aquilino (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981: p. 147-48: Otro tanto podría decirse del término «torna», que, aparte de un valor genérico puede aludir al duelo o cualquier otro tipo de ordalía. For example: FELIU, SALRACH, Els pergamins, doc. 700: *Et si ipse Raimundus non vult credere quod per fidem percipiat ei ipsa, Artall faciat ei iurare per unum militem quem non sit deved tornà*. Comp. VLCM**:** Debel·lar *v. a.* Batre l'enemic a força d'armes, destruir.

1102 Sometimes referred to as Guillem of Gurb or Guillem I of Queralt, father of Bernat Guillem de Queralt.

1103 SALRACH, MONTAGUT, *Justícia*, doc. 390. Almodis acts as countess so the charter can be dated between her marriage and her assassination: 1052-1071.

1104 Ibid.

as it is not dated and furthermore lacks all diplomatic formalities of the *eschatachol.* On this occasion the oath seemed to be sufficient but in the case of later betrayal this could have turned into a case for trial by combat. At the same time this raises several questions. Why was a knight that had never done *bataliam* before needed if a simple oath would be enough? Is it possible that the phrase was just used to clarify that this was a possible case to proceed with a trial by combat, or to impose a threat? On the other hand, a fighter who lost a judicial duel could be considered tainted and unfit to perform another fight of this type, but in that case we would expect previous winners to be allowed. It is possible that the knight swearing the oath would be the same one called upon to fight, in case of the charters being used against the couple later on? This notion is supported by the wording of the above-mentioned case between the Archbishop of Tarragona and Pere Ramon of Tous. It is the only case where neither *milites* or *cavaler* is used to describe a fighter – throughout the document we find the word *missum* instead.[1105] That could imply a very different dynamic in certain cases, when the knight sent to swear the oath would be the one to fight in the duel if this oath was seen as not credible enough.

There is another case that also indicates that the individual who had to swear an oath was also the one had to overcome the ordeal. In a dispute concerning an allod between Bernat Ramon and Guilla, daughter of Ramon and Ega, one encounters the only occasion in which trial by combat stands side by side with another type of ordeal.[1106] The parents of Guilla gave her an allod through a *scripturam donacionis* but Bernat Ramon claims that he bought it from her with *consilio et consensu*. The judge rules that they have to prove their testimony and that what *probatum aut escundictum fuerit* through peasants (*pagenses*) should be done through *iudicium aque calide* and probably that which would be done by *milites* through *bataliam*.[1107] The loser would have to return the allod and pay double for what it had yielded.

1105 SALRACH, MONTAGUT, *Justícia*, doc. 543: *Quod si domnus archiepiscopus hoc facere noluerit, Petrus Raimundi expiet se sacramento et pugna per suum missum quod nullo modo scit quod prefatus archiepiscopus aut precessores sui ullo umquam tempore habuisset vel habuissent vel habere debeat predictum receptum ex iamdictis hominibus. Quod si missus prefati Petri fuerit victus,* […], etc.

1106 SALRACH, MONTAGUT, *Justícia*, doc. 425. Only indicating the regnal year, *[...] XVIIIIregnante Philippo rege*, the charter could be dated to 1078 or 1079.

1107 The charter is considerably damaged at several points and the easiest explanation, keeping in mind the cases analysed so far, is that the *milites* would do *bataliam* instead. SALRACH, MONTAGUT, *Justícia*, doc. 425: *Et illud quod recognoverit dimittat [...] quicquid probatum aut escundictum fuerit per pagenses fiat per iudicium aque calide, quicquid per [...] de fiat per bataliam. Qui vero ibi superatus fuerit reddat illud alodium et explets in duplum [...] et emendet malum de ipso batalario.* For *escundictum*, comp. DuCange, **e**xcondicere, escondire: Excusare, satisfacere, purgare se sacramento, affirmare.

In several occasions the agreements stipulate that the combatants had to be locals. The first is a clause found in the agreement between the counts Ramon Berenguer I of Barcelona and Ermengol IV of Urgell about the terms of the rights they have over some castles, dating sometime between 1066 and 1076. They agree that if one suspects the other to have broken the agreement then they would arrive in court where the case could be handled *through battle between them done by two Knights which are from those land of Clusa close to Enca and which never before have done sworn battle.*[1108] Later in the agreement regarding the pledges it states that under special circumstances, knights could be sent into a duel but both combatants had to be *de sua terra*[1109] and that they are *homines de iamdictis duobus comitibus.*[1110] In an earlier agreement dating in 1062 between count Ramon Berenguer I and Ermengol III, the father of the beforementioned count of Urgell, a similar clause is established between the two in the case of infringement. The *caballarii* that should do the duel should be *naturales de terra preditorum comitum* and thus one can conclude that *de sua terra* referred to the county as well.[1111] Both examples are in regards to agreements between the count of Urgell and Barcelona so that they are not very representative of the period or region as a whole, but in another case dating in the year 1128, Ponç II of Empúries was given the chance to *expiet se per unum militem de terra sua ad alterum militem comitis de Rosseion* after being accused of having broken a truce with the count of Rosselló.

This could be another argument for consciously avoiding having combatants for hire on the market, or could simply be a regulation that enhances the symbolic dominion over the men in the own county, and at the same time impedes men to change sides and allegiances. Regardless of the exact motivations behind these

1108 BAIGES, FELIU, SALRACH, *Els pergamins,* doc. 66: *Et si non concordant ipsi homines ex utraque parte de ipso uidicio, sit factum et creditum ipsum iudicium quid fuerit factum et ereptum per bataliam inter eos per duos caballarios qui siant de illorum terra de Clusa ad Enca et qui umquam non fecissent bataliam iuratam.*

1109 Ibid: […] *predictus Barchinonensis comes mitat in verum per sacramentum et bataliam per unum caballarium qui sit de sua terra et qui unquam non fecisset bataliam iuratam,* [...]. *Et iamdic[tus] comes Ermengaudus si vult distornet ipsum caballarium per sacramentum et bataliam per alium suum [caballa]rium qui sit de sua terra et qui umquam amplius non combatesset bataliam iuratam.*

1110 Ibid: *Et sint factas istas supradictas batalias in potestate de duos hominis qui sint homines de iamdictis duobus comitibus quos […]nes eligant et qui voleant bene et pacem de hoc ex utraque parte.*

1111 FELIU, SALRACH, *Els pergamins*: doc. 588: *Et [i]psi caballarii qui debuerint facere ipsam bataliam sint naturales de terra predictorum comitum et qui unquam non fecissent bataliam cumbatuds et iuradam, et veniant in potestatem de duobus hominibus bonis predicti Reimundi comitis et de aliis duobus predicti Ermengaudi comitis propter hoc ut faciant ipsam predictam bataliam. Hec omnia iam dicta de predictis hostaticis sint facta sine enganno ex utraque parte predictorum comitum.*

regulations, they clearly hampered the notion of champions for hire and together with the underlying notion of honour this established a pre-chivalrous tradition.[1112] These are only small hints but everything points towards the understandable concept of recruiting the champions from the magnates entourages as being in practise long before the Usatges set down this concept in law. It is intriguing to consider that having more loyal men at one's disposition, willing to fulfil their duties towards their lord, would increase the chances of finding a suitable contestant. Therefore that consideration not only encourages training but also recruitment and could also serve as a test of loyalty. As most of the documents are interim documents or agreements the names of the fighters are usually not documented, otherwise one would certainly be able to determine the ties between the magnate and the combatant and whether it was considered one of the vassal's obligations to help his lord.[1113]

The legal documentation is silent on the topic of the final preparations right before the judicial duel. Blessings, benediction and prayers surely played a role as they did in nearly all spheres of life. This silence in the pontificals and sacramentaries gives the impression of a lesser involvement of the church that is surely misleading. The only formula for benedictions for stick and shield for judicial combat is preserved in British sources. Liebermann dates this formula in the years 1067-1130 and it shows certain similarities to the pilgrim blessing ritual – *perae et baculi* – which in many of the cases it is found next to.[1114] There was flexibility to adapt, taking certain parts of other ordeals[1115] and mostly drawing from psalms combined with the imagery of the boy David triumphing over the giant Goliath made for a good coherent mixture that could be used nearly anywhere.

1112 Hired champions became a common feature in many places in later centuries ranging from thugs and criminals to professionals. This can be linked to the fact that all kind of issues could be determined by trial by combat, while in Catalonia a lot of legal restrictions were put in place early on. For 13th Century England and the scale of this from a business perspective, see: Leeson, P. T. (2011), 'Trial by Battle', *Journal of Legal Analysis*, 3/1: 341–375; p. 342: "Trials by battle were literal fights for property rights. I model these trials as all-pay auctions. Disputants 'bid' for contested property by hiring champions who fought on their behalf. Better champions were more expensive and more likely to defeat their adversaries in combat. Since willingness to pay for champions was correlated with how much disputants valued contested land, trial by combat tended to allocate such land to the higher-valuing disputant."

1113 Regarding the concept of *auxilium* see: Débax, H., 'Le conseil féodal en Languedoc et en Catalogne, XIe-XIIe siècles', in M. Charageatet and C. Leveleux-Teixeira (eds.), *Consulter, délibérer, décider. Donner son avis au Moyen Age (France-Espagne, VIIe-XVIe siècle),* (Editions Méridiennes, PUM), p. 109-128, esp. 13-16.

1114 Franz, *Benediktionen,* p. 364-65; Liebermann, *Gesetze*: p. 430-31.

1115 Especially, see Zeumer, *Formulae,* p. 639, 673, 709.

IV.2.3.4.2. The Aftermath

Quite a common regulation is that the losing party – *qui verbo ibi superatus fuerit* – amends, meaning pays for the injuries – *mallum* – sustained by the winner.[1116] In all cases the verb *emendare* is used here and with good reason. The losing side has wronged the other and the language used is the same as if they were compensating and paying for other damages caused. The focus lies always on the side that *victus fuerit* and not on the one winning.[1117] For that reason this regulation is sometimes awkwardly added for each side.[1118] This general rule makes sense – the losing side is forced to actively acknowledge, in front of the present crowd, that they are the wrongdoers. Never explicitly stated, one has to assume that the amount of payment was evaluated by the men entrusted to take care of the fighters before the duel or the *boni homines,* as was generally the casein other aspects.

The fate of the fighters is unclear. Losing in front of everyone while fighting for your lord that had put all his trust into your hands must have been devastating. Eradicating all potential to cheat in such a fight must have been crucial. On the 24th of July 1075, Geribert Guitard and his wife Rodlanda donated an allod with a house, barn, pen and different types of trees in the territory of Barcelona, at today's Banyoles and Cornellà de Llobregat, to the Lord God and the Canons of the holy cross and Saint Eulalia.[1119] Written by the presbyter Arloví[1120] and signed only by the spouses, one phrase jumps out as being out of the ordinary. The "before-written allod came to our possession through purchase, other voices[1121] and through the *emendationem quam*

1116 Salrach, Montagut, *Justícia*, doc. 425: *Qui vero ibi superatus fuerit reddat illud alodium et explets in duplum [...] et emendet malum de ipso batalario.*

1117 Salrach, Montagut, *Justícia*: doc. 398: *Et qualiscumque victus fuerit emendet malefacta ad militem alterius* […].

1118 Salrach, Montagut, *Justícia*: doc. 409: *Et si fan batalla et suo omine de Remon Gomball i venez ut predicta episcopo feneschat ad iam dicto Remon Gomball ipso termine et emendet ipso malo quod apreenderit ipso kavallario de Raimundo sic quomodo fuerit iudicatum per directum. Et si ipso suo omine de domno episcopo i venz, similiter fenescat Remon Gomball ipso termine iam dicto supra nominato ad iam dicto Guilelmo episcopo et emendet ipso male ad ipso bataller quomodo erit iudicatum per recte.* Miquel, *Liber Feudorum,* doc. 821: *Et si caballarius iam dicti vicecomitis et vicecomitisse victus fuerit, emendet ipsum malefactum in duplum, simul cum ipso malefacto de ipso caballario, quod accepit in ipsa batalia, et hoc quod comes et comitissa dederunt ad ipsum caballarium per ipsam bataliam. Et si caballarius iam dicti comitis et comitisse victus fuerit, definiant ipsum malum iam dictis vicecomiti et vicecomitisse, et illorum caballario emendet ipsa malefacta que acceperit in ipsa batalia et hoc quod predicti vicecomes et vicecomitissa dederint ad eum per ipsam bataliam.*

1119 Salrach, Montagut, *Justícia*, doc. 406.

1120 Arluvinus.

1121 *Per ullasque voces* is a standard phrase that refers to property deriving from different sources. Compare

nobis fecit Guilelmus Bernardi per bauziam quam ipse fecit nobis de ipso nostro bello"[1122]. One plausible interpretation is that the compensation Guillelm Bernat made was for the *bausia* he committed in a judicial duel concerning them.

After the fighting was done, the wounds attended to and the first moment of excitement or shock had passed, the court received payment. Income through battles is listed next to other forms of lordly income. In an evacuation charter Pere II, count of Carcassonne and son of Garsenda de Besiers, gives up the rights[1123] over the viscountal castle of Carcassonne to Ramon, son of Béliarda, along with nine demesnes over certain places.[1124] Preserved in the *Liber Feudorum Maior* this transaction of right can be roughly dated between 1036 and 1050.[1125] Also included at the end are "*ipsas bataleas et ipsos usos et ipsos censos comitales et ipsa medietate de ipsum comitatum.*" These *bataleas* most certainly refer to the income generated by trial by combat as well as the right to perform these trials. They also figure in the sale by Rangard, countess of Carcassonne, to Raymond, count of Barcelona, her brother-in-law and his wife, her sister Almodis, of her rights in Carcassonne in 1070.[1126] Here the *batalias* figure in between the income through judicial assemblies – *placitis* – and other justices (*iustitiis*) as a separate right.[1127] Thus with a part of it being a right that resides with the highest magnate of the region,[1128] that probably also meant that certain payments were retained from the pledges.

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for example a charter dating to the year 1079, Rius, Cartulario, doc. 696: […] *per vocem uxoris mee, sive per comparacionem sive per ullasque voces*, […].

1122 SALRACH, MONTAGUT, *Justícia*, doc. 406: *Quod alodium prescriptum advenit nobis per comparationem sive per ullasque voces et per emendationem quam nobis fecit Guilelmus Bernardi per bauziam quam ipse fecit nobis de ipso nostro bello.*

1123 For *guerpire* as in abandonment, *carta guirpicionis*, For other meanings, see: Brosman, P. W. (1964), 'Romance "guerpire"', *Romance Philology*, 18/1: 31–33.

1124 MIQUEL, *Liber Feudorum,* doc. 813.

1125 Baudreu, D. (2019), 'Du pouvoir comtal au pouvoir royal : le château de Carcassonne', *Patrimoines du Sud*, 2019, p. 18.

1126 MIQUEL, *Liber Feudorum,* doc. 823. For more detail, see: Cheyette, F. L. (1988), 'The "Sale" of Carcassonne to the Counts of Barcelona (1067-1070) and the Rise of the Trencavels', *Speculum*, 63/4: 826–864.

1127 MIQUEL, *Liber Feudorum,* doc. 823: [...] s*imiliter cum omnibus ipsis fortedis, et dominicataris, villis, et census, et redditus, et viaticos, et monetis, et alberges, et staticas, et placitis, et batalias, et iustitiis, et redirectionibus,* […].

1128 A bit out of our scope but still significant. On the 14th of November in the year 1155, Arnau, bishop of Elna, and Gaubert of Avalrí, settle their dispute regarding their rights over the town of Elna and its territory. Comp.: MONSALVATJE, *Noticias históricas*, XXI, doc. 40: […] *Itaque ego Gaubertus de Avalrino recognosco et laudo consilio praedictorum iudicum Ecclesiae Sanctae Eulaliae et tibi Artaldo domino meo Helenensi Episcopo et omnibus successoribus tuis in perpetuum omnia regalia et omnes batallias et omnes iustitias, scilicet cogocias, homicidia, adulteria, furta, et* [...] *in meo et in alieno a collo de Bagiis usque ad ripam maris et a Reardo usque ad flumen de Tec; sed ego teneo per te omnes justitias de Avalrino, exceptis batalliis*.

Combining the different sources to visualise how the whole procedure looked in the second half of the 11th Century is risky as many parts seemed to have been still negotiable and needed to be finalised beforehand to avoid misunderstandings. The similarity between the cases should nevertheless be understood as an indicator that customs already governed procedure at this point in time.

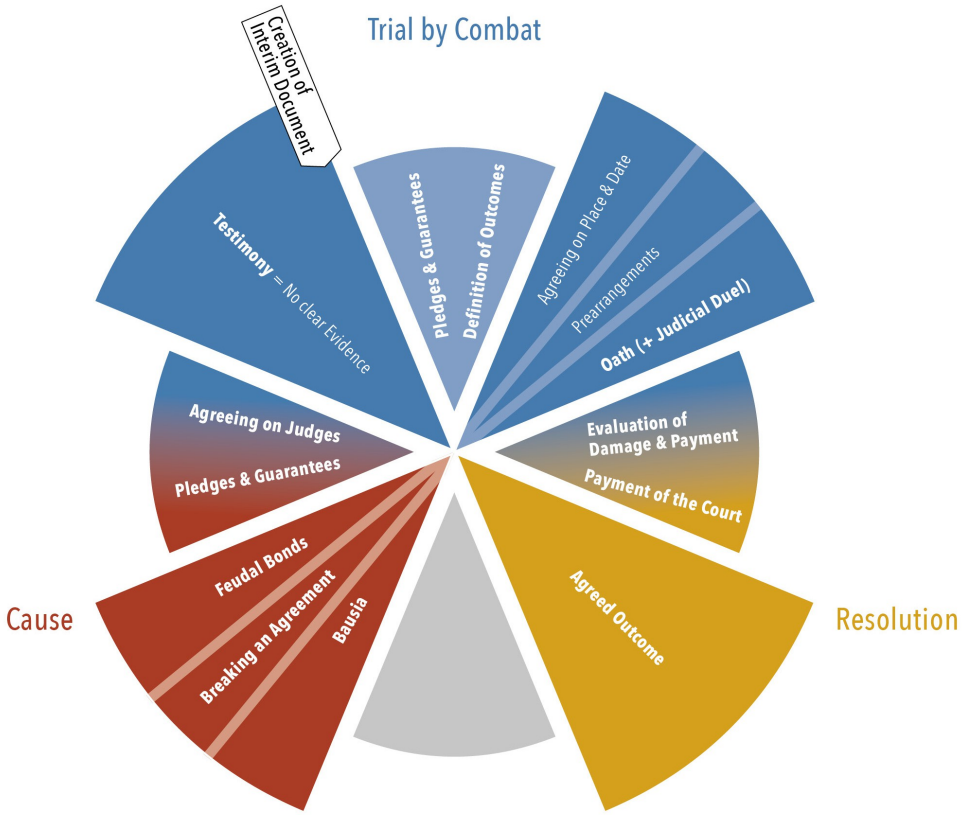


Fig. 8: Trial by Combat in the 2nd half of the 11th Century

Looking at the evidence so far the general impression is that trial by combat, very similarly to other ordeals of unilateral character like the cauldron, was proposed and contemplated but rarely executed, however there is one specific case in which the end result is preserved that leaves no doubt that judicial duels actually took place.

IV.2.3.4.3. A Case of Domestic Violence

That treacherous parricide gave me a blow under the chin
so that all the teeth in my mouth are still waggling.[1129]

The next case is a commemoration charter regarding the events around a disputed property near Arfa that the winning party donated to Santa Maria d'Urgell on the 11th of April 1091.[1130] The charter defines itself literally as a *carta comemoracionis seu evacuacionis,* as it certainly commemorates the deeds and actions that led to the evacuation by the losing side. At the same time the document reads like an inventory of the damages that Guillem inflicted on his father Arnau.[1131] At first glance it is just another charter that shows the conflict between father and son over some inheritance. In this particular case however actions became dreadful, starting off with petty crimes like theft and scams but quickly proceeding to more serious acts that show a clear and organised intent to disgrace and ruin his own parent. These acts of calumny finally escalated into a spiral of violence leading to assault and even homicide. Only after the judicial system is activated, in this case not by the victim of the violence but by the offender, does the case culminate in a final act of confrontation that settles the score.

Right after the *Invocatio* the charter begins in the fashion of a donation, in the first person with Arnau, father of Guillem, swearing that God being his witness that he fed and educated his son as well as he could.[1132] After this introductory statement, the document starts to list the events and deeds chronologically. Arnau explains that when Guillem reached adulthood, he asked his father to accept him as a vassal, which he did, but with some remorse. A short time later Guillem asked his father to sell him an

1129 SALRACH, MONTAGUT, Justícia doc. 491: […] *ille perfidus parricida subtus mentum talem mihi dedit quod semper omnes dentes in ore meo contremuerunt.*

1130 Ed. BARAUT, «Els documents», VII, doc. 1079; SALRACH, MONTAGUT, Justícia doc. 491. This document was Studied by Salrach briefly and Sabaté mentions it as well. See: Salrach i Marés, J. M. (2000), 'Les modalités du règlement des conflits en Catalogne aux XIe et XIIe siècles.', in , *Le règlement des conflits au Moyen Âge* (Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public. 31e congrès., Angers), p. 131-32. Sabaté i Curull, F. (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada), p. 83.

1131 Ibid: *Hec est carta comemoracionis de malis que iniuste fecit Guilelmus Arnalli mihi patri suo Arnallo*. The son's full name was Guillem Arnau and his father's name Arnau Guillem. To simplify the narration and avoid confusion from now on the name Guillem will refer to the son, and Arnau to the father. To complicate things further, one of the judges involved is also named Guillem Arnau and will hitherto be addressed as Guillem Arnau.

1132 Ibid: *Ego predictus Arnallus ut michi testis est Deus enutrivi meum Guilelmum et erudivi eum ut melius potui* […].

obtimam mulam, a mule he had, and his father sold the animal to his son for twenty ounces of gold but he did not receive the payment.[1133] On another occasion, when Arnau was in the company of some canons of Urgell, Guillem came to him and asked for the keys to a house which he needed in order to pick up his brother's harness. His father gave him the keys but had difficulties getting them back. Shortly after, Guillem came with a man from the castle *Sancti Iacobi*[1134] to his allod in Arfa. There he broke into both Arnau's house and the *sagrera* that he had near the church of Sant Sadurní,[1135] and took all the possessions that he could find. Arnau asks, invoking God and the fidelity that he owes him, that he returns everything that he unjustly took, but Guillem refuses and instead mocks him, saying that he does not even want to give him sufficient livelihood for one day.[1136] Only a few days later, according to Arnau, while the count and the bishop of Urgell were besieging the castle of Calassanç with a great troop of soldiers[1137], Guillem appeared in front of the bishop and accused his father of being one of the unfaithful, to the point that he should be counted among the heretics, and of being an adulterer and a drunk, and thus unworthy of belonging to the society of the brothers of the heart of Santa Maria de la Seu d'Urgell.[1138] Guillem postulated that he should occupy his father's place in the *societate fratrum*, from which Arnau was consequently expelled.[1139]

Not knowing what to do Arnau went home to his allod, but his "pursuers" wasted no time; Guillem went there, together with Arnau Dacó and some other men, and threatened to throw his father out of his house. Because Arnau was not able to do

1133 Ibid: *Transacto autem modico tempore ego habebam obtimam mulam, ergo ut eam ille vidit dixit ut eam venderem ei, et ea adpreciata dedi ei per viginti uncias auri, qua accepta nec falsum denarium non mihi persolvit propter hoc pretium.*

1134 Due to proximity the most probable location of the *castri Sancti Iacobi* would be some ruins next to Santuari del Boscalt at the feet of the Cadí mountains.

1135 There are several places named Sant Sadurní, because of the proximity to Arfa it most probably should be Sant Sadurní de Noves de Segre today at Les Valls d'Aguilar.

1136 SALRACH, MONTAGUT, Justícia doc. 491: *Ego enim rogavi eum per Deum et per fidem quam mihi debebat quod restueret et redderet michi hoc quod iniuste abstulerat, sed ille suus sevus omnino facere recusavit et subsannando [ne]que ad diem unum victum michi dare noluit.*

1137 The castle of Calassanç situated today at the town of Peralta i Calassanç was besieged by Ermengol IV of Urgell the first time in 1083 but withstood Christian attacks until capitulation agreement was reached in 1103. See CR, 26, p. 277-279.

1138 SALRACH, MONTAGUT, Justícia doc. 491: *Hoc transacto, postpositis paucis diebus dum esset Ermengaudus comes et episcopus Bernardus cum maxima caterva militum, qui erant congregati ad obsidendum castrum Calasancii, venit Guilelmus ante episcopum et retulit de me multa falsa testimonia quod eram infideli satque inter ereticos computatus, adulter et ebriosus et eram indignus in coro cum aliis meis fratribus societatem habere.*

1139 Ibid: *Quid plura referam. Ad ultimum dedit episcopo semedipsum pro me et fuit in suo famulitio propter hoc ut expelleret me a coro Sancte Marie et a societate fratrum, et omne hoc quod dolose loquendo incoavit non desinit quousque ad perfectum adduxit.*

what they ordered quick enough, Guillem struck him so hard that he dislodged his teeth. Then he pulled him outside and struck him on the chest using the door, causing Arnau to fall into the dung-heap.

The son returned to his father's home only a few days later with his men and took everything that was left after his first plundering, even taking the shutters and the doors. They also found a follower of his father, who was lying ill in bed. They threw this man out as well, which caused the man to die eight days later.[1140]

The third and final attack happened when Arnau was lying sick in bed and his son arrived with his *perfidis hominibus.* They entered loudly, making a lot of noise, telling Arnau to leave and threatening to bind his feet and drag him to the Segre river if he did not do so, probably to drown him. But as his father was unable to get out of bed, Guillem took all of his wine before his father's eyes, while threatening that if his father bothered them then he would take a doorpost and use it to strike his father's head so hard that his eyes would be knocked out and fall to the floor.[1141]

There are more examples of this kind of systematic terrorisation to achieve the abandonment of a property in the 12th Century that also involve several visitations with nearly the same conduct, culminating in the withdrawal of shutters and doors.[1142] This was much too common to be coincidental but rather points to a symbolic meaning in leaving the doorways and windows permanently open that shows up in

1140 Ibid: *Hoc peracto, post paucissimos dies reversus est hic cum suis hominibus et omne hoc quod reliquid in prima depredacione abstulit tunc sine ulla reservacione, et ut omnia ad interitum devenissent non ibi reliquid seras neque ulla obstacula ostiorum. Super hec autem meum hominem qui iacebat eger in domo tam graviter eiecit foras quod mortuus fuit infra dies octo.*

1141 Ibid: *Iacebam nimium eger in prediolo meo de Artedo et ille venit illic cum suis perfidis hominibus et inreverenter cum magno strepitu intravit ante me et dixit ut inde exirem, quoniam nisi cicius hoc facerem religatis pedibus cum fune faceret me trahere a garenis usque ad flumen Sigeris. Ego autem dum hinc sicut ille iusserat exire non potui, videntibus meis oculis, abstraxit inde omne vinum quod hic habebam et minatus est michi quod si molestiam illi facerem cum una ex postibus domorum talem in frontem mihi daret quod statim oculi evulsos a capite in terram caderent.*

1142 The attack of the estate the Mas Saltells by Guillem II de Montcada, follows the same pattern with several attacks culminating in the withdrawal of the hinges of windows and doors thus leaving the property open. The intruders in these incursions also drink the wine and threaten the administrators with the goal that they abandon the property. First edited by Víctor Farias and then by Benito Monclús. See Farías i Zurita, V. (1994), 'Una querimonia desconeguda procedent de l'antic arxiu de Sant Cugat del Vallès (ca. 1160-1162)', *Gausac*, 5: 99–104: *Ianuas vero et hostia domorum et omnia vascula domus fregerunt atque portaverunt, seras quoque portarum extrahentes detulerunt.* Benito i Monclús, P. (2000), 'Els "Clamores" de Sant Cugat contra el fill del gran senescal, i altres episodis de terrorisme nobiliari (1161-1162)', *Anuario de Estudios Medievales*, 30/2: p. 862: "Finalment, el dia de Sant Esteve, entraren en el mas Saltells, prengueren 20 quarteres d'ordi, trecaren els atuells, i també se n'endugueren alguns, trencaren les portes i les finestres i s'emportaren els forrellats".

local customs written down in the 13th Century.[1143] The message was clear: Leave or I will make you leave.

But his actions were still not enough to get his father to leave his own house. Having not achieved his goal Guillem then commits a grave mistake: he finally decides to activate the legal apparatus. Having made the right allegiances and isolated his father in such a manner, he must now have felt safe enough to come to the chapter of Urgell in order to accuse his father of holding back the allod at Arfa. In the presence of the judges Guillem Arnau and Ermengol Bernat and many clergy- and laymen he claimed that his father had made a donation charter to his mother and that she had later handed the property over to him. In court Arnau denied that he made or issued such a charter. It would make sense that now with nothing to lose the humiliated father would also present his grievances, thus breaking his silence and causing contradictions. The conflict had reached a climax which resulted in solution via *bellatores* – meaning trial by combat. It is hard to not sympathise with the victim and upon reading the charter one cannot but be relieved that the combatant of Arnau won. Guillem therefore made the *evacuatio* in favour of his father, who donated the property to Urgell as a remedy not only for his own soul but also for his son's.

It is an extraordinary document in many regards and worthwhile to study in detail, first by taking a look at the narrative structure of the document and then by inspecting it from the standpoint of diplomatics and the circumstances of its creation.

The charter was written after the ordeal and the same rules regarding narratives in the case of unilateral ordeals have to be expected here. Introducing the narrative using a biblical reference is a well-used tool to reinforce the imagery and here one could have recited the famous biblical commandment, "Honour your father and your mother",[1144] or cited passages from The Book of Sparks as was the case in other conflicts between father and sons,[1145] but another biblical reference was cautiously

1143 In a franchise charter, dating to the 16th of January 1268, the Viscount of Vilamur gave certain rights to the habitants of the town of Ribera de Segur while reserving himself the right to withdraw the doors of the houses of the citizens that did not pay the agreed census. The franchise charter exists in both a Latin and a Catalan version; for convenience only the latter is cited. Ostos, *«Vizcondado de Vilamur»*, doc. 30b: *Item si per aventura alcun no paguarà lo sens de les casses al terme a aquell asignat, lo senyor del loch se'n port les portes de les casses d'aquells qui no hauran paguat lo sens constituït.* Josep Pons not citing his source propbably meant the same charter, comp.: Pons i Guri, Josep M. (1986), 'Relació jurídica de la remença i els mals usos a les terres gironines', *Revista de Girona*, 118: p. 440: "El senyor podia fer ús de drets tan pintorescs com el de treure les portes de la casa si l'emfiteuta no pagava els rèdits al temps oportú o no feia ferma de dret en el cas que li fos exigida".

1144 Exod. 20:12.

1145 The Liber Scintillarum, a florilegium of biblical and patristic statements is, for example, preserved in

selected instead. The treasonous character of the son is reinforced by stating that he followed the example of Ham, the second son of Noah.[1146] As told in Genesis[1147] the father of Canaan, after planting a vineyard and drinking some of its wine, laid naked in the tent. Ham saw him like this, but instead of covering his father he went to his brothers and told them about it. The two brothers then walked in backwards and covered their father's naked body. When Noah awoke, he cursed Ham and blessed his other sons. This reference is extremely appropriate. On one hand because of the existing brother but more importantly because of the embarrassment the father was exposed to: *as all were able to acknowledge.*[1148] Invoking this image of humiliation right at the beginning of the narrative shows the treasonous character of the son who had been fed and brought up well, as the father swore, and is a fitting introduction to the unfolding story – *sicut subscriptum in hac paginola*.[1149] Arnau's depiction in first person leaves no doubt that his son had indeed come to him at the right age deceptively asking for the oath to become his man.[1150] This side note is important from a legal perspective as we are told that he was of *perfectam etatem* and he did so with malicious intent, as he had no valid motive since he had been brought up with the father's best intentions.[1151] This was with no doubt a question of honour. It is not only the son against his father when he accuses him in front of others as a drunkard and as an adulterer, but also a vassal betraying his liege. The introduction of this detail is important as it makes trial by combat as a valid option in the hands of the judge that concludes the charter.

Let us now turn our attention to the structure of the charter which mixes certain elements of different document types. The *narratio* at the beginning of the document is extraordinarily long and has a certain resemblance to the list of grievances that start

Ripoll (ACA, Col. Man. Ripoll, num. 199, 2v-156r) containing several various fitting references to the chapter *De honore parentum* from the book of Sirach (Sir. 3). This chapter was "wielded in reprimanding rebellious sons" (p. 51) in other occasions as Wassenaar shows for the 9th Century, see: Wassenaar, J. I. (2016), 'Social justice in the Carolingian world in the ninth century. Poverty, hierarchy, and the (non)uses of Pseudo-Cyprian's De duodecim abusivis saeculi.', Master Thesis. (University of Utrecht). p. 49-53.

1146 SALRACH, MONTAGUT, Justícia doc. 491: *Supra scriptus autem Guilelmus quando ad perfectam etatem pervenit sequendo Cham filium Noe, qui noluit operire verenda patris sui sed vocatis aliis fratribus eum irrisit,* [...].

1147 Gen. 9:20-27.

1148 SALRACH, MONTAGUT, Justícia doc. 491: [...] *ita et ille omnino irridendo me sprevit atque turpiter coram omnibus, sicut subscriptum in hac paginola ab omnibus potest agnosci, conviciavit.*

1149 Ibid.

1150 Ibid: *In primis quando ad perfectam etatem prefatus Guilelmus venit fuit ante me et fraudulenter dixit mihi* […].

1151 Ibid.

to appear in documentation in middle of the 11th Century, but it is also, as the charter states itself, designed as a *commemoratio*. The charter also has a legal function as an *evacuatio* and as a donation. Therefore the document takes on a more standardised approach when Guillem is bringing forth the complaint – *ante conspectum omnium querellavit se* – that his father held the allod at Arfa unjustly.[1152] Without the *narratio*, from this point onward the charter would have the same composition as many other documents, but by putting this part before the rest, the charter maintains a chronological order.[1153] Everything that happened before the complaint is written beforehand but surely would have had resemblance to the grievances articulated by Arnau in court, and we probably even miss out on some details due to narrative cohesion and available space on the parchment.[1154]

The date of the charter is also revealing. The commemoration is signed not just any date but on the 11th of April 1091, on Good Friday, two days before Easter Sunday. To resolve the case with a commemorating charter wrapping up all these events right before Easter and thus closing this chapter with a donation was in everyone's interest. Arnau had clearly failed as a father and his son forfeited his inheritance because of the damages.[1155] This would also be in complete coherence with the *Usatges* wherein fathers can disinherit their sons when they seriously strike or dishonour them, accuse them of a crime before a tribunal or become traitors – all present in our story.[1156] The condition that sons must be clearly proven guilty had been met thanks to the judgment of God.

How is it that no one intervened even when the violence spiralled out of control? Shame and embarrassment could be factors that played a key role, but also the

1152 Ibid: *et multorum aliorum ante conspectum omnium querellavit se quod ego prefatus Arnallus iniuste tenebam meum alodium de Asua quod per cartam donacionis quam feceram sue matri et illa fecerat sibi erat suum directum.*

1153 Using a standard *promulgatio* formula after two thirds of the document: *Idcirco notum sit cunctis* [...]. Therefore the document starts with a *invocatio* then jumps directly to a *narratio* and starts all over again with a *promulgatio.*

1154 Ibid: *Et quia ille propter hec malaet multa alia que hic scripta non sunt* […].

1155 The verb *amittere* can be translated as 'to lose' but in that context clearly means to forfeit something. Ibid: *Et quia ille propter hec mala et multa alia que hic scripta non sunt amisit suam hereditatem, ego prescriptus Arnallus, propter remedium anime mee vel parentorum meorum ut Deus nobis propicius sit, dono prefatum alodium Domino Deo et Sancte Marie eius genitrici.*

1156 Bastardas, *Usatges,* Us. 119 (77): *Exheredare autem possunt predicti ienitores filios suos vel nepotes sive neptes, si illi tam presumptuosi extiterint ut patrem aut matrem avum vel aviam, graviter percusserint vel desonestquerint, vel de crime eos iudicip accusaverint, aut si filii efficiantur baudatores* [...]. It seemed to have been part of the agreed outcome beforehand, Salrach, Montagut, Justícia doc. 491: *et insuper quia iniuste belligerare fecerat patrem suum debebat amittere omnem suam hereditatem que ex me illi contingebat.*

systematic isolation of Arnau by his son that from our modern perspective has so much in common with cases of domestic violence today should be taken into consideration. The blame is divided between the father and the son and the father surely felt as ashamed as Noah – and in fact we can see this in another document related to this case.

After a year of inflection and thought, on the 20th of February 1092, also a Friday, two days before the Sunday of *Kathedra Sancti Petri*[1157], Arnau commits a *scriptura largitionis* to Santa Maria d'Urgell.[1158] Right away the charter starts with a *recognitio* that he is a sinner and a villain. He states that when he was young he acted against *God and his mother* – meaning the virgin Mary – and that the wrongs he committed would be too long to recount.[1159] The most reasonable explanation is that the donation was done after a confession and that now, "*however, trusting in the mercy of God and remembering his voice saying that in the very hour the sinner is converted, and aches and does penance all his sins will be forgotten by the presence of the Lord*"[1160] he is willing to redeem.[1161] In this document Arnau connects in a way the vicious deeds of

1157 Arnau surely would attend mass on the forthcoming Sunday. As far as I know there is no Antiphonary from that exact time period that survived from Urgell but all the *Missae in cathedra Sancti Petri Apostuli* are very fitting for the circumstances. The Missale Gothicum (VatLat, Lat. 317, f.) for example reads after the *Post Nomina* (BENNISTER, *Missale gothicum,* I, p 48.): *Deum qui beato petro tantam potestatem discipulo contulit ut si ipse legaverit non sit alter qui solverit et quae in terra solverit idem caelo soluta sint. Praecibus inpleremus ut eductis a tartaro defunctorum spiritibus non praevaleant sepultis infernae portae per crimina quas per apostuli fide vinci credit eclesia per dominum nostrum Iesum Christum.* The mass in the Antiphonary from Sant Pere d'Àger (BC, M 1147, f. 115) is the closest we can get. Comp.: Bellavista, J. (2007), 'L'Antifoner de Missa de l'Església de Sant Pere d'Àger: El Santoral. M. 1147 de la Biblioteca de Catalunya a Barcelona', *Revista Catalana de Teologia*, 2/1: pp. 192, 207.

1158 Ed. Baraut, «Els documents», VII, doc. 1084; SALRACH, MONTAGUT, Justícia doc. 498.

1159 The use of *eius Genitricem* could imply actions against the See of Urgell. Ibid: *Ego Arnallus Guilelmi recognosco me esse peccator, quia instigante inimico humani generis usque nunc promptior fui ad malum quam ad bonum,et egi multa a iuventute mea contra Deum et eius Genitricem que enarrare longum estunde ego facinorosum me recognosco*

1160 Ibid: *Attamen confisus in Dei misericordia et recolo vocem eius dicentis, quia peccator in quacumque hora conversus fuerit et ingemuerit et egerit penitenciam omnia eius peccata in oblivione erunt coram Domino.*

1161 The combination of Ezec. 33:12 (*Iustitia iusti non liberabit eum, in quacumque die peccaverit, et impietas impii non nocebit ei, in quacumque die conversus fuerit ab impietate sua*) and several passages of the new testament (Math. 12:31-32; Marc 3:28; Luke 17:3-4; 18:13-14; 23:42-43) allows this concept of penitence and salvation. McGrath suggests that it is the influence of Alcuin correlating justification and penance through a conflation of Ezec. 18:21 and 33:12 culminating in the spread of the phrase: *In quacumque hora conversus fuerit peccator, vita vivet et non morietur.* For the other medieval authors using this phrase onwards. See: McGrath, Alister E. (2005): Iustitia Dei. A history of the Christian doctrine of justification. 3rd ed. Cambridge: Cambridge University Press, p. 118. In the next Century Bernard of Clairvaux would finish his *Sermo de duodecim portis Ierusalem* in a short but concise fashion. MPL184, 1122: *In quacumque hora ingemuerit peccator, salvus erit*. In this case nevertheless the exact wording could stem from a prayer, comp.: Ogle, Marbury B. (1940): Bible Text or Liturgy? In *The Harvard Theological Review,* 33 (3), pp. 220-221.

his son with his own youth by donating half of his whole inheritance, which his son Guillem lost due to the damage he caused, and one third of the half corresponding to his other son, Ponç Arnau.. The donation is considerable and is comprised of some housings, all located in the town of Arfa, built by him inside of the *sagrera* at the church of Sant Sadurni[1162], most likely the same property his son raided with his entourage. The donation ends with a very fitting *sanctio* threatening wrongdoers not only with a quadruple amendment if transgressed but more seriously that they would be struck by the sword of anathema.[1163] Of course the *sanctio* formulae are standardised but as in the way biblical scenes were fittingly used this choice of formula relates perfectly to the trial by combat that happened a year ago, when the combatant of Guillem was vanquished "*through the help of God's Justice*".[1164] The *sanctio* clarifies that this donation is untouchable by even the most powerful in the region.[1165] Again this is, I believe, a careful choice of formula as it is not completely clear who the supporters of Guillem were, and closing the door to any possible appeals from the brother or any other family member and thus bringing the wheel of justice to a grinding halt was in everyone's interest. In fact the only name mentioned as a supporter of the vicious son is the local noble magnate Arnau Dacó.

If we combine the two documents into a graphic the complexity of dates becomes clearer.

1162 SALRACH, MONTAGUT, Justícia doc. 498: *Totum quod mihi advenit per successionem parentorum meorum seu per emptionem vel hedificacionem sive per quascumque voces, et unas mansiones quas ego ipse construxi intra sacraria Sancti Saturnini.*

1163 Ibid: *Si quis sane, quod minime credimus,homo aut homines, femina vel femine hanc largitionis mercedem confringere veldisrumpere presumpserit vel presupserint aut aliquid de ipsa canonica extraerevoluerit vel extraxerit peccatum meum illius anime sit obligatum quod pro hac largitione cupio esse purgatum, et quantum tunc temporis predicta omnia melioratafuerint, secundum instituta sanctorum canonum, in quadruplum cogatur exsolvere prephate Dei Genitricis Marie eiusque Canonice, et insuper anathematis gladio feriatur donec ad dignam satisfaccionem.*

1164 SALRACH, MONTAGUT, Justícia doc. 491: [...] *et Dei iusticia auxiliante fuit superatus atque convictus bellator prefati Guilelmi a meo.*

1165 SALRACH, MONTAGUT, Justícia doc. 498: *Sub ea vero lege ut nullus comes aut episcopus seu archidiaconus vel primicerius aut ullus homo vel femina, nobili autvili persona in alios usus quead retorquere.*

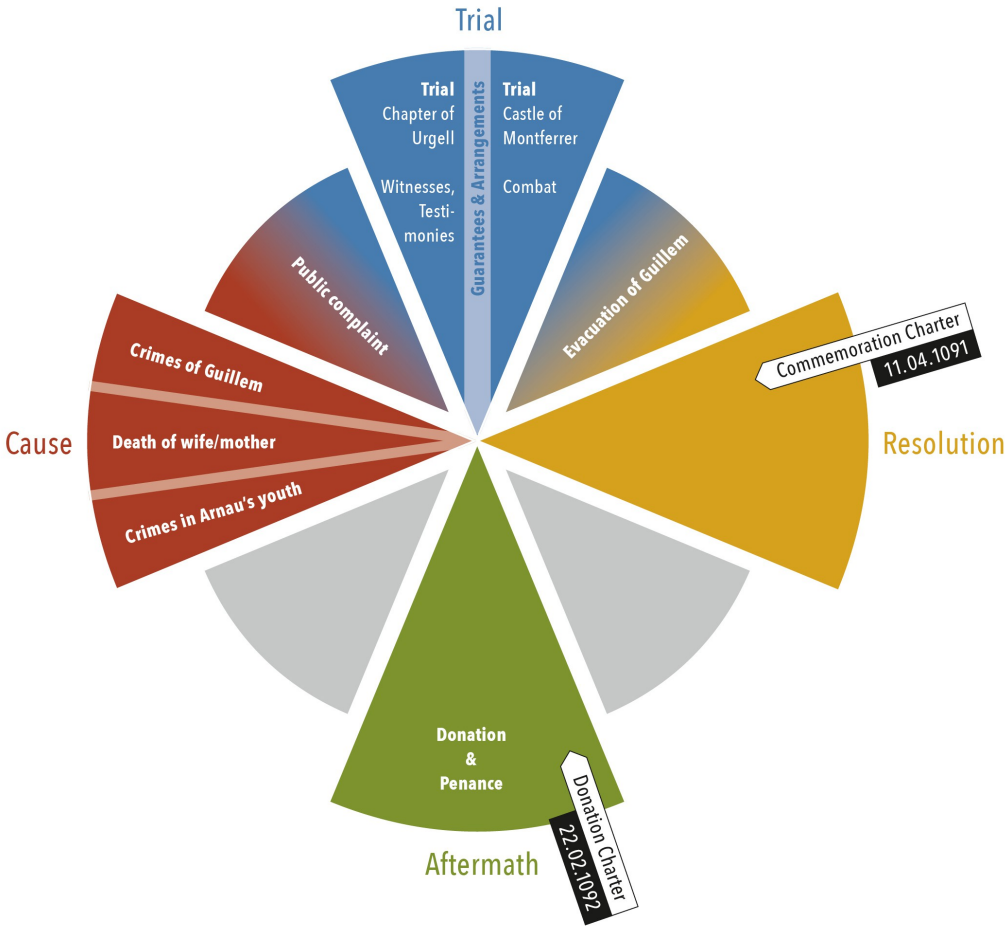


Fig. 9: The case of Domestic Violence Between Son and Father

Far off in the shadows are the tensions possibly created by the crimes committed by Arnau during his youth and the death of his wife, the mother of Guillem, which could have created early resentment between the two that may be reflected in Guillem's accusation of his father as an adulterer. The spiral of violence, from pithy crimes up to the most violent acts against his own father, is followed by the public complaint and the successive trial. Both sides present their witnesses, the judges suggest trial by combat and the litigants accept the proposal with the clearly outlined possible outcomes and consequences. This meant another break for arrangements had to be made, not only for the potential exchange of guarantees that could have been necessary but also for the selection of willing combatants that probably had to be equal in size. These volunteers were sent to the judge Guillem Arnau and the duel between the two took place at the Castle of Montferrer.[1166] After the fight, Guillem makes his *evacuatio* in favour of his father. That finally leads us to the first document written down in Urgell, commemorating not only the events themselves but also the witnesses testifying that they heard and saw the *evacuatio*.[1167]

Things get more complicated when one looks at the judge of the duel, Guillem Arnau. As the trial by combat took place at the castle of Montferrer we can be certain that we deal with no lesser man than Guillem Arnau de Montferrer. He would become the Bishop of Urgell between 1092 and 1095, together with the counter-bishop Folç de Cardona, and furthermore he is the son of Arnau Dacó, the same man that accompanied Guillem on his first raid.[1168] Guillem Arnau de Montferrer was elected bishop around the time when Arnau made his donation on the 20th of February 1092 as one month later he is mentioned as *recently elected*.[1169] This could have had many implications in this case that cannot be realised today due to the lack of sources or background knowledge. One hypothesis could link these parental connections between the local judge and Guillem's partner in crime with the audacity of the misbehaving son's actions. Guillem felt safe and secure enough to proceed with his

1166 Today in ruins close to the town of Montferrer i Castellbò.

1167 Ibid: [...] *nos prescripti audivimus et vidimus hanc evacuacionem quando prescriptus Guilelmus filius Arnalli evacuavit se in potestate sui Arnalli.*

1168 More specifically the son to the first wife of Arnau Dacó, Ermengarda, daughter of the viscount Arnau of Pallars. The castle of Montferrer was given by Guillem Arnau to the church of Urgell in 1087 together with the church of Aravell. See: Puig i Ventosa, I. (1980), 'L'ascendència pallaresa dels Bisbes d'Urgell Bernat Guillem (1076-1092) i Guillem Arnau de Montferrer (1092-1095)', *Urgellia: Anuari d'estudis històrics dels antics comtats de Cerdanya, Urgell i Pallars, d'Andorra i la Vall d'Aran.*, 3: 185–193.

1169 On the 22nd of March 1092 he is addressed as *nuper electi*. See: BARAUT, *Els documents*, VI, doc 1088.

agenda. When the scandal came to light word stood against word and the accusations against the former ally were horrendous. The explicit *recognitio* of Arnau in his last donation admitting his crimes in his youth would help an upcoming bishop in his aims to establish peace; Guillem Arnau de Montferrer could present himself in a better light as a bishop of action while giving the humiliated father a chance to redeem himself. The two documents are extremely important as they clearly leave no doubt that trial by combat in 11th Century Catalonia was not just merely considered or threatened, but actually done.

IV.2.3.4.4. Trial by Combat and the *Usatges*

A true informer will not be so considered unless that which he informs about he demonstrates as true by oath, judicial battle, or judgement by boiling or freezing water.[1170]

Bonnassie already used trial by combat in his argument for the change of society being complete by the 1060's and emphasised the importance of this custom for the creation of the law code,[1171] whereas Kosto pointed out that the vocabulary of the *Usatges* is off, for example using the word *duellum* instead of others, and so on.[1172] While this is true for the cases of the 11th century, there are certain indicators of a change of language in the beginning of the 12th century that show a transition in style. Most chapters that mention trial by combat in the *Usatges* were considered by Bastardas to form part of the archetype he proposed,[1173] and if the creation of the code is understood as a compilation of customs used in the curia of the counts of Barcelona then it would be reasonable to assume that the legal professionals working at the court used the legal language of their day for redaction.[1174]

The confirmation of rights to the monastery of Sant Serni de Tavèrnoles by Count Ermengol VI of Urgell, dating on May 14th 1128, is a rather late example and in that regard can be considered a valuable document. Contentions arose between the monastery of Sant Serni de Tavèrnoles and Berenguer Ricard de Santa Fe and his son Babot,[1175] as the latter claimed the *batllia* of the castle of Lladurs over the monasteries' men that lived there, while the abbey responded that it had been the former count of Urgell who had given its rights *francum et liberum* to God and the men of Sant Sadurní.[1176] After a long quarrel they both sent sureties of a thousand solidi and went

1170 Translation by KAGAY, *The Usatges of Barcelona*. BASTARDAS, *Usatges*, Us. 90 (113): *Vere index aliter non erit nisi hoc quod indicaverit ad verum traxerit per sacramentum et per bataiam vel per iudicium aque calide vel frigide.*

1171 Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2, p. 177-181.

1172 Kosto, A. J. (2001), 'The limited impact of the "Usatges of Barcelona in twelfth-century Catalonia', *Traditio*, 2001, p. 70.

1173 BASTARDAS, *Usatges*, Us. 1 (1-2) 23 (27), 42 (45), 43 (46), 54 (57), 90 (113). Us. 89 (112) is not in the archetype foreseen by Joan Bastardas and will be left out of consideration here.

1174 Iglesia Ferreirós, A. (2001), 'De usaticis quomodo inventi fuerunt', *Initium: Revista catalana d'historia del dret*, 6: 25–212; esp. p. 121-122.

1175 In 1107 and 1110 Berenguer Ricard, together with his sons Babot, Ramon Berenguer and Pere Berenguer, donated property and rights to the church of Santa Maria of Solsona . RODRÍGUEZ, *Col·lecció*, doc. 314, 320.

1176 RODRÍGUEZ, *Collecció*, doc. 356: *Sit notum cunctis qualiter altercatio fuit inter Benedictum abbatem Sancti Saturnini et Berengarium Ricardis Sancta Fides et filium suum Babot. Dicebant Berengarius Ricardi et Babot filius suus quod ipsi d[e]b[e]bant habere baiulia in kastro de Ladurs et in hominibus*

to trial before Count Ermengol of Urgell.[1177] If the father and son could prove through the presentation of evidence, be it charters (*per kartas*), witnesses (*per testes idoneos*) or through *unum militem qui stetisset ad talionem* and if they could *superare* they would have the said *bauiliam,* but if not then the monks would have it from that point on.[1178] They chose the last option, so we must assume that neither written nor oral evidence was available and consequently nobody other than the oldest son of Ricard, Babot, would fight for the family rights. The next paragraph is especially interesting for our purpose here:

"This is how it was done, so that Babot son of Berenguer Ricard prepared himself for combat and they gave him Ponç de Calders[1179] as a pair, who also prepared himself so that both knights prepared themselves as it was custom for battle."[1180]

In the end Babot decided that he did not want to do battle, and father and son acknowledged that they held the rights unjustly and handed them over to the count,[1181] who then confirms them to the monastery.[1182] The signature of the abbot is not needed but both Ponç and Arnau de Calders signed as they probably travelled together.[1183] First of all this paragraph provides names and shows that, in this example at least, the combatants actually signed the charter as well. Like in unilateral ordeals it could happen that the individual was not up for the task and backed down at what seems to be the last moment.

Sancti Saturnini qui stare infra terminos de Ladurs. Abbas Sancti Saturnini et monachis suis respondebant ad hec quod Ermengaudus comes Urgellensis dedit domino Deo et Beato Saturnino francum et liberum et propter hoc non debebant abere.

1177 Ibid.: *Et de hoc fuit longa contentio inter eos. Ad ultimum miserunt pignoriis utrumque per mille solidos in manu comitis Ermengaudi.*

1178 Ibid.: *Quid plura et fuit in dictum quod si potuisse probare Berengarius Ricardi et Babot filium suum per kartas aut per testes idoneos aut per feminae ipsos aut per unum militem qui stetisset ad talionem et si potuissent superare abuissent bauiliam iamdictam; sinanti, abuissent Sancti Saturninus et Benedictus abbas et monachis, presentibus et futuris, castrum iamdictum, cum suis terminis et cum suis hominibus.*

1179 For Ponç de Calders, see: Benet i Clarà, Albert (1982), 'L'origen de la família Calders', *Miscel·lània d'Estudis Bagencs*, 2: 15–30.

1180 Ibid.: *Sic fuit factum ut Babot filius Berengarius Ricardi paravit se ad bellum et dedere ei parem Poncius de Callers, quid amplius paravere se utrumque sicut milites solet aptare se ad bellum.*

1181 Ibid.: *Et quid dicam noluit agere bellum Babot filio Berengarii Ricardi hanc baiulia recognoverunt in manu comitis Ermengaudi quod iniuste tenuissent et habuissent et numque per se aut aliquis ex propinquis suis aliqua baiuliam abuisent nec aliqua forcam fecissent nec aliquos placitos abuisssent in nullam rem in kastrum supranominatum et in terminis suis.*

1182 Ibid.: *Sicut antea dedit Ermengaudus comes, qui fuit condam, in suis scripturis, sic laudo ego Ermengaudus comes domino Deo et Sancti Saturnino et habitatoribus eiusdem loci presentibus et futuris, sicut melius ego abeo francum et liberum nullam rem sic laudo et dono, sine aliqua retinentia, propter talem baiulia qualem debo habere comes in suo monasterio.*

1183 Ibid.: *Sig+num Ermengaudi comitis. Sig+num Berengarii Ricardis. Sig+num Babot. Sig+num Arnalli de Callers. Sig+num Poncii de Callers. Sig+num Poncii Bernardi de Sero. Sig+num Raimundi Bernardi de Sero. Sig+num Mironi [Gui]tardi. Sig+num Guillermi de Ponts.*

But most interestingly, it shows that the matchmaking procedure was well established (*et dedere ei parem*) and we must assume that it was already the rule or custom that the combatant would have to be *de genere et de honore sit de suo valore*.[1184] It was the son of the castle holder himself that faced Ponç de Calders representing the monastery of Sant Sadurní and again one is only presented with the end result; a lot of detail regarding the matchmaking is missing, meaning the process could have been way more detailed than these charters suggest.

A later treatise written around 1255 named *De batalla* by histography specifies these details[1185] and one wonders how far these actually reflect the customs of that time.[1186] Compiled and usually inserted next to the *Usatges,* it regulated trial by combat but also reduced its application to just three indictments: "Judged battle, before it is sworn, if it is to be done by knights, must be firmed with pledges worth 200 ounces of Valencian gold, which are 400 Maravedis. [...] a trial by combat should not be done by wish, but by necessity, when the court recognises that the indictment is so that trial by combat must be done, that is, because of felony or broken truces or treason."[1187]

In any case, so far the examples given show that trial by combat was an option put forward by the tribunals and, in the cases where more context is available the procedure, is found to be related to questions of treason, honour and broken truces.[1188] This allowed lords to challenge their men and their loyalty, as well as for them to cleanse themselves of these accusations if need be. Before we conclude a last example seems fitting as it shows how trial by combat could be used as a political tool.

1184 Bastardas, *Usatges*, Us. 42 (45): *Et si a potestate fuerit reptatus, debet se in manu sua mittere, et per iudicium ipsius curie redirigere et emendare dampnum et malum atque deshonorem quod ei factum habuerit, aut expiare se de bauzia per sacramentum et per bataiam ad suum parem qui de genere et de honore sit de suo valore, cum dampno et prodo quod per hoc debuerit habere.*

1185 Bohigas, *Tractats*, p. 84-85.

1186 For its creation and context, see: Sabaté i Marín, G., and Soriano i Robles, L. (2015), 'La cavalleria a la Corona d'Aragó: tractats teòrico-jurídics de producció pròpia.', *eHumanista: Journal of Iberian Studies*, 31, p. 84-85. A modern edition is still not available and Pere Bohigas' in his 1947 edition based the text on only eight manuscripts from Barcelona. Riquer, M. de (1947), 'Resenya, Tractats de cavalleria, edición de P. Bohigas', *Revista de filologia Española*, 31, p. 242.

1187 Bohigas, *Tractats*, p. 79: *Bataylla jutjada, ans que sia jurada, si per cavalers deu ésser feita, sia fermada ab penyores tinents per·CC Unçes d'or de València, qui són CCCC Morabatins [...] que bataya no·s deu fer per volentat, mas per necessitat, quant la cort conexerà que·ll reptament és tal que bataya se'n deja fer, so és per bohia, o per treves trencades, o per trahició.*

1188 Already pointed out by Josep Balari. Comp. Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 383: Los duelos no se hacian por voluntad de las partes contendientes, sino que por necesidad eran decididos por los tribunales, como en el caso de *bausia*, quebrantamiento de treguas o traición. Por esto el *usatge* que determina la fianza que antes del juramento había de prestar cada uno de los contendientes, según su clase, empiexa con las palabras *Batayla judicata*. Esto era costumbre en aquella época.

IV.2.3.4.5. A Question of Honour

When one driven by anger breaks ties with his lord or abandons his fief to him, let his lord confiscate all which the vassal holds for him and retain it until the vassal shall return to the terms of the homage, post a surety with him, and make compensation to him with an oath for the dishonour which he has done him. After this, let him recover the fief which he has abandoned.[1189]

On the 29th of march 1113 the counts of Barcelona, Ramon Berenguer III and his wife Dolça, put an end to the enmity between themselves and their *veguer* Berenguer Ramon of Castellet.[1190] The short explanation about the events that caused the hostilities is given in the final peace charter and serves as an excellent example of how the escalation of violence can be condensed to a few lines, starting from an initial refusal of authority to a war-like situation over the possession of the Castell Vell in Barcelona (*Castro Veteri de Barchinona*) and the income of the city's markets linked to it.[1191]

The starting point of the conflict is the office of *veguer* associated with the castle, which had previously been enfeoffed to the *veguer* Arbert and was given by the count *pro servitio et peccunia* to Berenguer Ramon of Castellet.[1192] Without any specified reasons the new officeholder refused to go to court with the sons of the former and Ramon Berenguer consequently *expulit Berengarium de ipsa honore* and gave it to two loyal men of his, Ramon Renard and his brother Guillem.[1193]

As a consequence, Berenguer Ramon of Castellet and his men committed some unspecified crimes against the counts who, in their turn, decided to wage war for these injustices. In this war-like scenario Berenguer Ramon of Castellet and his brother saw

1189 Translation by KAGAY, *The Usatges of Barcelona*. BASTARDAS, *Usatges*, Us. 35: *Qui ira ductus seniorem suum diffidaverit vel ei suum fevum reliquerit, imparet ei senior suus cuncta que per eum habuerit et teneat tantum donec in suum hominiaticum revertatur, et firmet ei directum et emendet illi per sacramentum deshonorem quem illi fecerit et postea recuperet fevum quem reliquerit.*

1190 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 445.

1191 For a reading from a financial perspective, see: Ortí Gost, P. (2000), *Renda i fiscalitat en una ciutat medieval*: *Barcelona, segles XII-XIV* (Anuario de estudios medievales. Anejo, 41, Barcelona: Consejo Superior de Investigaciones Científicas), p. 451-458.

1192 His sons will adapt the nobiliary particle "de Barcelona," making the city their new centre of interest. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 445: *Dederat enim ipse comes predicto Berengario in Castro Veteri de Barchinona et in eius pertinentiis quedam pro servitio et peccunia quam ab ipso acceperat.*

1193 For more details on the Renard brothers, see: Shideler, J. C. (1987), *Els Montcada, una familia de nobles catalans a l'Edat Mitjana, 1000-1230*: *Una família de nobles catalans a l'edat mitjana (1000 - 1230)* (Col·lecció Estudis i documents, 39; 1ª, Barcelona: Edicions 62), p. 51-53. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 445: *Deinde quia ipse Berengarius noluit venire ad iustitiam per ipsum comitem filiis Arberti, qui fuerat vicarius ipsius castri, expulit Berengarium de ipsa honore et dedit illum Raimundo Renardi et Guilelmo fratri eius, qui agebant causam pro filiis Arberti. Propter hoc Berengarius et sui forifecerunt multum comiti. Comes vero pro tanta iniuria sibi illata cepit eos guerregare et cogere ut ad iustitiam venirent.* The Renard brother scame to terms with the Bishop from Barcelona about the taxation of market rights on May 7th of the same year, see PARDO, *Mensa*, doc. 20. Dating the conflict into 1114.

their "honour dispersed" and witnessed not only the death of some of their men but even the death of their own father.

At this moment they must have realised that they could not uphold the war against the counts and so handed themselves in by either making a pact or, more probably, going to court, as they handed over men – hostages – and made oaths to receive the complaints of the counts.[1194]

After a long time had passed and the counts saw good service and fidelity they released Berenguer Ramon of Castellet of his oaths, agreements and definitions, while he completely accepted his fault in the whole conflict.[1195] In compensation, he obtained from Ramon Berenguer and his wife all the income of the *usaticos novos* that were recently created by the counts themselves at Barcelona market, which included bakeries, taverns and the sales of wheat and livestock, alive or dead.[1196]

With a "grateful spirit" Berenguer Ramon, his brother and relatives waived their complaints of all that they had suffered at the hands of the counts[1197] and defined the Castell Vell to the counts and the Renardi brothers while swearing an oath of service and fidelity.[1198] The counts thus achieved the detachment of the castle and the office of the *veguer* that would as a consequence significantly change during the second half of the 12th Century.

The charter sums up a list of events that may have produced a lot of legal documentation. The complaints of the sons of the former *veguer* that led to the trial, Berenguer Ramon's refusal to appear in court or the potential second trial could have created oaths, agreements, exchange of guarantees etc.

1194 All this is summed up in just a short sentence. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 445: *Berengarius autem ipse et frater eius post dissipationem honoris sui post mortem suorum hominum et patris videntes quia non possent sufferre guerram comitis miserunt se in potestatem eius et difinierunt illi et suis omnes querimonias suas et hominio et sacramento sicut ipse mandavit.*

1195 Ibid: *Post multum vero temporis comes videns bonum servitium et fidelitatem Berengarii solvit sacramenta et convenientias et difinitiones quas ei fecerat quia per violentiam videbantur esse extortas ut corda eorum essent paccata et totum esset in causimentum illorum.*

1196 Ortí gives a detailed reconstruction of the development of these new taxations, see: Ortí Gost, P. (2000), *Renda i fiscalitat en una ciutat medieval*: *Barcelona, segles XII-XIV* (Anuario de estudios medievales. Anejo, 41, Barcelona: Consejo Superior de Investigaciones Científicas), p. 459-467

1197 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 445: *Propter ista denique prescriptus Berengarius et fratres et consa[n]guinei eius grato animo definiunt ipsi comiti et suis omnes querimonias quas de ipsis habent de omnibus malefactis et contrarietatibus quas ipse comes et sui illis quocumque modo propter hanc guerram intulerunt et ipsum honorem Castri Veteris sine ulla retentione definiunt comiti et comitisse et Guilelmo Renardi et fratribus eius.*

1198 Ibid: *Et convenit ipsis ut serviat eis et in hostes et in cavalcatas et in placita ubi ipsi mandaverint et sit suis illorum contra cunctos homines vel feminas et sit eis fidelis de personis ipsorum et de omni honore quem hodie habent vel deinceps habebunt et hoc faciet et attendet eis per fidem, sine engan, et hanc fidelitatem proprio sacramento eis confirmet.*

Other charters may also have been issued after peace was established between the two sides. These could have included a charter regarding the rights of the market, the waiver of the complaints of the Castellets or the definition charter of the rights of the castle, now in the hands of the Renard brothers. It is only because of this charter recounting the events that led to the renewed oath of fidelity and a peace that was meant to be final that we gain insight into these power struggles.

Berenguer Ramon of Castellet regained his office as *veguer* of Barcelona and held it between 1123 and 1139, only to have another confrontation, this time with Ramon Berenguer IV in 1131, although on this occasion he went to court. The charter at hand is not the final resolution of the court case but rather a list of complaints with the decision of the judges and can thus be located in the middle of a heated judicial dispute.[1199] It starts off with guarantees as the count of Barcelona *requisivit estachamentum de directo* of his *veguer* because of the many grievances he had against him and thus Berenguer Ramon put up five men each worth a hundred maravedis.[1200] The selected nine judges heard and discussed the reasoning of both sides and sentenced the complaints one by one.[1201] Ramon Berenguer IV must have been around eighteen at this time and his *veguer* must have seen him grow up after the peace with his father that happened roughly at the same time when the young count was born. Now, two months after the death of his father and having finished the Easter celebrations, the new count met the veteran *veguer* in court.[1202]

The new count had a series of serious complaints against his *veguer*. They included the complaint that he had robbed the count of the corresponding incomes from judgments, usages and pleas.[1203] In addition, under the shadow of his office (*sub umbra*

1199 Only preserved in a copy from the end of the 12th Century (ACA, Cancelleria, perg. Ramon Berenguer IV, num. 333) and dated by Bofarull into the year 1160 (BOFARULL, *Colección*, IV, doc. 113) the charter was consequently dated into the same year in the newest edition (BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 1056). The charter reads: *Acta sunt hec XI kalendas mai, anno XXIII regni Ledovici regis.* Most certainly we deal with Louis VI (1108-1137) of France and not Louis VII as Berenguer Ramon of Castellet died somewhere before 1145, therefore the charter must be dated on the 21st of April, 1131.

1200 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 1056: *Notum sit omnibus quoniam domnus Raimundus, comes Barchinonensis, requisivit estachamentum de directo a Berengario vicario suo ob multas querimonias quas contra eum habebat, que inferius inveniuntur. Et Berengarius estachavit ei directum per quingentos morabitinos et dedit ei fidancias quorum nomina hic scripta leguntur: Raimundus Renardi per centum mohabitinos, Guillelmum de Podio Alto per C, Gaufredum de Sancta Columba per C, Poncium Petri per C, Raimundum Bermundi per C.*

1201 First men of the church including the archbishop of Tarragona and bishop of Barcelona Oleguer, the bishop Ramon Gaufred of Vic, the archdeacon Berenguer of Girona, the *primicerius* Petrus from Vic and the *prepositus* Arnau from Barcelona, followed by the lay men, the seneschal Berenguer of Queralt, Bernat I de Lluça, Ponç Hug de Cervera and Guillem Ramon de Pujalt.

1202 This charter makes the death of Ramon Berenguer III on the 23rd of January and not in July more plausible.

1203 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 1056: *Conquestus est denique comes de prephato*

vicarie) he had created new levies on many matters[1204] and under the pretext of acquiring a portion of the viscounty he had taken a part of the county for himself.[1205] Finally, he accused him of unjustly taking the pledge of a loan from a Jew.[1206] The *veguer* Berenguer Ramon of Castellet, on the other hand, denies everything, and complained that the count had taken from him the honour of the incomes his father gave to him, most likely referring to the corresponding part of the new *usaticos* from the anterior conflict.[1207] The accusations are quite diverse but the designated judges decide that all the unprovable grievances would have to be "defended" through judicial duels. This may come as a bit of a surprise but if ones takes a closer look at the initial accusation against the *veguer* it may be more understandable, as it suggests tensions between the two had gone beyond the purely material issues at hand.

Berengario quod plures iusticias et usaticos et placita que ad comitem pertinent propter servicia et remuneraciones quas inde accipit, offocat ei et tollit; quod predictus Berengarius denegavit. Iudicaverunt ad hec quod quicquid iamdictus Berengarius de his sibi obiectis recognoverit, redirigat ipsi comiti; et si adhuc comes institerit, expiet se per sacramentum quod per duellum defendat.

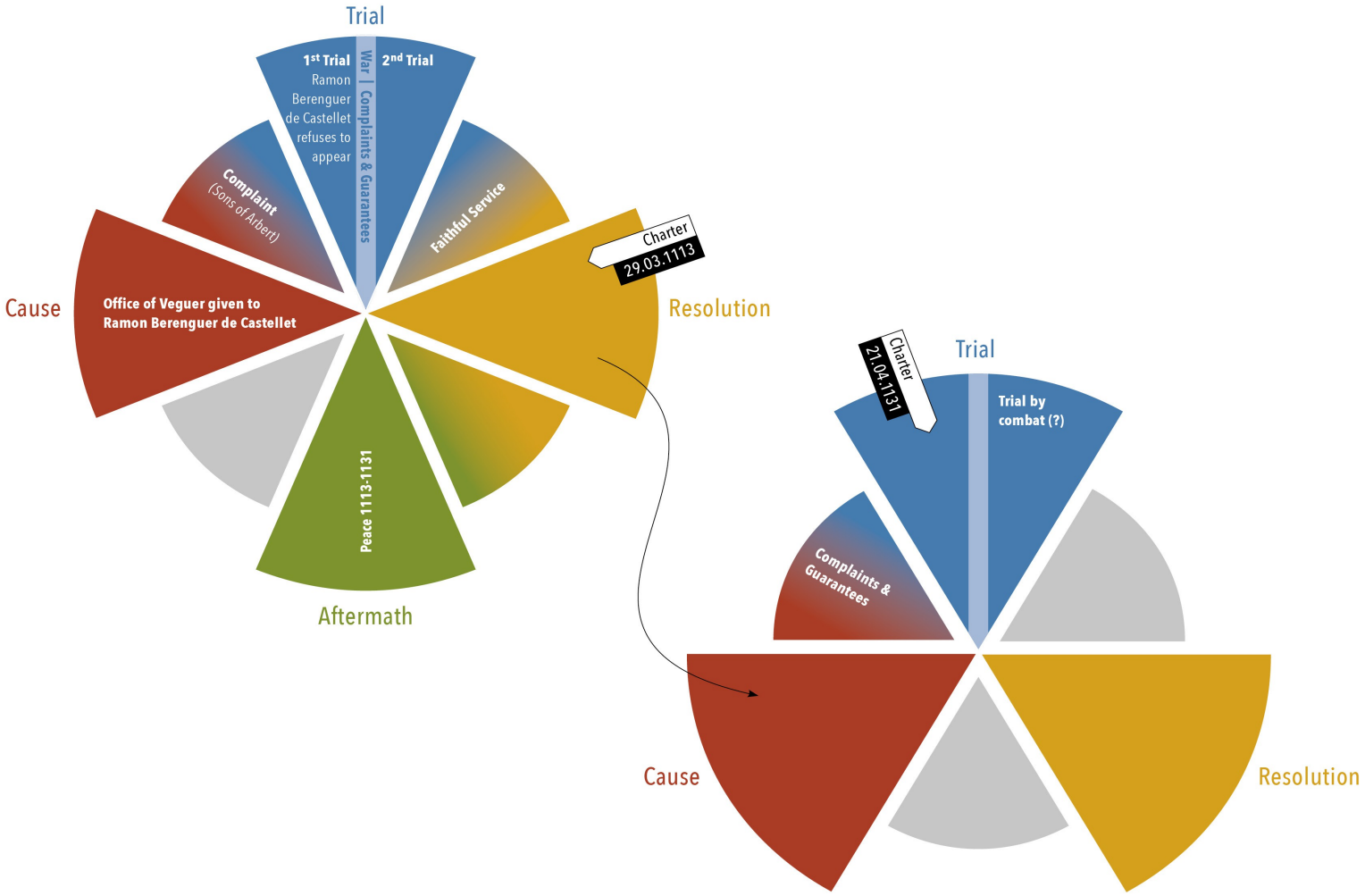
1204 Ibid: *De superfluis exactionibus super quibus comes conquestus est a Berengario fieri in Barchinona sub umbra vicarie, videlicet in semitrossellis et in bardis et in boionis et in leudis ferri et piscis ac multarum aliarum rerum et in receptis nupcialibus et in superflua accepcione foccaciarum, iudicatum est quod quantum ipse Berengarius potuerit probare per legitimos testes aud verificare per unum militem qui defendat se per duellum antecessorem suum Bernardum Arberti tenuisse per vegeriam, quiete habere Berengarium ad servicium comitis. Cetera vero in quibus defecerit, debere redigere predicto comiti.*

1205 Ibid: *De adquisicione vicecomitatus, unde comes conquestus est, iudicaverunt quod quicquid Berengarius potuerit probare quod ab ipso vicecomite vel a filio eius Reverter adquisierit, quod domnus comes ei auctorizaverit, habeat et possideat; cetera, comiti restituat.*

1206 Ibid: *De pignore autem iudei, unde comes conquestus est predictum Berengarium suo iudeo iniuste abstulisse, quod redirigat Berengarius iamdicto comiti pecuniam et dampnum aud iuret Berengarius predictum pignus ante datam peccuniam non imparasse; et hoc sacramentum defendat per duellum.*

1207 Ibid: *Post hec requisivit Berengarius a domno comite ut redderet ei ipsum honorem quem pater suus sibi abstulerat, videlicet ipsas migerias de frumento quas accipiebat ab ipsis flechariis Barchinone. Ad quod respondit comes non videri sibi esse iustum ut eas redderet illi, tum quia pater suus noviter per violenciam eas imposuerat predictis flechariis et in infirmitate que obiit, sub gravi interminacione quam archiepiscopus ei super hoc fecit, penituit se de hac violencia et precepit ne ulterius hec exactio in ipsa civitate fieret, tum quia ipse Berengarius bene noverat hanc violenciam quando eas accepit pro emendacione ipsius fevi de Terracia. Super hoc quoque iudicatum est quod si Berengarius quando adquisivit predictas migerias ab ipso comite sciebat iniuste esse impositas predictis flechariis, non debere sibi restitui a predicto comite; quod si dixerit se tunc nescisse, monstret hoc verum esse per sacramentum quod defendat per duellum et comes emendet ei, impleto tempore sacramenti a patre sibi constituto favore tocius curie sue. De debito patris quod Berengarius requisivit a filio, quiquid pater in scriptis suis recognovit, debet ei reddi a filio; que autem ipse non recognoverit, si per legitimos testes aud per scripturam ipse Berengarius probare potuerit sibi deberi in ipso tempore mortis, solvantur ei a comite. Item, quiquid predictus Berengarius legaliter probare potuerit de iusticiis placitorum sibi debitis comitem accepisse, censuerunt a comite sibi debere restitui.*

Fig. 9: A Question of Honour



The list of complaints starts off with the venerable count accusing Ramon de Castellet of insulting him by disparaging what he has done for him by saying that he is not "one fart" thankful for it.[1208] The count stated that he heard him say it, the *veguer* denied it and the judges decided that if the count desired, a duel may decide the contradiction, according to the customs of the court – *secundum curie consuetudinem*. Let us assume the accusation is true and that something the young count had said must have stirred anger in Berenguer Ramon of Castellet. With the age difference and the previous conflict in mind the disrespectful answer of the *veguer* suddenly seems rather plausible. He had no reason to be grateful towards the son but towards the father, the late Berenguer III, that he had served well after the end of their conflict that had come with a high price. But now the son of his former rival was *seniori suo* and thus this insult definitely became a question of honour. The new count chose a trial to expose these differences in public. The judges decided that if Berenguer Ramon of Castellet *negat se dixisse hec verba que comes afirmat se audisse* his only way to purify himself was through an oath defended by a duel.

The fact that this accusation starts the list of grievances probably also reveals the strategy of the young count in court and explains why such a high number of grievances should be defended through trial by combat. The narrative suggests that the *veguer* is not only accused of being verbally disrespectful, but of going behind the back of his liege, in the shadows of his office, creating new taxes, buying part of the county through acquiring parts of the viscounty and even behaving as if he were the count in regards to the dealings with Jews. In that light these loose accusations form a narrative that can be linked to questions of honour and treason and therefore can justify the application of trial by combat, potentially even with several judicial duels. While the ambitions of the *veguer* are real and surely must feel threatening for the young count, the strategy to expose them publicly and adding a treacherous motif to them serves to quash any further ambitions.

1208 Baiges, Feliu, Salrach, *Els pergamins*, doc. 1056: *Conquestus quipe est venerabilis comes super ipso Berengario quod ad contemptum comitis, in faciem eius, protulit hec verba ipse Berengarius: «quod ego accipio et teneo non gratificor vobis unum petum». Hoc dixit de sarraceno quem consuetudinaliter accipit de ipsis galeis. Quod Berengarius se dixisse omnino negavit. Super hoc iudicatum est, quia Berengarius negat se dixisse hec verba que comes afirmat se audisse, Berengarius debet se expiare per sacramentum quod defendat per duellum, si comes voluerit, secundum curie consuetudinem. Et si prevaluerit, emendet ei comes omne malum quod in ipso duello sibi evenerit et ipsam ei querimoniam finiat. Si vero in hoc defecerit, tantam faciat comiti emendacionem quod valeat defendere per duellum, se amplius non debere comiti seniori suo pro illato contemptu emendare.*

Nevertheless this interim document was copied a generation later, and when it was the subscription of all the secular testimonies was left unpunctuated, making it plausible that we deal with a draft. Somehow the court case was resolved and we will probably never know if it came to a judicial duel or not. Arbitration, especially from the third point of power in that triangle, the bishop of Barcelona, may have solved the issues between the two beforehand. Clearly Ramon Berenguer de Castellet stayed in office and managed to maintain the incomes linked to the *vegueria,* while the count of Barcelona was able to publicly display who was at the top of the hierarchy in the city and was able to stamp out the threat of the rising power of the castle holders within the walls of Barcelona.[1209]

1209 Ortí Gost, P. (2000), *Renda i fiscalitat en una ciutat medieval*: *Barcelona, segles XII-XIV* (Anuario de estudios medievales. Anejo, 41, Barcelona: Consejo Superior de Investigaciones Científicas), p. 451: El moment de màxima concentració de poder d'aquests castlans es materialitzà en la figura de Berenguer Ramon de Castellet que fou castlà del castell de Regomir i veguer de Barcelona entre 1113 i 1140, per tant també castlà del castell Vell. Si a això afegim que Berenguer Ramon de Castellet adquirí els drets que el vescomte de Barcelona tenia en el mercat de la ciutat, es poden entendre millor els conflictes que s'ocasionaren al voltant del repartiment dels drets sobre les lleudes, els passatges i els mesuratges de la ciutat.

IV.2.3.4.6. Conclusion

All the evidence indicates that the practice of strengthening one's oath through trial by combat was a new practice entering Catalonia's legal culture at the beginning of the 11th Century, where it fell on fertile ground.[1210] As it was practised elsewhere in Europe an import seems reasonable and would show the permeability of customs as they become law on a wider scope; the vocabulary in the earlier charters seems to look towards Italy at the beginning. As was the case with other ordeals it rather quickly adopted a very particular vocabulary; it was defined as customary law as *usum de Barchinona et de Urgello* in the second half of the 11th century, administered *secundum curie consuetudinem* in the first third of the 12th and finally entered the *Usatges* where scribes used the latest vocabulary and formulated an idealised procedure that, again, would need time to come into effect and finally be regulated even more in the middle of the 13th century, culminating in one of the earliest and most detailed legal texts about the regulations of trial by combat in medieval Europe.

In most cases the bilateral ordeal was suggested but judges probably rarely executed it.[1211] However, it addresses new types of offenses related to honour as central in feudal relationships and while the value of honour is hard to quantify, the importance of relying on men entrusted to take care of a network of castles should, in my understanding, not be underrated. Looking at all the evidence it is hard or even impossible to make an "in-depth breakdown of all the aspects the duel must have had in Catalan feudal society."[1212] The simple threat of a judicial duel may have caused men to

1210 Floyd Seyward Lear's considerations on treason and the Visigothic Law code are interesting in that regard. Lear, F. S. (1951), 'The Public Law of the Visigothic Code', *Speculum*, 26/1, p. 6: Germanic colouring, despite the fact that *infidelitas* is not defined specifically. The law of allegiance (2,1,7) rests squarely upon Germanic ideas of a pledge, bond or troth, whereas the law of treason (2,1,8) covers offences which have their parallels in Roman law. Nevertheless, the idea of majesty in the Roman sense of the word is as lacking in the one as in the other. Treason is broken faith (*infidelitas*), whether with the land and folk or with the king, and constitutes the negative aspect of the political principle of allegiance. Allegiance is the recognition of sovereignty; treason the denial and destruction of it.

1211 Comp. Auer, A. M. (2012), 'Vorgeschlagen, vereinbart, verhindert. Gottesurteile als Mittel der Konfliktlösung', in R. Czaja, E. Mühle, and A. Radzimiński (eds.), *Konfliktbewältigung und Friedensstiftung im Mittelalter* (Toruń), 181–96.

1212 Ruiz-Domènec, J. E. (1982), 'Las prácticas judiciales en la Cataluña feudal', *Historia. Instituciones. Documentos.*, 9, p. 261–262: Ante todo, permanezcamos en el nudo problemático de las fuentes diplomáticas catalanas entre 1025-1140. Este tipo de documentos es, en ocasiones, parco, pero siempre resulta contundente. En efecto, en tales fuentes no contemplo, como en el caso de Cram, una riqueza semántica, ni siquiera descriptiva, que me permita llevar a cabo un desglose profundo de todos los contenidos que el duelo debía tener en la sociedad feudal catalana; sin embargo son lo suficientemente expresivas como para que perciba en alguna medida la dimensión de esta práctica judicial.

think twice, while for others it must have served as a tool to prove their loyalty. While men in the 19th century looked at the medieval sources to justify the honourable duel between gentlemen as a means to defend their honour, they could have been closer to the quintessence of the reason to fight for ones rights, as a legal system must address all offences to allow for satisfaction.

The duel's clear difference from unilateral ordeals is that it allowed ordeals to be administered in accordance to social status and allows a *caballarium* to be distinct from someone fighting on foot. While this seems trivial it set the course for centuries to come; whereas in mid-13th century Barcelona the duel between knights was still done on horseback while in other places in Europe it continued to be done on foot.

IV.2.4. Defying Justice

It is a matter of common experience, that the same justice, which has protected the citizen, overwhelms the enemy; and destroys external conflicts to the extent that it has ensured the internal peace of its own.[1213]

A key evaluating factor for a functioning legal apparatus is its efficiency (or deficiency) in bringing people to court. In that regard if figures defied justice by leaving court before the sentence was delivered or simply refused to appear in court, that can be read and has been understood as a sign of weak government and loss of control by the ruler and his court. This chapter first looks at selected cases in which one side abandoned trial, then at cases in which the accused refused to appear, and finally a case which combines both and can be seen as exemplary for the struggles of the 11th Century.

A key evaluating factor for a functioning legal apparatus could be seen in its efficiency or deficiency to bring people to court. In that regard if actors defied justice by leaving court before the sentence was delivered or straight away refused to appear in court can be read and had been understood as a sign of weak government and loss of control by the ruler and his court. This chapter first looks at selected cases in which one side abandoned trial, then on cases in which the accused refused appearance and at last a case which combines both and can be seen as exemplary for the struggles of the 11th Century.

1213 LV I.2.6: *Experimentum enim naturalis est rei, ut iusticia illa confodiat hostem, quae tutaverit civem et externam inde perimat litem, unde suorum internam possederit pacem.*

IV.2.4.1. Abandoning Trial

God shall judge the righteous and the wicked.
For there is a time there for every purpose and for every work.[1214]

Direct citations of the Visigothic Law code and the sometimes intense narration of interactions in court that involve first person narratives of plaintiffs and defendants are surprising and at times can even feel excessive. Be that as it may, many of the most detailed charters of the 11th Century have one element in common: they were written down after one party had abandoned the lawsuit. These cases are of special interest as they reveal a lot about the mentality and power structures of the time, as well as how the judges decided to narrate the decision and the working of the court as they added more details than usual.

First of all, we must assume that not just anybody could simply leave a trial and that puts forth the question of who was actually able to leave and what motivated a party to abandon trial. Within the stages of conflict, finding a place and time to finally deal with the matter was not easy, but finding the right tribunal and a favourable attendance for one's cause also played a big role in resolving a case in one's favour. If the powerful agreed to go to court they surely did so with certain expectations regarding the outcome of the lawsuit and prepared accordingly. It seems logical that emotions would become involved, especially when confronted with the unexpected. In particular new evidence, be it witnesses or documents, could be the cause of anger or frustration. Nevertheless, participants usually stayed in court until the outcome of the trial became clear, and only if they saw no means of negotiation would they have left before the final verdict.

It is reasonable to state that charters issued after the trial were more of a document of memory of what just had occurred. The participants that had stayed drafted a charter that usually marginalised the losing party and the arguments they had presented in court and thus the documentation presents a very one-dimensional viewpoint. But there were certain limitations to this version of the story as certain participants had given testimony and had to sign the document. The process of negotiating what had just happened and what narrative should be presented must

1214 Eccles. 3:17.

have been intense and established its own truth, which was the one put down in writing.

Even if one party left the judicial assembly the judges continued and promulgated a final verdict. The Visigothic law code (LV II.1.25) was interpreted by the judges to mean that even if one side abandons the trial the case had to be finished.[1215] Every charter is a memorial document, but in those cases when the judges referred to the corresponding law even more so – though the same chapter also ends with the significant stipulation that the judge had to ensure that he had an *exemplar* of what was judged, to stop possible controversies.

Two examples dating in the early 11th Century seemed to be related and show the reform bishop Ermengol of Urgell,[1216] later venerated as a saint, fending off his own kin regarding property at the town of Aiguatèbia, first in 1025 then again two years later in 1027. He is one of the few figures from Catalonia that actually had an hagiographic tradition and had already started to produce hagiography in the 11th Century, in which he is described as a *prudens negociatur qui dando terrena lucrabatur celestia* and as a cultivator of the holy justice.[1217]

The first trial was presided over by Guifré II, count of Cerdanya, Conflent and Berga, together with the most important local magnate, the viscount Bernat II of Cerdanya, and the judge Sendred, and took place in the presence of other local

1215 LV II.1.25: […] *Si vero, hordinante iudice, una pars testes adduxerit et, dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se absque iudicis consultu substraxerit liceat iudici prolatos testes accipere et quod ipsi testimonio suo firmaverint, illi, qui eos protulit, sua infrantia consignare. Nam ei qui fraudulenter se de iuditio sustulit, producere testem alium omnino erit inlicitum. Qui scilicet hoc sibi tantum noverit esse concessum, ut antequam testes illi, qui testimonium dederant, moriantur, si habuerit quod rationabiliter in eis accuset, pacienter audiatur a iudice. Et si acusatus testis fuerit evidenter convictus, eius testimonium pro nihilo habeatur. Unde et si duo testes non remanserit, qui digni in eodem testimonio maneant, ille, qui prius testem obtulerat, infra trium mensium spatium testes, alios, qui ceptum negotium firment, inquirere non desistat. Quod si invenire nequiverit, rem universam ille recipiat qui eam antea visus fuerat possedisse. Iudex sane de omnibus causis que iudicaverit exemplar pene se pro compescendis controversis reservare curabit.*

1216 For more literature, see: Bowman, J. A. (2002), 'The Bishop Builds a Bridge: Sanctity and Power in the Medieval Pyrenees', *The Catholic Historical Review*, 88/1: 1–16.

1217 Although the four versions are considerably late Baraut sees them as based on an archetype from the 11th Century written between 1042-1044. The mentality of the B type, dating to the 13th Century and stemming from the monastery of Sant Miguel de Cuixà, fits considerably well with how justice was expressed in the judicial tradition presented here, introducing God as the "Sun of justice, king of kings" and Ermengol as his faithful servant and actually fitting into this scenario: Baraut, C. (1998-2001), 'Les fonts documentals i hagiogràfiques medievals de la vida i miracles de sant Ermengol, bisbe d'Urgell (1010-1035)', *Urgellia: Anuari d'estudis històrics dels antics comtats de Cerdanya, Urgell i Pallars, d'Andorra i la Vall d'Aran.*, 1998-2001, p. 145: *O providus dispensator; o prudens negociator, qui dando terrena lurabatur celestia. Qui de tanto presule, sanctissimo iusticie cultore et Xpisti confessore, que homo merito potest ammirari per singula poterit fari?*

bonorum hominum.[1218] Bonadona, the daughter of the late Arnau I, Viscount of Conflent, claimed from her uncle, the said bishop Ermengol, the inheritance of Aiguatèbia that her aunt Guisla sold to her father.[1219] She presented the sales charter but her uncle came well-prepared, replying that he knows and recognises *ipsa carta*, but that he is also aware that his brother and Guisla had annulled the charter (*disnegociavit)* and therefore she had fully recovered its price. To prove this he presented the standard three witnesses demanded by the law – and by the language of the charter we must assume that they had already travelled there with him – named Ermemir, Bonfill and Honofred.[1220]

The three of them swore on the altar of Sant Joan at the village of Alp that they saw, heard and were present when the charter was annulled at the village of Cabestany (Caputstagno), and that Guisla *sua propria voluntate* had received a silver cup, seven silver spoons, a good sword and money in exchange.[1221] The specifications of the transaction, with it being effectuated willingly whilst also detailing what she had received, must have been more convincing in the judges' eyes as it properly corresponded to the value of the property in dispute. If the bishop was planning to scam his sister he came well prepared for it, but either way from this moment on it becomes clear that one was scamming the other. It seems only fitting that the judge Sendred concluded that Guisla should accept the testimonies (*debet* […] *accipere ipsas provas*) but instead she refused and abandoned the trial. Sendred continued by order of the count, "his lord", and in accordance with Gothic law (LV, II.1.25) attributed the property to the bishop. Sendred consequently signed the charter confirming that he faithfully took the oaths,[1222] while a man called Sal·la, *sacer et iudex*, probably the

1218 SALRACH, MONTAGUT, *Justícia,* doc. 213: *In iudicio domni Wifredi comiti et Bernardi vicem comiti et Sendredi iudici, et in presencia Bernard et Witard et Wifredi vicem comiti et Reimundo Ardman et Willelmo Tederigo et aliorum bonorum hominum qui ibidem aderant.*

1219 Ibid.: *In istorum supra dictorum presencia venit femina nomine Bonadona et petivit avunculo suo Ermengaudo episcopo Horgellensi per ipsa hereditate de Gisla femina que abuit in Aquatepida et vendidit ea ad condam Arnallo vicem comiti, unde filia sua in iam dicto placito cartam hostendit.*

1220 Ibid.: *Et contra ipsa carta iam dictus episcopus respondit: «Scio et recognosco quia vera est ipsa carta set frater meus Arnallus iam dictus disnegociavit cum sorore mea Gisla de ipsa hereditate, et recuperavit precium. Unde predictus iudex me interrogavit si possum probare aut non, et ego abeo testes veridicos, idest Ermemiro et Bonefilio et Honofredo».*

1221 Ibid.:: *«Nos omnes simul in unum damus testimonium, iuramus per trinum et unum Deum super altari Sancti Ihoanni, qui est situs infra baselica Sancti Petri de Albo. Nos vidimus et audivimus et de presente fuimus in villa Caputstagno quando desnegociavit Arnallus vices comes cum sorore sua Gisla de ipsa sua hereditate de Aquatepida, que ei abebat vendita per carta, et recuperavit precium per sua propria voluntate, id est cupa una argentea et quocleares septem argenteas et espada una hobtima et solidos XV de dinarios».*

1222 Ibid.: Signum *Sendredus iudex qui hunc sacramentum fideliter recepi.*

viscount's judge, also signed the document and evaluated its truthfulness thus providing another judge's opinion.[1223] The charter's chronology is straightforward but when considered alongside the other cases of a party abandoning trial, one is inclined to believe that Guisla went off before the witnesses swore their oath, thus refuting their validity. The oath-taking of the trio was also recorded in another charter dating the same day[1224] suggesting that Guisla heard the witnesses in court, and when she realised that she would probably lose she decided to leave, perhaps to express her disdain. After she left the witnesses statement was confirmed through an oath at the altar within the presence of elected men, and finally two documents were drafted, both preserved in the archive of Urgell suggesting that the one was actually destined for another individual but never found its way to them.

1223 Ibid.: *Sanla* (Sign), *sacer et iudex, confirmo que iuste superius sunt scripta.*

1224 SALRACH, MONTAGUT, *Justícia,* doc. 214.

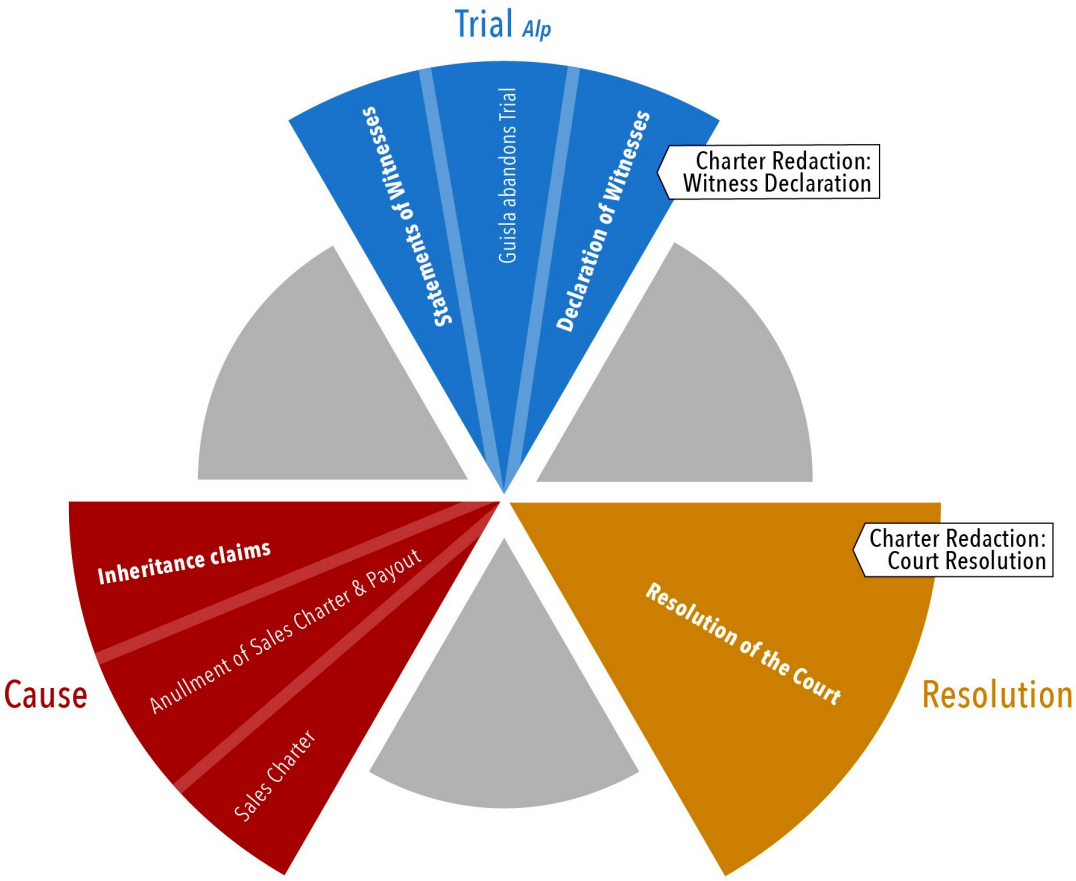


Fig. 11: Guisla Abandoning Court

Two years later the bishop Ermengol faced a series of trials, this time with his sister Gerberga and his brother-in-law Renard who acted on her behalf.[1225] Whereas the case of 1025 was a relatively short charter, this time the document is very detailed by comparison, including dates and circumstances as it focuses on ending the dispute once and for all, and is more of a narration of events than a judicial decision in itself. The necessity of writing a memoir and detailing the legal arguments brought forth by the judge Guifré who accompanied Ermengol throughout this legal struggle is emphasised, as his relatives brought forward the before-mentioned experienced judge Sendred to defend the validity of their charter. This time, the bishop's relatives claimed the tithe of the allod of Aiguatèbia, stating that Ermengol and Gerberga's mother wrote the sale of the tithe to Gerberga. This time, however, the bishop is explicitly unaware of the document and consequently questioned its authenticity;[1226] therefore at a first encounter close to the 29th of September (the feast of saint Michael) at the abbey of Sant Miquel de Cuixà the congregated assembly challenged the documents validity.[1227]

But the couple did not accept the decision and appealed to the judge Sendred to defend their claim. They agreed to meet at the church of Sant Jaume de Rigolisa but Renard and his new defendant Sendred did not appear as agreed.[1228] The following day they finally showed up after midday, but showing his good will Ermengol, full of kindness (*bonitate repletus*) and not enraged (*pro hoc ira non elevatus*), moved the trial to a different morning at the church of Sant Esteve de Lluçanès, where the count Guifré[1229] would be able attend as he passed through.[1230] Finally they met on this

1225 SALRACH, MONTAGUT, *Justícia,* doc. 220

1226 Ibid.: *Contra hac petitione Renardi episcopus ita respondit: «Cartam quod modo proclamatis incognita est mihi et dubiam eam aestimo quia genitrix mea, socrui vestre, talem non habuit inopiam ut suum decimum per vinditionem scripturam in suam confirmasset potestatem».*

1227 Ibid.: *In hac vero altercatione advocatus fuit iudex Guifredus, quia prope fuit festa Sancti Michaelis ubi fue[runt] congregati Cocxani in loco. Qui hoc ut audiens talem dedit sententiam, ut si ipsa carta quem proclamabat vel hostendebat utilis vel legalis fuisset et iustissime ac legitime ac de rebus debitis patuerit esse conscriptam, sicut lex continet in scripturis parentum, quia mox prolator ille iurare cogatur nihil fraudis vel lesionis in ea quandoque aut a se factum esse aut ab alio quocumque pacto omnimodo cognovisse vel nosse, set ita manere sicut auctor eius eam voluit ordinare vel roborare; set quia lex eam exstirpat vel repellit invalida et exinanita poenitus debet esse relicta.*

1228 Ibid.: *Hoc vero audiens iam dicto Renardus, qui vocem uxoris prudentissime requirebat, noluit adquiescere consiliis vel sententiis iam dicti iudicis sed in magno accepit labore properando usque Cerdaniam pro Sendredo iudice, ubi pro hac causa moti sunt presul et iudex ab oppido Austoveri, quod est in Confluenti, et venti sunt in loco Sancti Iacobi Auracolisa ubi fecit eos prefatus Renardus ipso die in vacuum transire, quia ipsum diem cum ipso iudice ad hoc disputandum nullatenus voluit advenire.*

1229 We surely deal with Guifré II of Cerdanya.

1230 The translation of the phrase as "next morning" seems unrealistic, as there would not be enough time because of travel distances, but is not impossible. SALRACH, MONTAGUT, *Justícia,* doc. 220: *Set trannsacto meridie adfuit ibi Renardus cum suo patruo archidiacono Pontio, quem iam dictus episcopus, bonitate repletus, pro hoc in ira non elevatus mutavit ei placitum usque in crastinum, ubi*

occasion, with the attendance of many noble men from both sides, and the judge in charge of settling the lawsuit, Guifré, ruled that the charter should be rejected. Sendred disagreed, defending the validity of the document. The legal impasse led to a judicial debate (*discussio mota est inter illos*)[1231] during which Guifré firmly relied on the *Lex Visigothorum*.[1232]

Arriving at such a legal stand-off, it seems reasonable to not force a final decision here but to consult more experienced legal personnel, so the judges agreed to "amplify" the lawsuit and move it to Santa Maria de Ripoll, where it would take place 15 days before All Saints' Day, on Wednesday the 16th of October.[1233]

As the date approached Ermengol travelled with great effort from Urgell over to Manresa, picking up the judge Guifré, and together they travelled to Sant Pere of Vic, where he added an additional thirty *militum ferme* to his entourage. He finally arrived in Ripoll only to find that his brother-in-law Renard had not shown up at all. The charter emphasises the frustration, stating that this equals *quod magna lex posita est de tali iniusta fatigatione*.[1234] The technical term "*fatigatio de directo*" usually describes the legal situation of the applicant not receiving a reply to the requests made to the defendant to submit to the law and justice, and it is applied in a double sense here as this lawsuit must have been indeed fatiguing.[1235]

As Renard did not appear in the last court session Guifré ruled that the bishop would rightfully possess the tithes. The motivation behind writing the charter over a month later, on the 18th of November, is also given in the last part of the document. After the narration of events it is clear that the pontiff *exultat iustitia* and he presents

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venti sunt ad ecclesiam Sancti Stephani in loco ville Luci, quia ibi advenerunt in occursum comite Guifredo qui ipso die transivit portum. Set remanserunt ad iam dicta ecclesia iam dicti iudices ad hoc discutiendum, ubi adfuerunt pariter episcopus et Renardus et Guitardus Mirone et multorum nobilium virorum ab utraque partium.

1231 Ibid.: *Et quia hec ratio in solis iudicibus persistebat electio, discussio mota est inter illos. Ubi voluit Sendredus iudex ipsam defendere cartam per multis argumentis quem Renardus hostendebat, sed nullo modo potuit, quia iustitia Domini cum iam dicto Guifredo iudice restitit illi, in tantum ut ad inquisitionem et perscrutationem legis pervenerunt.*

1232 LV IV.5.1, IV.5.2, II.5.7, II.5.10.

1233 Ibid.: *Pro hac vero meditatione ampliaverunt placitum episcopus et Renardus et mutaverunt eum in loco cenobium Sancta Dei Genitrice Maria Riopullo, terminato et constituto die feria IIII[a], XV die a Sanctorum Omnium festa.*

1234 Ibid.: *Ubi cum magna desudatione pervenit prefatus episcopus ab Urgello usque Minorisa, unde sumens ipsum iudicem et cum ipso pervenit usque Sanctum Petrum Sedis Viccum et deinde, cum militum ferme triginta, usque Riopullo ubi prestolantes Renardum nullatenus ibi accessit, quod magna lex posita est de tali iniusta fatigatione.*

1235 Rodón i Binué, Eulalia (1957), *El lenguaje técnico del feudalismo en el siglo XI en Cataluña*: *contribución al estudio del latín medieval* (Barcelona), p. 113-114. GMLC, F, fatigatio, 29-30.

to his subjects the reasons why Renard's charter must be "put to eternal damnation."[1236] The last lines have a certain resemblance to a *sanctio* line and form a frame with the introductory part of the charter,[1237] thus emphasising that no one should reopen the case but instead recognise God's justice, who is *iudex iustus et verus.*[1238]

1236 SALRACH, MONTAGUT, *Justícia,* doc. 220: *Sed quia magna ex parte pontificis exultat iustitia, qui ex hoc per se et subditos suos prestus fuit rationem et legalem exibere rationem, debet possidere securus et quietus absque iam dicta carta inquisitione, quia ipsa carta posita est in aeterna dampnatione.*

1237 Ibid.: *In virtute et nominis omnipotentis Dei cum domno Ihesu Christo suo dilecto, redemptore nostro, et Spiritu Sancto aequaliter regnante. Agnoscant cuncti per orbem prefatam indivisam et ineffabilem Trinitatem credentes, qualiter mota est ratio inter Ermengaudem, presulem Urgellensem, suique cognati Renardi, qui per vocem uxoris sue nomine Gerberga, germana iam dicti pontificis, appetivit iam dicto cognato episcopo pro causa decimi alaudis genitoris pontifici, que dicunt Aquatepida.*

1238 Ibid.: *Et si hoc aliquis vult repetere vel inquirere sciat confirmatum hoc esse a iudicibus agnoscentibus Dei veritatem et revereatur et conquiescat victus per virtutem Domini Nostri Ihesu Christi, qui cum Patre et Spiritu Sancto vivit et regnat Deus, iudex iustus et verus, per infinita secula seculorum, amen.*

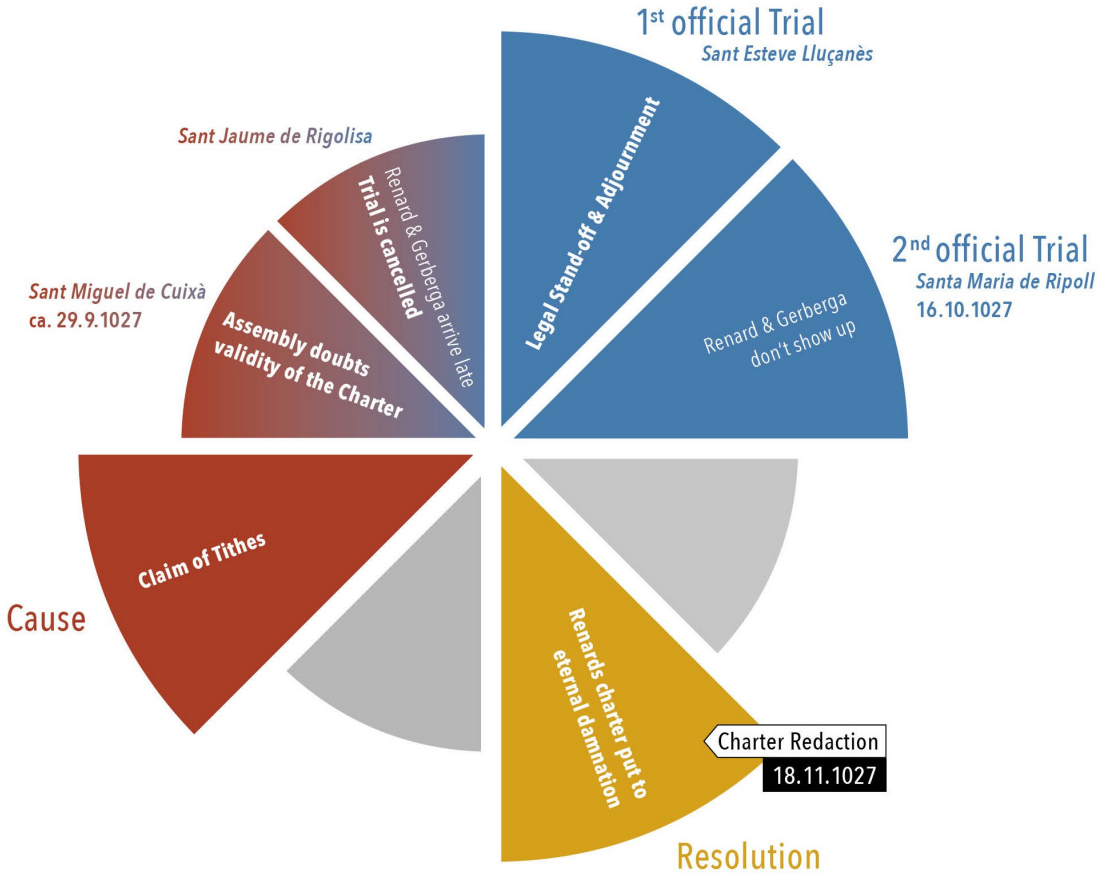

Fig. 12: The Case of Renard

The charter shows a bishop in good control of his emotions, organising trials and travelling far, eager to give holy justice its due. The document is special in many ways as it is not a court resolution per se but a memoir of the dispute that took over one and half months to finally end, and it seems to serve the purpose of explaining to the *subditos* the legal reasons (*legalem exibere rationem*) why Renard's charter had to be put to eternal damnation. The case indeed seemed to be resolved as not only did Renard's absence seal his defeat, but also putting his charter into damnation secured it.

The first two examples give a lot of insight into resisting legal authority and defying justice but could be explained within the framework of a standalone family quarrel. Therefore it is worthwhile to look at other examples that show that infuriated relatives are not the only ones capable of leaving trials early – the same goes with powerful magnates. As we will see, the next examples also show certain similarities that will be addressed, allowing them to all be visualised in one graphic pinpointing the moment at which one side abandons trial.

Before the court of the countess Ermessenda of Barcelona,[1239] her son count Berenguer Ramon I, and their judges, accompanied by count Hug I of Empúries, bishop Pere of Girona and other potentates,[1240] a certain Adalbert, viscount of Rosselló, accused the abbot Guitard of Sant Cugat of having taken an allod situated at Montgat, Monistrol and Tiana which he had inherited from his late wife Chisulo, who herself had inherited it from her aunt Ermildis.[1241] Confronted with the complaint the abbot replied that he had not taken it, but had received and recovered it from the hands of Count Ramon Borrell and that he is ready to undertake justice on the matter at that very hour (*in ac ora paratus sum iusticiam tibi facere*).[1242] Hearing these words

1239 Comp. Pladevall i Font, Antoni (1975), *La comtessa Ermessenda. Comtessa de Barcelona, Girona i d'Osona*: *esbós biogràfic en el mil·lenari del seu naixement* (Barcelona: Comtes de la vall de Marlès i barons d'Eroles), p. 51-52.

1240 Salrach, Montagut, *Justícia,* doc. 211: *[I]n iudicio domna Ermesindis in doli, gratia Dei comitissa, filioque suo domno Berengario, inclitus comes et marchio, et in ordinacione illorum iudicum subteriorum roboratorum, in presencia domno Ugonem, comitem urbe Impurias, et in presencia domnus Petrus episcopus, Raimundus archilevita, fratresque suos Guillelmus et Bernardus, Ugoni Cervilionensis, Gundebaldus Bisorensis, Amatus vicescomite Gerundense, Mironi Ostulensis, Bernardus quem dicunt Runtro, alius Bernardus Ovasius, et alii quam plurimi viri in eodem loco adsistentes.*

1241 Ibid.: *Quoram istis prefatis viris venit homo quadam nomine Adalbertus, vicemcomitem Rossilionensis, et postulavit directum predicta comitissa ut fecisset ei veritatem et iusticiam de Guitardus, abba cenobio Sancti Cucuphati martiris Domini, qui abstulerat suum alodem qui ei evenerat pro ereditatem coniuge sua quondam nomine Chisulo, et predicta Chisulo evenerat pro successione amitam suam quondam Ermildis.*

1242 Ibid.: *Tunc prelibatus aba in suis responsis afatus est dicens: «Neque abstuli neque disuasi, set propter manum dominus Raimundus comitem bone memorie eum accepi et prelibato cenobio eum recuperavit.*

Adalbert agreed to resolve the issue through a trial, and consequently both sides were obligated to put forward men for surety so that the outcome of the trial would be respected. The abbot chose Hug I de Cervelló while the other side *fide fecit* through a man called Gausbert Blanquet.[1243]

After these preludes, the trial took place *in ipso palatio comitale* and the court asked for oral and written evidence from both parties *per omnes voces veritatis*. The charter emphasises that Adalbert *evanuit omnem veritatem,* be it in scripture or witnesses, while the abbot had an abundance of *iusticiam et veritatem* by presenting two witnesses and three honest men as testimony, all in accordance with the saintly fathers and their divulgation of the Gothic law.[1244] This is an indirect reference to the Visigothic law code, which stipulates that that in their investigations the judges had to establish the truth through witnesses and scriptures. For the reader the complete lack of evidence on one side and the abundance of it on the other becomes more than clear.[1245] Guitard's witnesses declared that Ermildis left the allod to her niece on the condition that once she passed away it would then be in the possession of Sant Cugat.[1246] Adalbert, however, when "he saw himself vanquished" deceitfully did not accept the witnesses and abandoned the trial.[1247] The judges, in accordance with Gothic law and the saintly fathers, continued with the proceedings[1248] and after the

Eoque multis retro diebus semper tibi iusticie inquirendo et nichil michi proficiebat, set in ac ora paratus sum iusticiam tibi facere, sicut diiudicatum mihi fuerit secundum auctoritatem lege gotica, quod tu simili modo proficias».

1243 Ibid.: *Cum hec talis racio audivit prefatus Adalbertus placuit ei ut obligassent se ex ambobus partibus propter fidemiussoris in conspectu superiorum virorum predictorum. A parte vero pretexatus abba fide fuit Ugoni Cervilionensis et ex alia parte fide fecit Gaucebertus Blanchetus.*

1244 Ibid.: *Cum hec factum fuit hoc obligatio inquisierunt omnes viros qui erant quoadunati intus in ipso palatio comitale, intus in Barchinona civitate, sicut superius inserti sunt omnes illorum certitudines tam pro scripturis quam pro testimoniis vel per omnes voces veritatis. A parte vero prefatus Adalbertus evanuit omnem veritatem, tam in scripturis quam in testimoniis et in cunctisque vocis. A partis vero predictus abba abundavit omnem iusticiam et veritatem, sicut sanctorum patrum dimulgaverunt in lege gotica, in duorum testium vel trium onestorum virorum.*

1245 Comp.: LV II.1.23; II 2.5.

1246 Salrach, Montagut, *Justícia,* doc. 211: *Ec sunt nomina eorum, id est: Teudericus, anacalita ex prelibato cenobio, et Guifredus ex puio Bitilona, Bernardus sacer et Livola. Isti fuerunt parati sacramentum facere, sicut et fecerunt, illos videntes et audientes et in eorum presencia adstitid prefata Aermildis quando dedit ipsas fruges tam sicas quam umidas qui, exiebant de ipsum suum alodem quod abebat in Montis Gato ad nepotam suam prefata Chisulo, ut eas tenuiset et exfructificasset in omnibus diebus vite sue. Post excessu vero eius, integrum et intemeratum cum eorum fructum terris atque vineis remansiset ad pretaxato cenobio Sancti Cucuphatis Octovianensis cum domibus atque superpositis qui in eodem alodem sunt constructi atque condirecti.*

1247 Ibid.: *Cum hec professi fuerunt predicti viri, sicut superius scriptum est, et vidit se victum ad sua fallacia noluit recipere ipsos testes et abstraxit se de ipso placito.*

1248 Ibid.: *Nos vero iudices creati recepimus eos sicut inveninus in lege gotica conscriptum secundum auctoritatem sanctorum patruum in libro secundo titulo primo: «Si de facultatibus vel rebus maximis aut eciam dignis negocium agitetur, iudex presentibus utriusque partibus duo iudicia de re discussa*

witnesses had testified *in situ*, close to the property in dispute at the altar of Santa Maria in Badalona,[1249] the triad of judges Bonfill, Vivas and Miró granted the allod to Sant Cugat.[1250]

The narrative of the charter is clear: one party has the overwhelming truth on their side while the other tries to betray justice and leaves. However, the charter can be also read in another way. The abbot had a well-prepared assembly of witnesses with him: Teuderic from Sant Cugat, a certain Guifré and Sendred from Badalona as well as Bernat, a priest, and Livola, a laymen who had been a *ministral* many years ago.[1251] No wonder the abbot was willing to immediately proceed to trial, seizing the moment and overwhelming the other side with his witnesses by surprise, especially if the claimant came empty handed. Again one side had arrived well-prepared and it must have been frustrating for Adalbert to be faced with well-chosen witnesses from both Sant Cugat and Badalona, giving the abbot had the upper hand in proving his point that it was the late count of Barcelona Ramon Borell himself that gave the allod to Sant Cugat, thus literally having a home court advantage.

Another triad of judges Guillem, Arbert and Enric also left no doubt that they want to *mandare memorie* when they settled a lawsuit between bishop Guillem of Vic[1252] and the brothers Ramon Guillem[1253] and Renard of Montcada[1254], which took place in the year 1049 at the church of Sant Pere of Vic, right in front of the choir.[1255]

conscriba. Si vero, ordinante iudice, unam pars testes adduxerit et dum oportuerit eorum testimonium debere recipere, pars altera de iudicio se absque iudicis consultu subtraxerit, liceat iudici prolatos testes accipere et quod ipsi testimonio suo firmaverint ille qui eos protulit suam instanciam consignare. Nam ei qui fraudenter se de iudicio sustulit producere testem alium omnino inlicitum erit».

1249 Ibid.: [...] *et per unc locum veneracionis Sancte Marie Virginis Matris Domini Nostri Iesuchristi cuius baselica sita est in comitato Barchinonensis, in Maritima, intus in vico Bitulona, supra cuius sacro sancto altario as manus nostras continemus vel iurando contangimus*, […].

1250 Ibid.: *Quantum istas totidem afrontaciones includunt, sicut consignamus nos iudices, id est: Bonifilius, clericus et iudex, et Vivas, sacer et iudex, et Mironi iudici, atque contradimus in potestate Domino Deo et Sancto Cucuphati martiris Christi vel eius abba sive eius servientes, ut faciant exinde sicut de aliis alodibus predicto monasterio mos illis est facere, et qui contemtor illis extiterit ire Dei incurrat, et ad extremum diem cum Iuda porcionem accipiat, et in antea ista paginala condicionis vel consignacionis firma et stabilis permaneat modo vel ultra.*

1251 Sendred does not sign the charter but is clearly one of the five men. SALRACH, MONTAGUT, *Justícia,* doc. 211: *Nos vero predicti testes Teudericus anacolita, Guifredus et Sendredus quem dicunt Iuvenis, Bernardus sacer et Livola laicus, qui fuit eius ministralis retro multis annis, in unum damus testimonium vel iuramus* […]. […] *Teudericus monachus SS. S+m Guifredus SS. Bernardus sacer. S + m Livola. Nos vero pariter in unum testes sumus et unc sacramentum fideliter in Christo iuravimus.*

1252 We deal with Guillem de Balsareny, bishop of Urgell, from 1046-1075 who as his name suggests had property at Balsareny.

1253 Ramon I of Montcada.

1254 Also known as Renard of Sarroca.

1255 SALRACH, MONTAGUT, *Justícia,* doc. 305: *Ego Guilelmus, iudex, et Arbertus, similiter iudex, Henricusque, monachus et iudex, volumus mandare memorie cunctorum tam presencium quam*

Space was indeed needed as it is listed that massive audience came and interfered. The *memoir* of personnel is divided between clergy and laity but makes it clear that the audience was even bigger that described, not only the on the clerical side (*et alii multi quorum nomina longum est intexere*) but also the laity, which included the countess of Barcelona Elisabet, the viscountess Guisla of Cerdanya and her son viscount Ramon, *et alii multi laicorum* that came for that occasion.[1256]

The object of the conflict was some properties at Súria consisting of vineyards, mills and other lands that Bernat Seniofred, the uncle of the Montcada brothers, had given to the canonry of the see in writing and that brothers claimed through inheritance of their father, Guillem I of Montcada, and their uncle, the archdeacon Ramon.[1257] As, according to the law, bishops cannot do legal business on their own behalf if they are involved in a suit but instead must choose representatives between their subjects to defend their lawsuits,[1258] the judges urged the parties to elect *assertores*, and so Guillem chose the archdeacon Adalbert, Ermengaud Ermemir, Ramon Guillem, and one of the judges, also named Adalbert, as his defendants while

futurorum hominum qualiter actum est placitum non minimum in ecclesia Sancti Petri sedis Vici, in coro scilicet ante altare, […].

1256 Ibid.: *Ad hoc namque placitum convenerunt et interfuerunt nobiles ac preclari viri, dompnus videlicet Adalbertus archidiachonus simulque prepositus et Ermengaudus caput scole Guilabertusque gramaticus et Petrus sacrista et Alerandus Bernardi et Tedbaddus Bonifilii Ermemirusque Quintille et Guilelmus Argemiri Guadaldusque Durandi et Guadaldus Sendredi Petrusque Adalberti et Riculphus Eldemari Heribaldusque Boetii et Petrus Cixelae Guitardusque Adalberti et Borrellus Bonucii, Ansulphus etiam sacerdos et Eldemarus presbiter, Suniarius quoque Randulphi et frater eius, Sanla, Arnaldusque Lopardi et Reimundus Guifredi atque Ermemirus Guilelmi et alii multi quorum nomina longum est intexere; domna etiam Elisabeth comitissa, et Guila vicecomitissa et filius eius Reimundus vicecomes, Reimundusque Guilelmi Hostolensis et Bernardus Guifredi de Portella, Miro quoque Guifredi et Bernardus, frater eius, Petrus eciam Ermengaudi et Gauzbertus Languardi Guifredusque Ysarni et Reimundus, frater eius, Guadaldusque de Tagamanent et Eldemarus Heldrici Borellusque Bonefilii de Falchs et Guilelmus Mironis de Mediona Balduinusque Sesmundi et Guido Richulphi et Bonefilius Odesindi Miroque Guilelmi de Montaneola et Guifredus Guifredi Attoque Ermemiri et Brocardus Onofredi Petrusque Bernardi, et alii multi laicorum.*

1257 Ibid.: […] *inter dompnum Guilelmum, predicte sedis episcopum, et Reimundum Guilelmi et fratrem eius Reinardum, pro molendinis vineisque et terris que et quas Bernardus Seniofredi dederat, patruus eorum, Canonice iamdicte sedis per scripturam legaliter ab eo firmatam et roboratam, in quibus prelibatus Reimundus et frater eius Reinardus requirebant debere se habere hereditatem per vocem patris sui, Guilelmi scilicet, et Reimundi archidiachoni, patrui sui, qui non minimam partem inter predictas res emerant et suam hereditatem, quia erantfratres, ibi habuerant.* See: Shideler, J. C. (1983), *A medieval Catalan noble family*: *The Montcadas 1000-1230* (Berkeley, London: University of California Press), p. 9-18.

1258 LV II.3.1: *Quod principum et episcoporum negotia non per eos, sed per subditos suos sint agenda.* In this case the reference is given as the second book and in the third title with the starting line after the header, which reads *Maiorum culminum excellentia.* To reference this law as *De maiorum culminum excellenciis* roughly corresponds with the fashion in which the *Usatges* will be referenced in the future.

the brothers appointed the experienced judge Guillem Marc, Bonfill Odesind[1259] and Guido Richulf as their defenders.[1260]

The judges then heard the testimonies presented by the two sides. In the writing it is rather odd to see nothing about the testimony presented by the Montacada brothers at all. Instead the bishops presented two witnesses, the presbyter Guifré and the layman and *milites* Guillem, who separately gave testimony in favour of the see.[1261] When they were about to swear their statements, the brothers and their defenders did not want to receive the testimony, neither hear it nor accept its truth (*suscipienda veritate*), and abandoned trial.[1262] The judges clarified that the brothers left without having consulted them (*absque nostro consulto*) and in accordance with the Visigothic Law continued the lawsuit, citing the familiar paragraph but slightly changing its wording so that it reads *sede Vico sustulit* instead of *se de iuditio sustulit,* thus adapting it to the occasion, and *secundum hanc legem* continued the procedure, thereby keeping justice intact (*salva iusticia*).[1263]

1259 Active also in other trials, see: SALRACH, MONTAGUT, *Justícia,* doc. 305, 318, 337, 356, 361. Bonfill Odesind and his wife Sança Galí had most of their properties at Barberà and Polinyà.

1260 SALRACH, MONTAGUT, *Justícia,* doc. 305: *Nos autem supradicti iudices, audita racione ab utraque parte, iudicavimus ut episcopus non per se set per suos subditos agat negocium accionis, secundum legem gothicam que legitur in secundo libro et in tercio titulo «De maiorum culminum excellenciis», quod et factum est. Elegit igitur domnus Guilelmus, predicte sedis episcopus, domnum Adalbertum archidiachonem et Adalbertum supradictum iudicem et Ermengaudum Ermemiri et Reimundum Guilelmi, qui pro sua vice legaliter ad hoc negocium responderent et facerent quicquid inde fieri deberet. Requisivimus etiam Reimundum Guilelmi et Reinardum, fratrem eius, si ipsi per se causam suam vellent asserere aut ad vicem suam assertorem alium ponere. Ipsi autem hoc negocium per se placitari dixerunt et Guilelmum Marci iudicem et Bonifilium Odisindi et Guidonem Richulphi pro parte sua assertores constituerunt.*

1261 Ibid.: *Statim duos testes ante nostram presenciam adduxerunt, Guifredum scilicet presbiterum et Guilelmum laicum et militem, et separati a nobis atque legaliter discussi testimonium dederunt huiusmodi quod viderant et audierant quando prefatus Guilelmus et Reimundus archidiaconus, frater eius, dederant omnes voces quas habebant et habere debebant in Sorisa et in suis terminis, sicut condiciones iuramenti edite testantur. Quod videntes et audientes, ad partes iusticie si ita iurarent satis sufficere diximus.*

1262 Ibid.: *Illi autem professi sunt se ita iurare et iurando firmare. Nos etiam admonuimus Reimundum iamdictum et Reinardum, fratrem eius, et Guilelmum iudicem et alios assertores eorum ut hoc testimonium nobiscum reciperent. Quod facere noluerunt et non solum ab audiendo testimonio set etiam a suscipienda veritate nostri iudicii, absque nostro consulto, se abstraxerunt.*

1263 Ibid.: *Nos vero testimonium ab eisdem testibus coram multis veraciter recepimus et predicta molendina et vineas, sicut in donacionis scriptura resonat quam Bernardus Canonice Sancti Petri fecerat, ad opus predicte Canonice legaliter consignamus et confirmamus, secundum preceptum legis que iubet ut si, ordinante iudice, una pars testes adduxerit et dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se, absque iudicis consulto, subtraxerit, liceat iudici prolatos testes accipere et quod ipsi testimonio suo firmaverint illi qui eos protulit sua instancia confirmare et consignare. Nam ei qui fraudulenter sede Vico sustulit producere testem alium omnino erit illicitum. Ideoque, secundum hanc legem, ad opus prelibate Canonice, sicut diximus, prefata omnia consignamus et manibus propriis subscribendo confirmamus, salva iusticia, tali modo si meliorem vocem potuerint invenire per quam causam suam iuste possint reparare.*

In contrast to the other cases the witnesses had already testified on Saturday the 14th of October, a week before the trial took place.[1264] Both the priest Guifré and the layman and knight Guillem swore on the altar of Sant Benet at the see of Vic, declaring that they saw, heard and were present when Guillem de Montcada and his brother, the archdeacon Ramon, gave to their brother Bernat everything they had in Súria in exchange for the allods that Bernat had from his paternal inheritance. According to their testimony, that donation had taken place in the choir of the church of Sant Pere in the castle of Muntanyola through the deliverance of a parchment on the day their mother's will was made public.[1265] Again, the preceding preparations had paid off as the Montcada brothers probably showed up in good spirits, bringing with them the necessary legal support from the count's court they were affiliated with, but still lost and probably felt overwhelmed by some unexpected, well-prepared evidence.

On Saturday 5th of December 1093 the judge Miró Guillem signed a *consignatio*[1266] relating to the conflict between the abbot of Sant Vicenç de Cardona and his canons on the one hand, and Guillem Bernat de Vallmanya, Ramon Gerbert de Montlleó and Pere Ramon on the other. The objects of the dispute were the castle of Aleny and a manor called Codony.[1267] The parties appeared at the castle of Calaf, in front of the bishop of Urgell and viscount of Cardona Folc II,[1268] where they gave guarantees to accept the judicial resolution and to appear on the appointed day.[1269]

1264 SALRACH, MONTAGUT, *Justícia,* doc. 304: *Predictum vero testimonium recepimus pridie idus octobris, nono decimo anno Henrici regis. Et in eodem mense, XII kalendas novembris, et in predicto anno regis Franchorum, hanc consignacionem fecimus.*

1265 Ibid.: *Nos testes Guifredus videlicet presbiter et Guilelmus laicus et miles iurando testificamur per Deum verum et vivum supra altare Sancti Benedicti in sede Vici quia vidimus et presentes extitimus quando Guilelmus de Monte Catano et Reimundus archidiaconus, frater eius, dederunt fratri suo Bernardo omnes voces quas habebant et habere debebant in Sorisa et in suis terminis, in domibus scilicet et in terris et in vineis cultis et eremis et in molendinis et in boschis, pro omnibus aliis alodiis quos predictus Bernardus habebat et habere debebat per successionem parentum suorum, et hec donacio fuit facta in ecclesia Sancti Petri de Montaniola, videlicet in coro, per tradicionem unius pergamini, et hoc fuit ipsa die quando fecerunt iudicium de matre sua. […] Sig+num Guilelmi, militis predicti. Guifredus sacerdos sub SSS. Qui ad hoc negocium presentes extitimus ideoque hoc testimonium damus et iurando sic nos audisse et vidisse firmamus.*

1266 SALRACH, MONTAGUT, *Justícia,* doc. 505: *Sig+num Mironis iudicis, qui hanc consignationem feci et firmavi.*

1267 Ibid.: *Hec scriptura istius consignationis cunctis sit cognita qualiter fuerunt diversa placita et plurime contentiones inter abbatem Sancti Vincentii Cardone eiusque clericos et Guillelmum Bernardi de Vallemagna et Raimundum Guiriberti Monteleonis et filios suos et Petrum Raimundi, filium quondam Raimundi Gerovardi, de castro Eligno eiusqe terminis et de manso Chotugni eiusque pertinentiis.* May be the *manso Chotugni* refers to a previous manor of the actual Mas el Codonyet north of Cardona.

1268 For the Bishop-Count, see: Rodríguez Bernal, F. (2011), 'Folc II, vescomte de Cardona, bisbe electe d'Urgell i bisbe de Barcelona (c. 1040 - 1099)', *Paratge*, 24: 253–269.

1269 SALRACH, MONTAGUT, *Justícia,* doc. 505: *Propter hoc diu placitantes et altercantes venerunt in castrum Calaph; et firmaverunt directum ex utraque parte in manu Fulchonis episcopi, ut facerent et acciperent*

As agreed the two sides appeared before the judge Miró Guillem, the bishop and many clergy and laity. The abbot and the canons presented charters and testimonies declaring that they received the property *ex manu* from the "long dead" grandmother of the plaintiffs named Maiassèn.[1270] The grandchildren did not want to accept either the witnesses or the rulings of the court.[1271] While it is not explicitly stated, they most probably abandoned trial, as Miró Guillem invoked the corresponding law and the abbot and the canons asked him to accept the testimony from the witnesses. Said witnesses declared that they saw and heard that the castle and the farmhouse were proper allods of Sant Vicenç of Cardona due to the testimony of Oliba and the donation by Maiassèn, and swore it on the altar of Saint Peter the Apostle at the castle of Calaf.[1272] After hearing the statements and seeing the document of donation, the judge consequently attributed the disputed properties to Sant Vicenç. As an experienced judge, Miró Guillem certified (*consigno*) the castle into the hands of the abbot of Sant Vicenç carefully using the vocabulary of the Visigothic law code.

The three grandsons probably felt scammed and showed their discontent by leaving early and this is presumably the reason why we are provided with the detail of them giving sureties that they would accept the court's resolution, which in the end they did not. The charter thus serves both as a document commemorating the course of events and as a guarantee for the canons that they now are holding the castle as well as the manor.

The last examples have some features in common. One side came well-prepared, presenting well-selected witnesses that were present at events that lay well in the

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directum de iamdictis rebus ad diem constitutum.

1270 Ibid.: *Et fuerunt inde data iudicia a Mirone Guillelmi iudice, in presencia eiusdem Fulchonis episcopi et Deusdedit Bernardi et Gerberti Ugonis et aliorum multorum clericorum et laicorum, ut fuissent ostense scripture ab utraque parte comprobata veritate per sacramentum et ontendissent testes. Prescriptus abbas Sancti Vincentii, cum suis clericis, ostendit scripturas et attulit testes, scilicet, Raimundus, prior Sancti Iacobi, et Raimundus sacricustos, ad comprobandam ipsam tenezonem quam habuit ex iamdictis alodiis, unde scripturam ostenderet confirmatam atque legaliter confectam ex manu Maiassendis, dudum defuncte, avie predictorum querelantium.*

1271 Ibid.: *Predicti quoque querelantes noluerunt facere nec accipere prolocutum directum nec testes quos attulerunt prescripti clerici. Hoc facere nolentes rogaverunt iudicem iamdictum ut acciperet prolatos testes a se consignaret in manu eorum auctoritate legali prefata alodia. Prescriptusque iudex accepit iamdictos testes et consignavit illis sepedicta alodia ita incipiendo in hunc modum.*

1272 Ibid.: *Consigno et trado prescripta alodia cum prenominato castro pariter Sancto Vincentio in manu prescripti abbatis eiusque clericis retinenda, reservata tamen prescriptorum causidicorum negocio legali tempore peragendo. Testimonium vero qui testes prolati protulerunt sic sunt: «Iuramus nos iamdicti testes super altari Sancti Petri Apostoli ecclesia cernitur constructa in castro de villa Calaph, quod vidimus et audivimus kastrum de Eligno cum suis terminis et mansum de Cotugno cum suis pertinentiis, tenere et habere Sancto Vincentio Cardone et suis hominibus ad suum proprium alaudium per testationem Olivarii et donationem Maiassendis femine»*

past. Keeping track of witnesses meant finding the adequate evidence to support one's claim, and this seemed to have frustrated the other side in all these occasions.

In comparison to these examples, where the declaration of the witnesses is usually preserved in a separate charter, there is one case in which both documents were written down together on the same parchment, combining the resolution and the oath taking, the latter being written down first reflecting the common chronological order of legal procedure.[1273] After the declaration of witnesses the charter starts off with judge Guitard, in charge of administering justice, stating that Ermengol left without consulting him when he *debui recipere hoc testimonium predictorum testium*.[1274] It is reasonable to suggest that the document essentially reflects the course of events. While Guitard was taking the declaration of witnesses, Ermengol most probably just left the premises. Again, adhering to the law and the ones that follow it, the trial was continued accordingly.[1275]

The judge follows up by explaining what had happened beforehand. While both sides presented scriptures,[1276] only Guillem Lobató was able to back those up through witnesses, stating that Ermengol took away the property[1277] and that they saw and heard that four batlles (*baiulos*) of the counts had already collected taxes there,[1278]

1273 SALRACH, MONTAGUT, *Justícia,* doc. 349, 350.

1274 SALRACH, MONTAGUT, *Justícia*, 350: *Ego igitur, prescriptus Guitardus iudex, Ermengaudo presbitero prescripto subtraente se de meo iudicio sine meo consultu, tunc temporis quando debui recipere hoc testimonium predictorum testium, hos testes suscepi et illas res, quas presenti testimonio suo firmaverunt, predicto Sancto Paulo et eius basilice per presentem consignacionis scriptam scripturam mea instancia consignavi per licentiam et preceptum legis illius que continetur in libro secundo legum.*

1275 Ibid.: *Que lex inter alia sic loquitur: «Si vero, ordinante iudice, una pars testes adduxerit et, dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se absque iudicis consultu subtraxerit, liceat iudici prolatos testes accipere, et quod ipsi testimonio suo firmaverint, illi qui eos protulit sua instancia consignare. Nam ei qui fraudulenter se de iudicio sustulit, producere testem alium omnino erit illicitum». Et alia que secuntur eiusdem legis.*

1276 Ibid.: *Accessi ad tempus statutum et predictus Ermengaudus hostendit mihi fictas scripturas quasi veridicas, quia protulerat michi iam scripturas in primis negociis, continentes quod auctor abebat et abere debebat in his que ei vendiderat. Unde iudicavi ut predictus Guilelmus ostenderet michi voces et documenta que predictus Sanctus Paulus et comes requirebant in supra dictis rebus. Idem Wilelmus exibuit michi hos testes supra dictos.*

1277 SALRACH, MONTAGUT, *Justícia,* doc. 349: *Preterea iurantes testificamur quia vidimus et audivimus quando predictus Ermengaudus predictas res abstulit a iure et potestate predicti Sancti Pauli et a iure et potestate comitis Reimundi Barchinonensis, presentis, qui nunc est comes.*

1278 Ibid.: *Sicut concluduntur et continentur predicte res intra predictos terminos et predictas quatuor afrontationes, nos predicti testes iurantes per presentes condiciones in iam dicto altari testificamur: «Quia per XXX[a] annos expletos et eo amplius sic vidimus et audivimus easdem res omnes ab integro teneri et aberi et possideri a predictis comite et comitissa per eorum proprium. Et vidimus et audivimus predicti comitis et comitisse baiulos Ansulfum et Bernardum Ovasii et Pedres et Gaufredum Adrac de predictis rebus omnibus apreendere libere et potestative censum, id est, tascas et bracadches de ipsis blads, que inde exierunt, et pascuaria tam de porcis, et denarios et solas et alias res utiles et clandes et tutones per censum preditarum rerum. Et vidimus et audivimus predictos baiulos custodire et defendere predictas res inter omnes tricennali tempore.*

whereas Ermegol was only able to tell him that he had no witnesses at all.[1279] Consequently Guitard, citing extensively from the Visigothic law, justified his decision and assigned the disputed forests and territory, situated at the parish of Sant Martí d'Arenys in the county of Girona, to the counts.[1280]

The idea that laymen angrily left court when facing ecclesiastical institutions fits well into the picture of feudal anarchy, but monasteries also fought their legal disputes between themselves with similar outcomes. In the year 1092 a court tribunal meeting at Castelló d'Empúries was to resolve the "altercation and contention" between the two abbots Matfred of Sant Pere de Rodes and Benet of Sant Esteve de Banyoles, regarding the possession of the churches of Sant Joan Sescloses, Sant Cebrià de Pineda, Sant Genís de Palol and Sant Tomàs del Pinnina. Because of the dispute count Hug II of Empúries had constituted and ruled that there had to be a trial between the two.[1281] The day was set so that they met after 15 days at the church of Santa Maria at Empúries. Presided over by Count Hug II of Empúries, the tribunal was formed of cardinal Ricard, the abbot of Sant Víctor de Marsella, Berenguer Guifré, the bishop of Girona, and the abbots of Santa Maria de Ripoll and Sant Quirze de Colera together with the judges Ramon Guillem and Ramon Bonfill and attended by numerous magnates.

The complaint was filed by Benet of Sant Esteve de Banyoles and in accordance with the law of the Goths and the customs of the land, the court first requests guarantors, and then advises each side to show their written evidence.[1282] Among said

1279 SALRACH, MONTAGUT, *Justícia*, doc. 350: *Et ego dixi Ermengaudo ut hostenderet suos testes, qui firmarent res suarum scripturarum ut, utriusque visis testibus partis, eligerem meliores testes. Item Ermengaudus dixit mihi non habere se ullos testes pro predictis probandis rebus ad partem sui neque auctorem scripturam novellarum.*

1280 LV X.3.5.3; X.2.3.4; X.2.6.5.; X.2.4.

1281 SALRACH, MONTAGUT, *Justícia*, doc. 501: *Satis volumus cunctis praesentibus sit notum et futuris non sit incognitum quoniam quidem magna altercatio atque contentio fuit inter domnum Matfredum, abbatem Sancti Petri coenobii Rodis, et abbatem nomine Benedictum Sancti Stephani Balneolis coenobii, de ipsa ecclesia in honore Sancti Iohannis Baptistae aedificata supra stagnum Castilionis cum alodiis et omnibus pertinentiis suis, et de cella Sancti Cipriani quae dicitur Pineta cum omnibus iuste scilicet pertinentibus, et Sancti Genesii cum decimis et primitiis ad eandem ecclesiam pertinentibus, et abbatia Sancti Thomae atque in monte Pinnini cum omnibus scilicet pertinentibus. Pro hac contentione constituit atque mandavit Ugo, gratia Dei comes, placitum inter illos.*

1282 Ibid.: *In praesentia vero istorum suprascriptis venit praedictius abba Sancti Petri, et attulit querimoniam de praedicto abbate Benedicto quod iniuste et absque recto ordine retinebat et possidebat iamdictas ecclesias cum illarum pertinentiis pro lucro pecuniae dandi omni tempore. Haec querimonia audita a praedicto abbate Benedicto et suis monachis, iamdictus Ricardus cardinalis et illorum vicem hoc responsum dedit, quod iamdictus Benedictus abbas non deberet responsum dare neque voces ostendere de iamdictis ecclesiis, nisi prius abbas Sancti Petri ostendered voces et auctoritates pro iamdicto Sancti Petri coenobio. His rationibus auditis iamdictis magnatibus, et a praedictis iudicibus, iudicaverunt secundum auctoritatem legis gotticae et secundum usaticos terrae constringere se debent*

evidence they found a precept of Louis V stating that the abbots Acfred of Banyoles and Hildesind of Rodes, upon the advice of counts Borrell II of Barcelona, Guifré II of Cerdanya and Gausfred I of Empúries and Rosselló and the bishop Gotmar III of Girona, had agreed that the churches belonged to Rodes. The court then decided to ratify it, but the abbot of Banyoles did not accept this and abandoned the trial, which led the court to advise the count and countess to grant the abbot of Rodes the ownership of the churches. The counts were firm in their decision and did so *propter Deum et remedium animarum nostrarum ceterorumque parentum nostrorum* also promising *Domino Deo et Santco Petro* that they will help and defend the rights of Sant Pere de Rodes.[1283] Again the list of attendees is extremely detailed, not only because of the importance of the occasion but also because of one side abandoning trial. The promises of the counts to defend the rights of Rodes were surely welcomed as Benet had left promptly and this was understood as an indicator for possible future legal strife and quarrel. Again one side left after facing unexpected evidence, in this case a regal precept.

In all the above-mentioned cases one side did not accept the testimony presented by the opposing party, being it witnesses or scripture. The wording and vocabulary used on these occasions is a reference to the correct application of the Visigothic Law as judges *accipere testimonio* while the other party fraudulently leaves (*fraudulenter sustulit*), but the question is if and how far this really reflected the reality of the conflict. The complex levels of reasons and animosities are hidden behind a facade of legal language where one side abandons trial without permission and

per fideiussores praedicti abbae in potestate praedicti comitis directum faciendi ad tempus sufficiens ex iamdictis ecclesiis antequam illorum voces ostendissent. Ex hoc guit in iamdicto placito magna contentio; et ut haec contentio se iamdicto iudicio sopita remaneret, praelibatus episcopus dedit consilium ut utrique abbates illorum voces et auctoritates scripturarum ostenderent.

1283 SALRACH, MONTAGUT, *Justícia,* doc. 501: *Et ideo ego praedictus comes adquieto iamdicto consilio reddo, dono, trado, evacuo, sumulque confirmo cum coniuge mea nomine Sancia, propter Deum et remedium animarum nostrarum ceterorumque parentum nostrorum, iamdictas ecclesias cum omnibus suis pertinentiis in ius et potestatem praelibati coenobii et iamdicti Matfredi abbatis et suorum monachorum praesentibus scilicet ac futuris, ita ut unquam non sit nobis licitum ullo modo iamdictas ecclesias a iure et dominatione praelibati coenobii abstrahere vel tollere partem vel totum aut minimum. Iterum convenio Domino Deo et praelibato coenobio et abbati Matfredo et suis monachis praesentibus et futuris ut ab hac die deinceps, si fuerit homo aut feminae, vel homines, qui iamdictas ecclesias sive de illarum pertinentiis abstollere vel auferre voluerint a iure et dominio praelibati coenobii, semper ero adiutor ac defensor tenere et habere omni tempore. Propter hoc promitto Domino Deo et Sancto Petro ita tenendi. Et qui hoc irrumpere tentaverit, nihil proficiat, sed ut sacrilegus componat praelibato Sancto Petro et suis monachis, et cum datan et Abiron portionem accipiat, et in antea haec scriptura firma permaneat.*

explicitly does not accept the other side's witnesses. It is the law that dictates the narratives and the motivation of the side abandoning trial is not elaborated further.

The dynamics of the cases when one side abandons trial can be summarised graphically in the following way: a claim or complaint is followed by the two sides giving sureties, the investigation of the evidence by the judges and the non-acceptance of witnesses, followed by one side leaving trial and the witnesses swearing an oath at the locality where the disputed property is situated thus cementing the court's decision. The *iudicatum* charter is then drafted afterwards copying the statements from the oath.

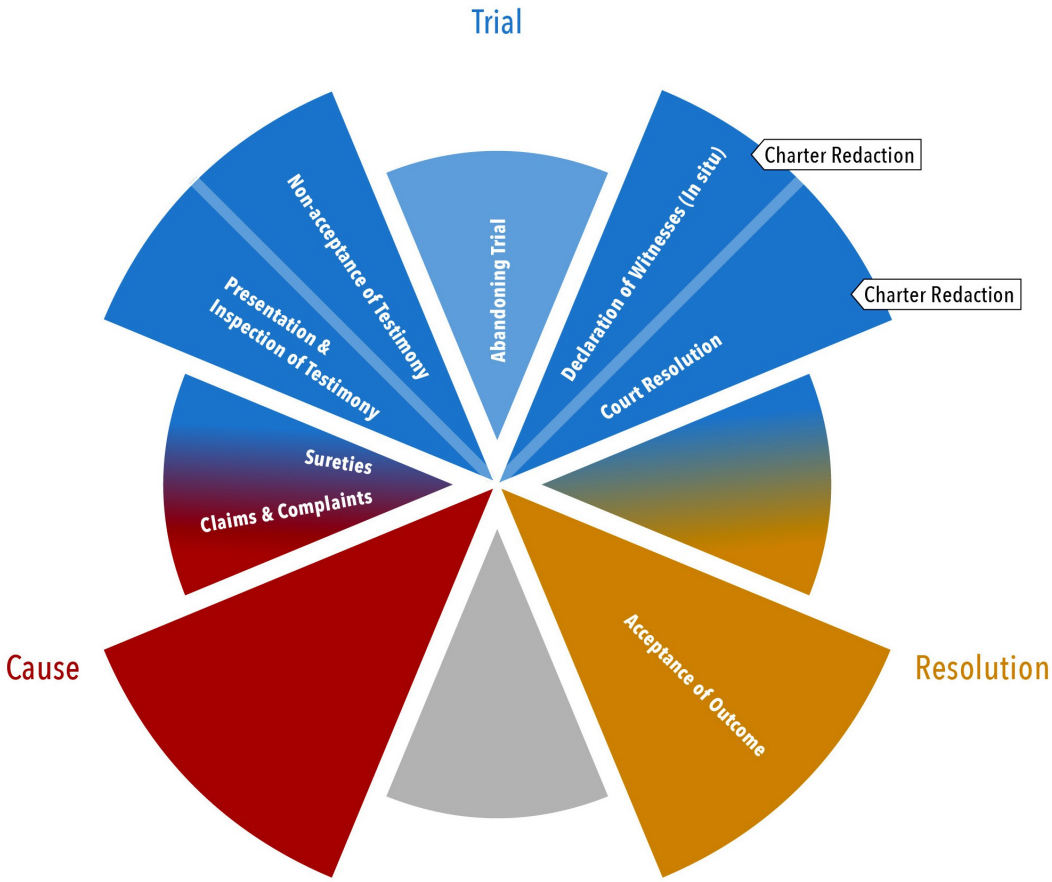

Fig. 13: Graphic of Abandoning Trials Due to Not Accepting Testimony

The declaration of witnesses was also integrated into an earlier lawsuit presided over by the countess Constança of Urgell and her son Ermengol III in 1041. The list of the tribunal and attendees, including Arnau Mir de Tost, Isarn Ramon de Caboet, Borrell de Taravall, and Hug Guillem de Lavansa with his brothers, maintains the standard order for its time, with *Senderedus iudex Ceritanensi* judging the case.[1284] The brothers Guillem, Ramon, Geribert, Rodlan and Arnau, accused their stepbrother Guitard of unjustly and violently contesting their inheritance,[1285] an allod at Vilaplana.[1286]

After this short standardised introduction the charter delivers a dialogue of arguments brought forward by both sides, starting with the accused replying that he acquired the allod in court from their common mother, named Riquilda, who held it beforehand.[1287] In response, Guillem and his brothers claimed that the allod was not from their mother but instead from their father, Arnau, who had inherited it from his parents but then lost it due to a homicide for which he was forced to leave the county of Urgell, however he later recovered it from the hands of Count Ermengol I, who forgave him.[1288] Guitard replied that Arnau sold his mother's allod without permission and then unjustly abandoned her.[1289] The other brothers, however, claim that he only abandoned her by external circumstance, as he had leprosy and had to live away from men.[1290] Because Guitard relied on these facts to justify his possession of the allod, the

1284 SALRACH, MONTAGUT, *Justícia*, doc. 272: *Notum sit omnibus hominibus presentibus atque futuris, qualiter venerunt omines nomine Wilelmus Arnaldus cum ceteris fratribus suis Raimundo et Geriberto et Rodlando et Arnaldus. Isti iam dicti venerunt in placito ante domna Constantia comitissa et filium eius Ermengaudum comitem Urgellensi et in presentia nobilium virorum ibidem adsistentium, idest Arnaldus Mironi Tostensis et Gonbaldus Matronensis et Isarnus Caputensis et Borrellus Taravallensis et eius Geraldus, et Ugo Wilelmi Lavancensi et fratres eius Gocbertus et Witardus et Wilelmus, et Gonbaldus de Ribelles et Senderedus iudex Ceritanensi qui iussus est iudicare, causas audire et legibus diffinire*

1285 Ibid.: *In istorum supra dictorum presentia venerunt predicti fratres et petierunt alium fratrem illorum nomine Witardum per illorum alaudem de Villa Plana et eis contendit illorum hereditates iniuste et violenter.*

1286 Situated at the marshland of Rialb (Baronia de Rialb, Noguera).

1287 Ibid.: *Ad hec respondit Witardus: «Ego adquisivi eum in placito de potestate matri vestra nomine Richel qui eum retinebat».*

1288 Ibid.: *Et illi ad hec dixerunt: «Ipsum alaudem non fuit de matre nostra sed de patre nostro nomine Arnaldus, qui eum adquisivi per vocem parentorum suorum, et postea amisit eum per homicidium quam fecit et fuit egectus de omnem terram Urgelli. Et postea reverti in comitatum et venit ad mercedem comiti Ermengaudi, prolem Borrelli comiti, et reddidi ipsum alaudem in sua potestate per suum beneficium et dimisit ei ipsum homicidium».*

1289 Ibid.:*Contra hec respondit Witardus: «Arnaldus vendidit alaudem matris mee in ipsa Rua violenter absque volumptate et consilium matris mee et postea relinquit eam iniuste».*

1290 Ibid.: *Ad hec responderunt ceteri fratres: «Necessitate conpulsus relinquit ea quia dispersa erat a lepra et degecta ab aliis hominibus»;*

brothers took another legal route and argued that more than fifty years had passed since it was lost and, therefore, any warden's right to claim a property would have expired (LV IV.3.2).[1291] From here on, still narrated in first person, the brothers state that the judge interrogated them diligently and asked them if they can present proof *contra vocem pupillaria*.[1292] The brothers consequently present witnesses (*veridicos testes*). The charter continues by giving the wording of the oath on the altar of Saint Andrew situated inside *domum Sancti Petri* at the see of Urgell,[1293] as the brothers swore that their father had leprosy but also that 50 years had passed.[1294] After this "I, Sendred the judge" reflected upon the law (*reminiscens legem*)[1295] and the aforesaid witnesses again swore that all that is true.[1296] When Guitard should have received these testimonies, he extracted himself without consulting the judge, as he never wanted to receive them.[1297] The judge, by order of the countess and in accordance with the powers given to him by law, cites the well-known paragraph of the Visigothic law (LV II.1.25), regarding someone abandoning a lawsuit.[1298] The charter ends with the

1291 Ibid.: [...] *propter hoc iam dictus Witardus voluit petere fratres suos propter possesionem patris illorum. Et illi ad hec responderunt: «Quinquaginta annos habet et amplius hec omnia supradicta factum est»; ad hec proclamat Witardus vocem pupillaria.*

1292 Ibid.: *«Unde nos Wilelmus Arnaldus et Raimundus cum ceteris fratres qui sumus de patri vel matri, predictus iudex nos interrogavit diligenter si possumus probare contra vocem pupillaria ad fratrem nostrum Witard de hec omnia sua, peticionem que quinquaginta annos habeat transactos vocem pupillaria lex sopiri decrevit quinquagenarium numerum. Et nos habemus veridicos testes nomine [...]».*

1293 The oath taking probably took place at Sant Pere d'Urgell. Carrero Santamaría, E. (2010), 'La Seu d'Urgell, el último conjunto de iglesias. Liturgia, paisaje urbano y arquitectura.', *Anuario de Estudios Medievales (AEM)*, 40/1, p. 255: El conde Seniofred hacía donación de un terrenourbano a Santa María de la Seu lindero con las iglesias de San Pedro y SanAndrés. Esta doble advocación ha sido identificada con el templo de SanPedro, localizado a una treintena de metros de la fachada meridional de lacatedral. La iglesia es citada como beneficiaria de las mandas testamentariasdel obispo Guisad en 952 y del conde Borrell II en 993, mientras en documen-tos de 1003 era denominada como sancti Petri de ipsa Sede. De lo hastaahora expuesto lo que se extrae a ciencia cierta es que, en el siglo X, la Seud'Urgell ya contaba con un conjunto de al menos dos iglesias.

1294 Salrach, Montagut, *Justícia*, doc. 272: *«Nos simul in unum damus testimonium iuramus per trinum et unum Deum et super altare Sancti Andree qui est situs infra domum Sancti Petri, nos vidimus et audivimus et de presente eramus quando condam Arnaldus abuit factum ipsum homicidium et ipsum alaudem de ipsa Rua venditum, simul cum uxore sua nomine Ermengarda perdiderunt illorum facultates, et fuit degectus predictus Arnaldus de comitate Orgelli et dum reversus fuit invenit ea degecta per chasum lepra ad hec necessitate conpulsus relinquid ea, et abet quinquaginta annos transactos et amplius que hec omnia facta sunt»*

1295 Ibid.: *Et ego Senderedus iudex reminiscens legem quem precepit in Liber Iudicum «illos annos in pupillorum accionibus conputandos esse censemus quibus videlicet illorum pater aut mater rem charuisse noscuntur, id est, ut ex eo tempore cum pupillaribus annis usque ad quinquagenarium numerum suma pertendat»*

1296 Ibid.: *«Et nos predicti testes iuramus quia ipsas facultates amissas vel perditas fuerunt de alaudem de illa Rua vel de ipsum de Villa Plana transactos annos quinquaginta habet et amplius, et iuramus omnia et in omnibus quia verum est».*

1297 Ibid.: *Et dum debuit predictus Witardus recipere istas provas extraxit se absque consultu de predicto iudice et noluit eas recipere».*

1298 Ibid.: *Et ego Sendredus iudex per iussionem iam dicta comitissa et per legalem preceptum quem*

line in which Sendred assigns the allod to the brethren: "And I the judge Sendred received this oath and consign this allod at Vilaplana into the *potestas* of Guillem Arnau and Ramon Arnau as well as the others of their brother excepting the inheritance of Witard, which the other brother will hold perpetually",[1299] followed then by the dating and the scribe's clause.[1300]

Besides being rather odd in style and it only being preserved as an original, there is an additional problem. The document is neither signed by the witnesses nor are their names listed, but instead the space is left blank. An explanation for this could be that the trial actually did not happen at Urgell but at another place, and that the charter is kind of an unfinished draft that recalls the arguments of both sides with added copied parts of the *Liber* thrown in. The witnesses have already stated what they are going to swear at the altar but they have not sworn it yet, as Guitard left during the proceedings. This would fit with the other cases and would explain the charter being unfinished.

The need to record the proceedings of a trial in greater detail became more acute when one party abandoned it, not only to make the course of events intersubjectively intelligible, so that for instance, other judges would be able to read and understand the arguments that led to the courts resolution, but also to record the attending audience to come back to them if need be. Evidence suggests that Visigothic law is therefore quoted more often and in more detail than in other cases, as one side could go to another judge and try to start the lawsuit all over again. However, it is also more likely that the more powerful the participants are, the better legal aid they would receive and therefore the legal expertise is reflected in the written charter. The powerful can leave court and display their disdain over the decision but it was interpreted as a sign of not having justice on their side.

In some instances one party left trial even earlier; right before giving guarantees. This time the conflict again involved the count of Empúries and the abbot of Sant Pere

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continet in Liber Iudicum, nam si «una pars testes adduxerit et dum oportuerit eorum testimonium deberi recipi pars altera de iuditio se absque iudice consultu substraxerit liceat et iudici prolatos testes accipere et quod ipsi testimonio suo firmaverint ille qui eos protulit sua instantia consignare. Nam ille qui fraudulenter se de iuditio sustulit producere testem alium omnino erit inlicitum».

1299 Ibid.: *Et ego Sendredus iudex recipio hunc sacramentum et consigno ipsum alaudem de Villa Plana in potestate de Wilelm Arnald et de Raimundo Arnald vel de ceteris suis fratres exceptus iusta hereditate de Witard, et ipsas alias ereditates a ceteris fratribus in perpetim abituras.*

1300 Ibid.: *Facta ista consignatione IIII nonas aprelii, anno X^{mo} regnante Aianricho rege. Eico sacer, qui ista consignatione scripsit et SSS cum litteras superpositas in verso XVI et dampnatas in XIII, die et prenotato tempore.*

de Rodes. Ponç I Hug demanded some vineyards and allods at the valley of *Moroni*, which the clergyman Brandoí had given to the monastery.[1301] The whole meeting probably took place *in situ*, at the water hole or fountain belonging to the vineyard or the entrance of the valley.[1302] The count maintained that Berenguer Odó, his brother Guillem, and he himself had more rights over the disputed property than the monastery.[1303] The abbot, however, replied that the count must return the allods and vineyards to the monastery, and then wait for the judges to settle the dispute *justly judging* it.[1304] The count then asks the lords present and the judge Guillem whether this is true or not. The judge, in agreement with the lords, affirms this by invoking the canons of the councils of Toledo and the laws of the Goths, which state that if anyone sells or gives to another something that must be claimed in court before his opponent has been judicially defeated,[1305] they would lose the case and would have to restore it double.[1306] He is also mentions another law in favour of the monastery which protects long-standing possessions of thirty years or more.[1307] After having heard so "*many*

1301 SALRACH, MONTAGUT, *Justícia,* doc. 314 bis: *Notum esse volumus omnibus hominibus tam praesentibus quam futuris qualiter fuit mota causatio inter domnum Pontium comitem et domnum Petrum, abba coenobii Sancti Petri Rodensis, de ipsis vineis qui fundatae sunt in valle quae dicitur Moroni cum omni fundo et termino et pertinentia ipsius alaudis et loci ipsius praenominati, sicut Brandoinus clericus concessit et donavit praedicto coenobio per cartam donationis quam ille manu propria litteris firmavit.*

1302 Ibid.: [...] *et ipsum mandamentum fuit factum in locum ubi dicunt ad ipsa gula* […]. GMLC, G, gula, gola, p. 159: "gorja, embocadura o pas d'entrada".

1303 Ibid.: *Dicebat namque et proponebat praelibatus comes quia supradictum alaudum et ante nominatas vineas cum illorum pertinentiis et omnem alaudium tam cultum quam eremum, quod resonabat in praescripta carta, melius et rectius deberet esse Berengarii Odonis et fratris sui Guillelmi et praedicti petitoris Pontii quam coenobii praefati sancti Petri.*

1304 Ibid.: *Praelibatus namque abbas Petrus in suis responsis sic affatus est dicens iamdicto comiti: «Si vos dicitis quod praedictum alaudem et vineas directum Berengarii et Guillelmi et vestrum esse debeat, primum reddite ipsum alaudem in potestate Sancti Petri et nostra; deinde vero sit judicatum per legem a judicibus qui juste judicent praefatam petitionem».*

1305 First council of Toledo (VIVES, *Concilios*, can. 11, p. 22). SALRACH, MONTAGUT, *Justícia,* doc. 314 bis: *Praenominatus comes requirens judicium suis nobilibus viris et judice Guillelmo si deberet esse rectum quod praescriptum alaudium reddere debuisset in potestate praedicti coenobii et praenominati abbatis, sicut ipse dicebat, jubente autem praenominato comite iudicavit praescriptus judex cum praescriptis viris quod justum judicium valde erat ut praescriptum alaudium cum praenominatis vineis in potestate praedicti coenobii et manui praedicti abbatis et monachis suis deberet reverti absque ulla diminutione per auctoritatem canonis Toletani ubi dicit in eximia synodalis. «Nullus potens, clericus aut laicus nudatus a rebus suis audeat judicare nisi prius illi restituantur ad integrum omnia quae illi tulit».*

1306 LV VIII.1.2; VIII.1.5. SALRACH, MONTAGUT, *Justícia,* doc. 314 bis: *Et leges Gothorum ita jubentur: «Si quis rem quae est per judicium repetenda priusquam adversarium suum judicialiter superet vendiderit vel donaverit», sicut Berengarius et Guillelmus praescripti fecerunt ad praescriptum comitem praedictum alaudium, «ipsam causam de qua agitur quasi victus perdat quare absque audientia judicantis privatum fuit dominium possessoris. Quod si ille illud abstulis quod per nullum judicium ei debebatur, reddat in duplum».*

1307 LV X.2.6. SALRACH, MONTAGUT, *Justícia,* doc. 314 bis: *Et per alia lege ubi dicit: «Si quis possessor per triginta annos et amplius res quascunque possederit absque interruptione temporis, in ejus jure persistat, et nequaquam ulterius per repetentis calumniam amittere potest».*

truths", the judge reminded the count that he should not usurp justice on his own behalf. Consequently Hug gave the allod with the vineyards to the monastery,[1308] then the count, the judges and the lords advised the brothers Berenguer and Guillem to plead for the allod with the abbot and to give bail, which would then oblige them to accept the verdict.[1309]

The brothers, however, refused to give sureties but instead *absque iudicis consultum et comitum* abandoned the trial. The count then ordered the judges to confirm the ownership of the allod and vineyards to the monastery in eternal possession and so it was done.[1310] In return, he and his wife, the countess Adalaida, received eight gold ounces from Sant Pere.[1311] Transgression of the verdict would be punished with the fine of one hundred ounces of gold.[1312] Interestingly the charter was not only considered as an evacuation of rights but also as both a security charter and a sales charter,[1313] which makes the compensation payment for the counts look more like a deal than a judicial decision.

The examples show that the more powerful were able to abandon trial in the 11th Century, and did so especially when they were confronted with evidence that surfaced from the past and they did not expect. Abandoning trial meant legal defeat but that frustration could easily turn into anger.

1308 LV VIII.1.5. SALRACH, MONTAGUT, *Justícia,* doc. 314 bis: *Auditum est autem tantae veritatis judicium a praedicto comite, reddidit praescriptum alaudium cum praescriptis vineis cum omni pertinentia de praescripto alaudio, sicut resonat in praedicta carta quod praescriptus Brandoinus fecit in potestate praedicti coenobii et praenominati abbatis et monachis suis jure perpetuo possidenda per auctoritatem. Alia lege vero dicit: «Nullus comes, vicarius, villicus, actor, aut procurator, rem quae ab alio possidetur, post nomen regiae potestatis aut dominorum suorum usurpare praesumat ante judicium».*

1309 Ibid.: *Praeductus namque comes et praedictis judicibus et senioribus praescripti praeceperunt Berengario et fratri suo Guillelmo praescriptis, et ipsum mandamentum fuit factum in locum ubi dicunt ad ipsa gula, ut placitassent praescriptum alaudium cum praedicto abbate, et dedissent se fidejussores ad invicem ut si directum ibi habebant, per justitiam recuperassent ea quae requirebant.*

1310 Ibid.: *Illi autem neglexerunt, sed absque judicis consultum et comitum abstraxerunt se de praescripto placito. Praescriptus autem comes praecepit consignari judicibus Guillelmo et Raimundo praememoratum alaudium et praescriptis vineis in potestate praedicti coenobii et praenominati abbatis et monachis suis aeternaliter possidendum, et ita fecerunt.*

1311 Ibid.: *Praescriptus autem Pontius comes et uxori suae Adalais comitissa acceperunt de substantia praenominati monasterii uncias VIII, inter aurum et res illis satis placibiles,* […].

1312 Ibid.: […] *sed componant ipsi qui hoc irrumpere voluerint centum uncias auri, et insuper praescriptum alaudium in duplo, et haec nostra definitio securitatis et venditio stabilitatis et firmitatis omni tempore firma persistat omne per aevum et per secula cuncta.*

1313 Ibid.: *Facta est haec scriptura diffinitionis atque securitatis seu venditionis II nonas octobris, anno Trabeationis Domini millesimo quinquagesimo quarto. Signum venerabilis Pontius, comes gratia Dei, eiusque coniugis Adalais comitissae, qui hanc cartam evacuationis atque venditionis seu stabilitatis scribi iussimus et manibus propriis firmavimus et bonis viris firmari rogavimus.*

Three charters can give a good insight into the dynamics of a local conflict that escalated but was appeased through mediation. In 1094, after many disputes with his brother Ermengol, through the mediation of common friends Odalguer renounced his rights over the allod of Torroella and the tithe of Orriols that he received from his mother, and passed them to his brother.[1314] Thirteen years later on the 17th of December 1107 Odalguer, together with his sons and daughters[1315] signed a *pactum scripture* evacuating and defining the same allod to Santa Maria de l'Estany.[1316] This time the charter gives some information about the circumstances. Odalguer was complaining that the prior and the *clerici* unjustly took away the allod that his father and mother had bought from a certain Guanalgod.[1317] The prior of Santa Maria de l'Estany was willing to have a trial about the issue and thus paid Pere Folc, who had been in charge of administering justice at the castle of Oló since 1097,[1318] the necessary guarantees so that he would receive them.[1319] The prior presents testimony that Odalguer had defined and evacuated the allod to his brother together with his complaints that it was sold afterwards.[1320] Pere Amalric and Bertran Ungbert judged

1314 SALRACH, MONTAGUT, *Justícia,* doc. 258: *Notum sit omnibus hominibus presentibus et futuris qualiter ego Uzalgarius multociens altercatus fui cum fratri meo Ermengaudo de partem quam requirebam in alodio de Torrezela et de decimum de Urriols, et postea veni ad concordiam cum illo ad laudamentum suis amicis et meis, id sunt, Raimundus Arberti atque Gerallo Bernardi et aliis bonis hominibus.*

1315 Quite a clan, besides Odalguer sign his four sons Ramon Odalguer, Bernat Odalguer, Pere Odalguer, Guillem and Ermegod Odalguer together with his four daughters Arsen, Ermessen, Adales and Ermengard. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 375: *Sig+num Uzalger, sig+num Ramon Udalger, sig+num Bernat Udalger, sig+num Pere Udalger, Wilelmus levita (Senyal), sig+[num] Ermengod Udalger, sig+num Arsen, sig+num Ermesen, sig+num Adalez, sig+num Ermengards, nos qui istam difin[i]cionem fecimus et firmavimus testibusque firmare rogavimus.*

1316 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 375: *Igitur, in Dei nomine, ego predictus Uzalgarius, cum filiis et filiabus meis, per hunc namque pactum scripture difinimus et evacuamus domino Deo et ecclesie Sancte Marie de Stagno et clericis eiusdem loci omnem partem quam requirebamus in alodio prelibato de Torredela cum comutatione que fecimus cum Ermengaudo ex decimo de Urriols, ut ab hodierno die et deincebs nullo modo repetamus neque nos neque ullus homo pro nobis, sed sit solidum et liberum predicte ecclesie Sancte Marie eiusque clericis sine ulla reservatione.*

1317 Ibid.: *Notum sit omnibus hominibus presentibus et futuris qualiter Uzalgarius et filiis suis querelabant ipsum alodium de Torrezela quod pater eius sive mater emerunt de Guanalgaudo et dicentes quod prior Sancte Marie et clerici eisdem loci iniuste auferebant supradictum alodium.*

1318 On may 18th 1097 Bernat Guillem de Gurb had commended the castle of Oló to Pere Folc and his brother Ramon Folc. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 299: *Hec est conveniencia que est facta inter domnum Bernardum Guillelmum de Gurbo et Petrum Fulconum et fratre eius Raimun-dum. Comandat namque iamdictus Bernardus ad iamdictos fratres ipsum castrum de Olo et dona eis ipsum fevum quod pertinet ad eundem castellum et terciam partem de ipsis placitis.* For the chain of command and the castleholders, see: Kosto, A. J. (2001), *Making agreements in medieval Catalonia*: *Power, order, and the written word, 1000-1200* (Cambridge studies in medieval life and thought, 4th ser., 51, Cambridge, UK, New York: Cambridge University Press), p. 236-239.

1319 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 375: *Ideo autem firmavit iamdictus prior in potestate Petri Fulconi per viginti uncias ut fecisset eius prior directum et recipisset ab eis.*

1320 Ibid.: *Ibi vero hostendit eis prior voces quas habebat ex predicto alodio, sicut ipse prelibatus Uzalgarius actenus vendiderat Arberto Franco uxorique eius Arsindis ipsamque difinicionem sive*

that Odalguer had to make the restitution of the property as it resounded in the scriptures presented.[1321] But when Odalguer heard what "grave sentence would came over him" he refused to accept the trial, and instead incited his children to commit violence and plunder houses and allods of Santa Maria de l'Estany.[1322] Only after they entered houses to plunder, and thanks to the intervention of the local *baiulus* Guillem Guisla,[1323] did another trial then take place at the same church.[1324] The intervening locals convinced both side to come to terms by pleading with the prior to make peace with them by giving them a *sacrarium* and receiving the plundered goods back in return, as well as getting the allods defined.[1325] This deal also seems to include a property that Odalguer had received in an exchange contract (*comutatione*) from his brother in 1094 when he evacuated and defined the property, and that was maybe the reason that stirred his anger.[1326] But this was not the end of things; roughly a year later on the 28th of October 1108 Odalguer and his sons and daughters again evacuated the rights they were defending in what seems to be the final document, in which they received ten silver solidus as a compensation.[1327] This time it seemed that the involvement of "their friends and ours" achieved this solution of a compensation before possible tensions could lead to another violent encounter.[1328]

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evacuacionem quam fecerat Ermengaudo fratri suo ex predicto alodio sive de omnibus querimoniis quas de ipso habebat.

1321 Ibid.: *Quas videntes Petrus Amalrici atque Bertrandus Ungberti, iudicaverunt quod ipse deberet facere ipsam composicionem quam in scripturis resonabat.*

1322 Ibid.: *Quod audiens predictus Uzalgarius quia tam gravia iudicia veniebant super eum, noluit facere directum neque recipere, sed incitavit filios suos ut depredarent domos Sancte Marie sive alodium eiusdem ecclesie, sicuti et fecerunt.*

1323 Most probably Guillem Guisla of Lluçà. Comp. Baiges, Feliu i Salrach, *Els pergamins*, doc. 315: *Sig+num Guillelmi Guisalli de Luca.*

1324 Baiges, Feliu i Salrach, *Els pergamins*, doc. 375: *Propter fractionem vero domorum et predam quam fecerant, Guilelmus Guisalli, qui erat exinde baiulus, adiunxit placitum cum Bermundo Aianrici ad ecclesiam Sancti Petri de Urriols et ibi interfuerunt nobiles viri, id est supradictus Guilelmus Guisaldi atque Bermudus Aianrici sive Petrus Fulconi seu Bertrandus Ungberti fratresque eius Raimundus atque Bernardus et Raimundus Arberti et aliorum quam plurimorum militum atque vulgus.*

1325 Ibid.: *Rogaverunt etiam omnes qui ibi aderant domnum priorem ut ad pacificacionem veniset cum eis et dediset eis ipsum sacrarium quod tenebat Guadallus et alium eis definiset, sicuti et fecit, illique reddidisent medietatem de ipsa preda que secum abebant, ita sicut ipse Guilabertus averaset per sacramentum.*

1326 Ibid.: *Igitur, in Dei nomine, ego predictus Uzalgarius, cum filiis et filiabus meis, per hunc namque pactum scripture difinimus et evacuamus domino Deo et ecclesie Sancte Marie de Stagno et clericis eiusdem loci omnem partem quam requirebamus in alodio prelibato de Torredela cum comutatione que fecimus cum Ermengaudo ex decimo de Urriols* […].

1327 Baiges, Feliu i Salrach, *Els pergamins*, doc. 383: *Ideoque accipimus de mobile predicte ecclesie X solidos plate. Si quis autem co[n]tra hanc cartam difinicionis vel evacuacionis venerit ad inrumpendum, nullo modo facere possit, sed componat aut co[m]ponamus in duplo cum omni sua melioracione. Et in antea ista difinicio firma permaneat modo vel omni tempore.*

1328 Ibid.: *Et postea venimus ad concordiam in presencia sive laudamentu suorum amicorum vel nostrorum,*

The conflict is clearly embedded in the local community and a certain Ramon Albert appears in all three documents as a man close to Odalguer, but is listed as a common *amicus* of both sides in the last. Looking at the documents it is easy to forget the expanse of time and the fact that years passed by is reflected in the detail that all three documents are written by the same scribe Berenguer, who signs the first document as a *levita* but the other two as *sacerdos.* The same goes with the second youngest son of Odalguer, in 1107 signing as *Wilelmus levita* and still listed with the rest of the family, while in 1108 one finds him closer to the scribe Berenguer as *Vilelmus sacer* and we so must assume that he had received his ordination within this year.

Odalguer and his offspring had a certain right to express their anger and were not punished for it; it becomes clear that modern notions of private and public cannot be applied here. It was a case of local justice that increased its scope when the first attempt of a trial administered by Pere Folc failed; it was brought to the next level with the intervention of the *batlle* but never reached the highest strata of society as no counts, viscounts or bishops intervened, as it was instead resolved within the local community still using the framework and vocabulary of the customs and laws but quite distinct from the earlier examples. Citations of the Visigothic law code are missing and instead a deal was struck to guarantee a certain peace. The violent reaction to the judicial decision is quite distinct when compared to the other examples laid out but it is reasonable to assume that Odalguer and his kin abandoned trial in the first case and that one rather misses out on the corresponding legal vocabulary as the Visigothic code is not cited.

During the 11th Century it became quite common for one side to abandon court during a lawsuit. The question at which moment one side within the court's procedure did leave can be pinpointed as right before the acceptance of testimony, especially that of witnesses. The side that left thus ensured that they would not be forced to accept the undesired outcome publicly by issuing and subscribing a charter, but instead got to display their frustration. While this seemed to have been the most common point in

id sunt Petri Fulconi atque Raimundi Arberti sive Raimundi Berengarii de Olon matrisque ipsius et Bertrandi Fulconi atque Geralli Arberti aliorumque bonorum hominum. Igitur ego predictus Uzalgarius cum filiis filiabusque meis per hoc namque pactum scripture difinimus et evacuamus omnem quam requirebamus in alodio de Torrezela, quod fuit de Guanalgaudo, ut ab hodierno die et deincebs nullo modo repetamus neque nos neque ullus homo vel femina pro nobis, sed sit solidum et liberum predicte ecclesie suorumque clericorum sine ullo tenore atque reservacione.

time to abandon court, it is worth keeping in mind that the narrative of the documentation relies heavily on the legal terminology employed as the judges were eager to showcase that things were done properly during the court proceedings, as their decisions had to be understood in possible future lawsuits. They did so by relying on the terminology from the Visigothic law code, using the whole amplitude of general and precise references as well as indirect and direct citations. This puts the modern historian at risk of seeing too many common patterns arise because of the court following these procedures. Of course, the law was adapted and used accordingly from case to case but the motivation, hopes and reasons for one side to go to court are marginalised and disappear behind this legal terminology. The motivations of the side abandoning court are therefore hidden behind the new established truth and backed up by the testimony presented at court. The judges often added a vivid first person narrative to this – not uncommon in other charters but particularly seen in the ones presented here – that fits perfectly into the legal requisites and visualises the decision-making process of the judges, along with the justification of the final verdict.

Ecclesiastical institutions were especially capable of successfully organising the evidence they brought to court. That meant tracking possible witnesses, the more significant for the case the better, and bringing them to court, organising their travel expenses and assuring that they give a coherent story, thus meaning the institution showed up well prepared and outclassed their judicial opponents. It cannot be overlooked that these witnesses themselves came home having witnessed these ecclesiastical institutions as powerful players that exercised interregional power within the framework of the law. It must have been appealing to join the party of these organisations through donations, and to guarantee that one had them as allies and not as foes, in this way fostering the powerful even more. Considering this, the line between peace and protection becomes blurry.

We rarely get an insight into the emotions at stake but, especially in legal quarrels regarding inheritance, the complete loss of one's claim must have angered and frustrated the losing side and opens up the question of why these parties should bother to stay when a legal defeat came into sight. It is appealing to see a change in mentality in that regard, as for the complainants the case was not necessarily considered closed when they left and this is reflected in the more and more frequent outbursts of violence in the late 11th and beginning of the 12th Century, when the more

powerful decided to not accept legal defeat but to heave the conflict up to the next level. The vocabulary changes in that regard, as peace meant not having open complaints and the acceptance of a judicial decision by both sides was more easily achieved through a compensation payment than a unilateral beneficial decision. At the same time the collective acceptance of violence guaranteed payments for appeasement, thus transforming society while simultaneously giving it more room for negotiating conflicts.

However, abandoning trial was only one way to show disdain and disapproval of justice. Another more straightforward approach to defy the law was not showing up at a trial or through other means ignores to appear at court.

IV.2.4.2. Refusal to Appear

The first case of one party clearly defying an appointment for a trial in the preserved documentation dates on the 7th of May 980 and is only preserved through a *condicciones sacramentorum*, but still delivers some context. Before a court presided over by Miró II Bonfill, count of Besalú and bishop of Girona, Guandalgot, viscount of Besalú, and the judge Joan, the abbot Teudebert of the monastery of Ripoll appeared to demand that Ató and his son Sunyer hand over an allod situated at Vallcanera and Prujà, in the county of Besalú, which the late countess Ava had given to the monastery and which father and son retained unjustly. However, both Ató and Sunyer did not appear in court. The charter emphasises that the judge and *saio* sent a messenger with a sealed letter[1329] to Sunyer beforehand, so that the two knew to present themselves in front of the court assembly to give their testimony.[1330] But their "mendacity and falsity" was discovered as Sunyer did not want to appear in court and so *se substraxit fraudulenter*.[1331]

As shown in the previous chapter, this corresponds to the standardised way in which the law was used and the application of legal language employed in the case of someone abandoning trial. This rather broad interpretation of the law in subtracting oneself from trial by not showing up highlights a problem that lawyers had been confronted with. As far as I am aware the *Liber* does not deal with the notion of someone defying justice by not showing up.[1332]

1329 Thus complying with court procedure in accordance with the Visigothic law code. LV II.1.19: *De his qui admoniti iudicis epistola vel sigillo ad iudicium venire contempnunt*.

1330 SALRACH, MONTAGUT, *Justícia,* doc. 90: *Unde supradictus iudex vel saione misimus nostrum missum cum epistola vel sigillum ad omine nomine Suniario, qui est filius de iamdicto Atone, que se presentavit in iamdicto placito per iamdicto filio suo et inibi de placito presentabat suo testimonio.*

1331 SALRACH, MONTAGUT, *Justícia,* doc. 90: *Et invenimus in eos mendacium et falcitatem, et iamdictum Suniarium noluit venire ad consultum iudicium in castro Bisilduno et sic se substraxit fraudulenter de iamdicto placito pro iamdicto filio suo.*

1332 The refusal by the defendant to appear in court as *fatigatione* is mentioned in the Visigothic Law code but in another context which was only developed clearly from the 1060's onwards, or at least the term is understood in that way in the confirmations of Peace and Truce (GONZALVO, *Pau i Treva*, doc. 5, 6.) and it is reasonable to consider that it found its way into the *Usatges* through these means. LV II.1.20: *Si quis iudici pro adversario suo querelam intulerit et ipse eum audire noluerit aut sigillum negaverit et per diversas occasiones causam eius protaxerit, pro patrocinio aut amicicia nolens legibus obtemperare et ipse qui petit hoc testibus poterit aprobare: det ille iudex ei quem audire noluit pro fatigatione eius tantum quantum ipse ab adversario suo secundum legale iudicum fuerat accepturus, et ipsam causam ille qui petit usque ad tempus legibus constitutum ita habeat reservatam, ut, cum eam proponere volverit, debitam sibi percipiat veritatem.* For the *fatigatio de directo*, comp. Rodón, E. (1957), *El lenguaje técnico del feudalismo en el siglo XI en Cataluña* (Barcelona), p. 113-114.

Non-appearance did not, however, stop the legal apparatus from working, as Teudebert went on to present five witnesses that testified on the altar of Sant Joan next to Besasú[1333] in favour of the monastery, and additionally testified that Miró gave the monk Seguer of Ripoll a vineyard for the monastery (*a vice cenobio*) at the same place that he had previously confiscated from said Sunyer for the treason (*bocia*) that he had committed against the count-bishop.[1334]

This example leaves no doubt that not showing up at a trial and thus defying justice was considered *mendacium et falcitatem,*, especially in that case, but it stayed that way throughout the documentation. Not showing up could mean losing a case or being considered guilty of a crime. For example, Baró Tudiscle was declared guilty of committing homicide after not showing up in court and got his property confiscated.[1335] Although not directly a case of refusal to appear in court, but one that clearly shows that not only individuals resisted and sometimes justice had to be enforced through threats, is the case of the neighbours of Tàies and Forques. They did not want to agree to show the delimitations of the property belonging to the abbey of Santa Maria of Arles to the abbot Sentill.[1336] The abbot brought his complaint to the court and got the necessary legal expertise and authority, which made the villagers reconsider as they were threatened with being whipped with a hundred lashes, all in accordance with the code relying on a wider interpretation of the law, as they would be indirectly refusing to testify about something they know.[1337]

1333 SALRACH, MONTAGUT, *Justícia,* doc. 90: *Et sunt nomina testium qui oc testificant sicuti et iurant, id est, Senderedus et Sort et Durandus et Flodeveu et Ienitone, in domum Sancti Ioannis iusta castro Bisulduno, supra cuius sacrosancto altari ubi has condiciones manus nostras tenemus vel iurando contangimus quod a plus debet essere suprascriptus alodes et istas terras et istas vineas et ista suprascripta omnia de iamdicto cenobio Sancte Marie per vocem de iamdicta Avane, comitissa, que fuit condam, quam de Atone per vocem de iamdicto filio suo Suniario aut de nullum alium ominem, sic nos adiuvet Deus et ista merita sanctorum.*

1334 SALRACH, MONTAGUT, *Justícia,* doc. 90: *Et alia vinea que fuit de Suniario in iamdicto loco, quod iamdictus Miro, gratia Dei comite et episcopum, donavit vel tradidit a Segario monachi, a vice cenobio Sancte Marie, pro ipsa bocia quod iamdictus Suniarius fecit ad iamdicto Mirone, comes et episcopum. Et nos vero testes in unum iuramus iuramentum supranixum iuramentum in Domino.*

1335 SALRACH, MONTAGUT, *Justícia,* doc. 522.

1336 SALRACH, MONTAGUT, *Justícia,* doc. 123.

1337 Ibid.: *Denique, ut audivit iamdicta Ermengardis tam magnam querimoniam vel clamorem de predicto abate suisque monachis, diligenter eam auscultavit et requisivit consilium ad predictos iudices et seniores quomodo potuissent tam magnam clamorem et tam grandem altercationem per directum finire. Predicti vero iudices ei dixerunt: In lege reperimus scriptum quia non est minor reatus vera subprimere quam falsa confingere; et «si amonitus quisquam a iudice de ea re que noverit testimonium peribere noluerit, si nobilis persona est, nullus homo non debet ulterius suum testimoniurn recipere; si vero minor ingenua persona est, et dignitatem et testimonium debet carere et centum flagella infamatus suscipere».*LV II.4.2.

The easiest way to ensure someone would not avoid justice were sureties, not only used for magnates but also for the common man. In 1003 the bishop-judge Ervigi Marc came to the Valley of Nespla (Mura) in the county of Manresa[1338] to hear the petition of the Judge Borrell, in the name of Sant Llorenç del Munt who summoned a man called Olibà who had stood surety for another man called Delà. Olibà, however, did not present himself in court when called upon but, again, *extraxit se de ipso placito.*[1339] He even fled into the mountains, however, as one must assume, was then caught and had to stand justice for Delà.[1340] The issue at hand was that Delà had proclaimed full possession of an allod that Count Borrell had given to Sant Llorenç thirty years ago. Sant Llorenç argued that he worked at the property for thirty years, paying the *taschas* and doing labour services like other men do, and we must assume that on the contrary Delà argued to have possessed the property for over thirty years now.

After having committed a crime he was punished with distraint for some kind of excess (*pro suo excessu*), but broke out of the *potestas* of the monastery, became another lord's man and even assaulted the judge Borrell and stole his mule.[1341] This last act of violence also explains the presence of Ervigi Marc, as suddenly the judge had become the victim and thus a plaintiff, and while not explicitly mentioned it would make sense that Ervigi Marc would be his *assertor* in the case. A solution was found: the allod of Delà should have belonged to Sant Llorenç, but as it seemed it was now protected through the new affiliations, the judge ruled that an allod of Olibà would instead have to do, and the movable goods from there (*mobilibus rebus*) would

1338 Today's Mura

1339 Salrach, Montagut, *Justícia,* doc. 147: *Pateant aures fideles qualiter ego in Dei nomine Marcus episcopus qu[i] et iudex accessi in comitatu Minorisa in valle Nespula et audivi peticionem qua Borrellus iudex apetivit Olibane, qui fuit fideiussorem de Dela, ut in placito suo se presentasset et iuxta leges omnia difinisset, et noluit et extraxit se de ipso placito et non ibi ullo modo accessi.*

1340 Ibid.: *Et postquam accessit montus et iussionibus meis nullo modo obtemperavit nec adquievit. Et hec est causa unde apetivit fidemiussorem supradictum in presencia Baroni, Gondemari, Suniari, Baioni, Adroari, alio Gondemari, Gondevini, Adalberti, Guadamiri, Salomoni, Mironi sacerdoti, Teredi, Marchoni et alii quamplures, scilicet quale Dela proclamavit alaudem Sancti Laurenti suum esse proprium et franchum, quem Sanctus Laurencius XXX^ta^ annos abebat possessum iure proprio per cartam quem condam comes Borrellus fecit ad predicta domum Sancti Laurenti.*

1341 Ibid.: *Et idem ipse Dela per hos supradictos XXX^ta^ annos servivit illum ad predicta domum Sancti Laurenti et donavit taschas et oblias et [r]eceptiones, sicut ceteri omines de ipsum alaudem tenent, donant et serviunt. Et distrincxerunt eum ministri Sancti Laurenti pro suo excessu sicut alii sui consimiles. Et postea ille exvasit et disrumpit de potestate Sancti Laurenti et fecit ibi alium senioraticum et fecit assallire ministrum Sancti Laurenti supradictum Borrellum et fecit ei tollere suum mulum.*

compensate Borell for the mule[1342] he had lost, a decision Ervigi Marc formally subscribed.[1343]

For our purpose here this exceptional document shows that Olibà as *fideiussorem de Dela* was well aware that he would face the consequences of Delà's actions and that both tried to defy justice. Delà's strategy seemed to have worked out up to that point, and he was not the only one trying to seek protection through becoming someone else's subject.

In different strata of society, especially between magnates, the diplomacy required to negotiate trials could become more complicated and when one side did not show up at a trial it was a clear sign of defiance and could easily lead to open warfare. One of the best examples to illustrate the complexity of these type of conflicts – without delving too much into the political history of Catalonia – is the *rememoracionis de placitum* dealing with the breakdown and restoration of the allegiance of the viscount Bernat II to count Ramon I Guifré of Cerdanya.[1344] The document adheres to, in my opinion, the tradition of court records that give a rather complete summary of the events, and for this purpose add in and copy from already existing sources to create a complete stand-alone document that outlines the whole episode. In this way, this document dates on the day before Saint John's Eve, on Friday the 22nd of June, but is only preserved in a later copy and misses signatures other documents of this type usually provide and which were signed in many cases on holy

1342 Ibid.: *Propter ea fuit apertus istum fideiussorem. Idcirco ego in De[i] nomine Marcus consigno et contrado predictum alaudem in potestate et dicione Sancti Laurenti et iubeo componere supradicto fidei[u]ssore aliut tantum alaude de suo, et omnibus mobilibus rebus quod ibi inveni tradidi in potestate predicti Borrelli propter suum mulum quod in quadruplum ei conponere debuerat, eo quod ipse [...], et in propter quod condam comes Borrellus instituit in ipsa scriptura, qui hinrumpere voluerit componat in duplo.*

1343 Ibid.: *Igitur ego pretextus Marcus, ut agnovi istum directum et audivi ... [quo]d predictum Delanem dedisse tascas, et quia fecit alium seniorem que non licebat ei facere, ideo consignavi et consigno, tradidi ac trado predictum alaudem in potestate et di[rectum Sancti Lauren]ti, ut dictum est. Et omnes mobiles res in potestate predicti Borrelli. Facta recognocione et consignacione vel tradiccione et extradiccione II idus octuber, [...] [reg]nante Roberto rege.*

1344 Analysed by Salrach, comp. Salrach i Marés, Josep Maria (2000), 'Les modalités du règlement des conflits en Catalogne aux XIe et XIIe siècles.', in , *Le règlement des conflits au Moyen Âge* (Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public. 31e congrès., Angers), 124-126. For context and the conflict, see: Miret i Sans, Joaquim (1901), 'Los vescomtes de Cerdanya, Conflent y Bergadà', *Memorias de la Real Academia de las Buenas Letras de Barcelona*, 8, p. 144-146. Baudon de Mony, C. (1896), *Relations politiques des comtes de Foix avec la Catalogne jusqu'au commencement du XIVe siècle*, 2 vols. (Relations politiques des comtes de Foix avec la Catalogne jusqu'au commencement du XIVe siècle, Paris: Alphons Picard et fils), I, p. 29-32. Blasi Solsona, J. (1999), *Els oblidats comtes de Cerdanya (798-1117)* (Col·lecció Nostra història, 1; 1. ed., Sant Vicenç de Castellet: El Farell Ed.), p. 197-199. Gascón Chopo, C. (2012), 'Els darrers vescomtes de Cerdanya i el casal de Castellbò', *Quaderns d'Estudis Andorrans*, 2012, p. 55-57. Bonales Cortés, J., *Límits jurídics i modificació de paisatges. La construcció històrica del territori andorrà*. p. 133-138.

days.[1345] As we have seen in other cases the document thus may not have been written directly after the events happened, and the chronological thread of events is vague.

After a short introduction stating the content of the document[1346] it can be divided into three parts, some of which surely were copied from other documents and linked together by a scribe or a judge. First come the clauses of the oath of fidelity the viscount had sworn towards the count some years earlier, followed by a long list of complaints that led to an agreed date for a trial, at which Bernat did not appear but instead increased his violent behaviour leading to a situation of open warfare that culminated in his final surrender and reconciliation. The narrative in that sense is a complete circle, from defiance to reconciliation and a status quo which saw the viscount in roughly the same position as before.

But, like in most of these cases that led to violence, there are preliminary events before the actual escalation. A starting point of conflict can be traced back to a military campaign lead by Ramon Berenguer I in 1046 against the count of Cerdanya, which was probably what incited the viscount Bernat to seize that moment and take hold of the southern slope of the Pimorent mountain pass, and this led to a trial that was held on the 28th of January 1047.

The assembly met *in palacio* at Cornellà de Conflent and was presided over by the count himself and his whole court (*congregatam universam suam cohortem*) as well as the abbot of Sant Miquel de Cuixà, and was directed by three judges: Salomó, Pere and Sendred.[1347] The Pimorent mountain pass was an important route for crossing the Pyrenees was completely controlled by the viscount (*que retinebat ultra montem Pimorent*e), who presented charters that showed that the town of Merens in

1345 It was most probably copied in the *Liber Feudorum Ceritaniae*, at the beginning of the 13th century, see: MIQUEL, *Liber feudorum*, doc. 595.

1346 This paragraph could have well been added by the copyist as the next paragraph *Hic est brevis rememoracionis de placitum* […] fits well into the tradition of other court records of this type and the addition *ut in hoc instrumento continetur* suggests this as well. SALRACH, MONTAGUT, *Justícia,* doc. 341: *Querimonie et causa super eisdem querimoniis agitata inter eundem dominum Raimundum, comitem Cerritaniensis, et Bernardum, predictum vicecomitem, et debito fine terminata, et in eadem causa emendavit isdem vicecomes domino comiti dicto castrum de Cheralt et diffinivit, et alia, ut in hoc instrumento continetur.*

1347 SALRACH, MONTAGUT, *Justícia,* doc. 297. *Notum sit omnibus presentibus atque futuris qualiter fuit domnus Raimundus, gracia Dei comes, in palacio Corneliani, et ante eum congregatam universam suam cohortem, id est, Bernardo Oliva de Castro Soni et Mironem Riculfi et Bernardum, fratrem eius, et Petro Poncii et Arnalli Bernardi et Raimundi Ardemanni et Suniarii Arnalli et Bernardi Radulfi et Gaucefredi, abbas cenobii Sancti Michaelis, et Berengario Mathfredi et Bernardi Isarni et Raimundi Mironi et Guillelmi Olive de Salsans et Arnalli Iohanni et Guillelmi Iohanni, fratrem eius, et iudices, qui iussi sunt iudicare, causas audire, legibus definire, id est, Salomon, sacerdos et iudex, et Petroni, iudice, et Sendredus, iudex.*

the Ariège had been acquired by his parents and argued that the limits of his property reached down to the southern slope of the Valley.[1348] When the court heard his argument he requested that the viscount reveal what he considered to be the limits of the allod of Merengs, which he did, but the count then argued that it was unjust that an allod in the county of Tolouse proclaimed limits reaching into the county of Cerdanya.[1349] The judges agreed on the matter, clarifying that the viscount had no right to demand that territory and that it must belong the county of Cerdanya (*vel debet esse de comitatu Cerritanie*).[1350] Consequently the viscount acknowledged and recognised that the disputed land was not his and made the corresponding evacuation of his rights.[1351]

Having that earlier dispute in mind makes it reasonable to argue that the two charters are related. This becomes clear through the list of complaints that presumably sums up the between years. The list is long, but for our study here two incidents are interesting. First, the event upon which the viscount took some allods from the monastery of Sant Miquel de Cuixà, as well as usurping the tax levied on the transit of merchandise passing through the Querol valley by obliging the merchants to pay at the village of Merengs, so that the count lost his share.[1352]

1348 The exact geographical details and their implication are discussed by Jacinto Bonales, see: Bonales Cortés, J., *Límits jurídics i modificació de paisatges. La construcció històrica del territori andorrà*, esp. p. 134-138.

1349 SALRACH, MONTAGUT, *Justícia,* doc. 297: *In istorum supradictorum presencia iam dictus comes petivit Bernardum vicecomitem per terram suam Cerritaniam, que retinebat ultra montem Pimorente, unde ostendit cartas de sua villa de Merengs unde eam adquisierant parentes sui et resonabant in comitatu Tolosani, et resonabat in eas affrontaciones et fines et adiacencias: de una parte in Pimorente, de alia in Portu Asnero, et in aliis quibuslibet locis qui erant in comitatu Cerritanie. Predictus comes, ut audivit, requisivit iam dictum vicecomitem ut ostendisset ei terminos de villa sua de Merengs. Et ille dixit: terminos de ipsa villa sunt ad ipsas Lobies. Et dixit predictus comes: iniuste resonant vestras scripturas per vocem vestram alodes de Tolosam qui proclamant affrontaciones et terminos infra meam terram de Cerritania.*

1350 Ibid.: *Et iudicatum est a predictis iudicibus, quia iam dictus vicecomes non habebat rectum requirere per alodem de ipsas [Lobies] usque in Pimorente et usque ad Port Asner, et de Pimorente in antea contra Tolosanum quantum est de terra predicti comitis vel est vel debet esse de comitatu Cerritanie.*

1351 Ibid.: *Et ego Bernardus vicecomes agnosco et recognosco quia non est meum alodem de ipsas Lobies usque ad Pimorente et usque ad Porto Asnero nec vallis que dicitur Eraval nec quantum est de terra senioris mei Raimundi de comitatu Cerritanie de Pimorente in antea. Es ego Bernardus, vicecomes suprascriptus, evacuo me de omnibus suprascriptis, que sunt de Pimorente in antea, qui est vel esse debet de comitatu predicti Raimundi, comitis Cerritanie, ut iam amplius petere non presumam per meum alodem nec ego nec ullus ex successoribus vel heredibus meis. Quod si presumo ego, aut illi presumpserunt, componam ego, aut componant illi in vinculo ipsam terram in. duplo; et in antea ipsa scriptura semper maneat inconvulsa.*

1352 SALRACH, MONTAGUT, *Justícia,* doc. 341: […] *et de alodios Sancti Michaelis Choxianensis, que abstulit predictus Bernardus in villa Estoll et in aliis locis* […]. *Item, de ipsa leuda de ipsos homines merchatores, qui transiebant per iam dictam Eravallem sive per Pinomorente, unde requirebat directum de ipsa leuda et nullo modo rectum habebat in illa, et propterea tollebat alia leuda ad predictos merchatores iniuste in villa Merengs ut predictus comes perdidisset suam leudam.*

While this seems less important in comparison to hiding the truth when some of the viscount's men killed a man of the count and not going to court to answer for the crime, as well as losing a castle he was entrusted with *per sua mala guarda* and other mischiefs, it still shows that the first dispute may be considered the starting point of the conflict.

Be that as it may, the count now filed a complaint about these incidents and the charter leaves no doubt that in his opinion the actions of the viscount were seen as a clear transgression of the oath he had sworn (*transgressus est eis sacramentum*) and that he did break the fidelity a man should hold for his lord (*Item, de fidelitate quod ei fecerat predictus vicecomes et sacramentos, sicut debet facere homo seniori suo, et hoc totum transgressus est*.).

The complaint was filed and sureties exchanged to guarantee that justice would be given to the count and his men.[1353] In a first encounter at Cornellà de Conflent they agreed to choose judges between them[1354] and Bernat agreed on a trial the following day but then on the last moment *rectum iudicium contempsit et facere noluit.*[1355]

When the count heard this he reminded the viscount that he had agreed on a trial and that he would lose the sureties he had placed and even the fiefdom, that is to say the viscountal honour as a whole.[1356] But what made things worse was the viscount's reaction, which was flagrant violent open warfare, constructing defenses and occupying spots from which to wage war.[1357]

1353 SALRACH, MONTAGUT, *Justícia,* doc. 341: *Et propter predicte querele, que superius scripte sunt, querelavit se predictus Raimundus ad predictum Bernardum in Corneliano ut rectum ei fecisset de predictis querimoniis, et dedit predictus Bernardus ex hoc fideiussores ad predictum Raimundum, comitem, per CC uncias auri obtimi, ut rectum et iusticiam inde fecisset ad comitem et ad suos homines.*

1354 Ibid.: *Quapropter in Corneliano elegit predictus comes Raimundus iudices inter se et vicecomite qui hoc iuste iudicassent, id sunt: Udalgarium et Iozbertum, vicecomites, et Bernardo Iohanni et Bernardo Olibani de Sono et Arnalli Riculphi et Petri Poncii et Arnalli Bernardi de Fullano et Raimundum Bernardi de Guardia et Olivari Bernardi de Termino et Raimundi Mironi et alii plures, quorum nomina longum est scribere.*

1355 Ibid.: *Iudicato, autem, iusto iudicio, prescripti iudices inter eos laudaverunt pariter comes prescriptus et iam dictus vicecomes omnem eorum iudicium de predictis querimoniis et terminum acceperunt inter se usque in crastinum ad faciendum iudicium. Reversus autem predictus vicecomes in crastinum in pago Corneliani ad placitum, et rectum iudicium contempsit et facere noluit.*

1356 Ibid.: *Quo audito, comes iam dictus per semetipsum ammonuit predictum Bernardum per sacramentum quod ei habebat iuratum ut rectum, quod laudaverat et iuste iudicatum erat, ei fecisset, ac ille contempnendo facere noluit, et omnes suos fideiussores et omnem suam pignoram, castellos, et omnem suam honorem in potestate predicti comitis incurrere permisit.*

1357 Ibid.: *Insuper, et quod peius est, ipse vicecomes accepit rochas et podios contra predictum comitem, quos antea ei iuraverat, et hedificavit ibi castellos contra eum et depredavit ei suas dominicaturas et homines terre sue.*

However, a compromise was reached at the summer residence of the count of Cerdanya, the village of Ix. The mediators, many of which already had been selected for the previous trial, were joined by none other than the brother of the count the bishop of Urgell, Guillem Guifré, and the viscount Udalgar I of Fenollet. They entreated Bernat to beg the count to have mercy on him, and to give up all his honour and all his trusted men into the hands of the count so that he may do what he wants with them.[1358] Finally Bernat came *coram comite* to the count's residence (*domum comitale*) at the village of Ix, but at this stage of the conflict the two did not meet at an agreed spot for a trial – instead the oath-breaking viscount had to come to the count and in front of the bishop and the *seniores* he had to plead to not lose his honours and to continue being his viscount.[1359] This last meeting, including the preambles, does not read like a trial but rather a clear submission under the auspices of the men who initially were meant to judge the case.

After hearing this the count and countess were willing to reach a peace, which included a compensation of a thousand solidi for the countess, and would waive their complaints under the condition that three castle-holders would swear allegiance to them.[1360]

The viscount defines the castle of Queralt, the fief of Prullans, and the church and parish of Serdinyà situated at Conflent[1361] to the count, only to receive them back but

1358 Ibid.: *Illo, autem, ita faciente venit dompnus Guillelmus, episcopus Urgellensis, et Dalmacius, vicecomes Bergitanensis, et Bernardus Iohannes et Udelgarium vicecomitem et Bernardo Olibani de Sono et Arnalli Riculphi et Petri Poncii et Mironi Riculphi et Raimundi Bernardi de Guardia et adduxerunt predictum vicecomitem ad prephatum comitem, rogantes et postulantes ut mercedem ex es habuisset predictus comes, recognoscens se predictus vicecomes coram predicto comite et aliis predictis viris ut omnem pignoram, quod ei miserat de omnem suam honorem, et omnes suos fideiussores iam incurrerant in sua potestate ad faciendum quodcumque voluisset.*

1359 Ibid.: *Quadam, autem, die venit predictus vicecomes in domum comitale in villa Ix coram predicto comite, unde adfuit ibi predictus episcopus et cuncti pariter alii predicti seniores, rogantes predictum comitem, ut ad eorum consilium se continuisset cum iam dicto vicecomite.*

1360 Ibid.: *Hoc audito, comes predictus et comitissa adquieverunt precibus eorum et promisserunt eis ob hoc se pacificare cum iam dictum vicecomitem ad eorum consilio, sicuti et fecerunt. Predictus Bernardus vicecomes pro eo quod tam iniuste egit contra seniori suo, emendavit ad predictum comitem ipsum castrum de Queralt, cum sua castellania, et ipsum fevum de Prullanos, et totum ipsum qui est infra ipsam parrochiam et ipsa parrochia cum ecclesia de Segdanna, que est in Confluente, cum omnibus suis pertinenciis et oblacionibus, et ad predictam comitissam solidos mille. Et predictus comes et comitissa et eorum filio Guillelmo definierunt ei omnes illorum predictas querimonias propter hoc et reddiderunt ei omnem aliam suam honorem que iam antea eis permisserat incurrere, sub tali tenore, ut ipsum castellanum aut castellanos, quos ipse vicecomes miserat in castrum Sancti Martini et in castrum Miralles et in castrum Ioch, propter predictos castros se comendant manibus ad predictum comitem et comitissam et iurent ex eis fidelitatem, sicut alii castellani eis iuraverunt et iuraverint de aliis eorum castellis.*

1361 Most certainly Sant Cosme i Sant Damià de Serdinyà, close to Vilafranca de Conflent.

this time with the clause that he would lose all that he has from the count (*omnem predictam meam honorem integriter*) for good in the event of a transgression.[1362]

Bernat agrees to these conditions and promises that from this day onwards he will be faithful to the counts and will not deny his service nor challenge the agreed conditions in any way, otherwise all would fall back into the hands of the count to do with it what he wishes.[1363]

Gerd Althoff's concept of barriers of violence (*Gewaltschranken*)[1364] is useful here. Violence could be compensated for, but it was the fact that established rules were finally broken in clear defiance of the court which led the viscount to stand alone and isolated, while it was roughly the same group of men selected to judge the case that found temporary reconciliation between the two parties. The probability that earlier negotiations failed and that Bernat thought to have a higher chance of a better outcome if he showed resilience and willingness to fight before entering negotiations again seems reasonable but is hard to prove, as we do not know how the resolution of the trial would have looked.

Reconciliation must have worked up to the 11th of August of the same year at least, when one sees the count Ramon and the countess Adelaida resolve a complaint brought forward to them *in audiencia* of the judge Adalbert and the viscount, again at Ix.[1365] However, less than two years later in early 1064 the inhabitants of Merens promised count Ramon Guifré that they would not help the viscount, while the same

1362 Ibid.: *Et ut ego, predictus Bernardus vicecomes ita tenebo fidelitatem et sacramentum ad predictum comitem et comitissam et ad eorum filios, sicut eis iuratum habeo manibus super sacramentali condicione, et ut predictum sacramentum et finem eis teneam et attendam, sine illorum engan, item, mitto eis in pignora modo omnem meam honorem, quam ex predicto comite habeo et in antea habuero. Et difinio eis iam dictum castrum de Cheralt, cum sua castellania, et ipso fevo de Prullas et ipsa ecclesia de Segdanna, totum, sine illorum engan. Quod si amplius eis querelavero et guerram aut dampnum alicui homini fecero, propter hoc incurrat omnem predictam meam honorem integriter, castellos et omnem fevum, quos hodie habeo et in antea habuero ex predicto comite, in eorum potestate ad deliberum ad faciendum quodcumque voluerit.*

1363 Ibid. *Et ego, Bernardus predictus, omnem diffinicionem quod hodie facio ad predictum comitem et comitissam et ad eorum filios sinceriter et sine engan eameis tenebo et cunctis suis hominibus, utriusque sexus, et amplius ei vel eis quicquam ex hoc non removebo nec querelabo, et propter hoc meum servicium non vetabo ad predictum comitem neque ad predictam comitissam neque ad eorum filios. Quod si fecero, incurrat predicta pignora in eorum potestate, sicut supradictum [est], ad faciendum quodcumque voluerint, sine ulla reservacione, ad meum opus.*

1364 Althoff, G. (1999), 'Schranken der Gewalt: Wie gewalttätig war das "finstere Mittelalter"?', in H. Brunner (ed.), *Der Krieg im Mittelalter und in der Frühen Neuzeit. Gründe, Begründungen, Bilder, Bräuche, Recht.* (Imagines medii aevi, 3, Wiesbaden), 1–23.

1365 SALRACH, MONTAGUT, *Justícia,* doc. 343: *Notum sit omnibus hominibus tam presentibus quam futuris, qualiter Bernardus Sanlani obtulit querimoniam quoram domno Raimundo, chomiti Cerritaniensis, et domna Adalan chomitisse pro se et fratri sui Raimundi [...] Berengarius Arnalli ut asserebat iniuste. Hoc tamen fuit in pago Exio in audiencia Adalberti iudicis et Bernardi Seniofredi vicecomitis et alii plures.*

charter allowed count Roger of Foix to claim rights and taxes from the villagers, which could be interpreted as an invitation to take over, and this must be read as an indicator that the same conflict had broken out again.[1366] It appears the title of viscount passed to the offspring of Ramon Guifré, as Bernat III, now viscount of Urtx, and Ramon II both held the title from 1067 onwards. The long-lasting conflict, from an initial small dispute building up to a moment of open warfare and its final episodes, show that violence was not arbitrary but centred around certain rights or possessions, and could escalate quickly in a spiral of violence that could temporarily break the rules of the game – but this activated peer pressure when clear boundaries were transgressed.

1366 MIQUEL, *Liber Feudorum,* doc. 591.

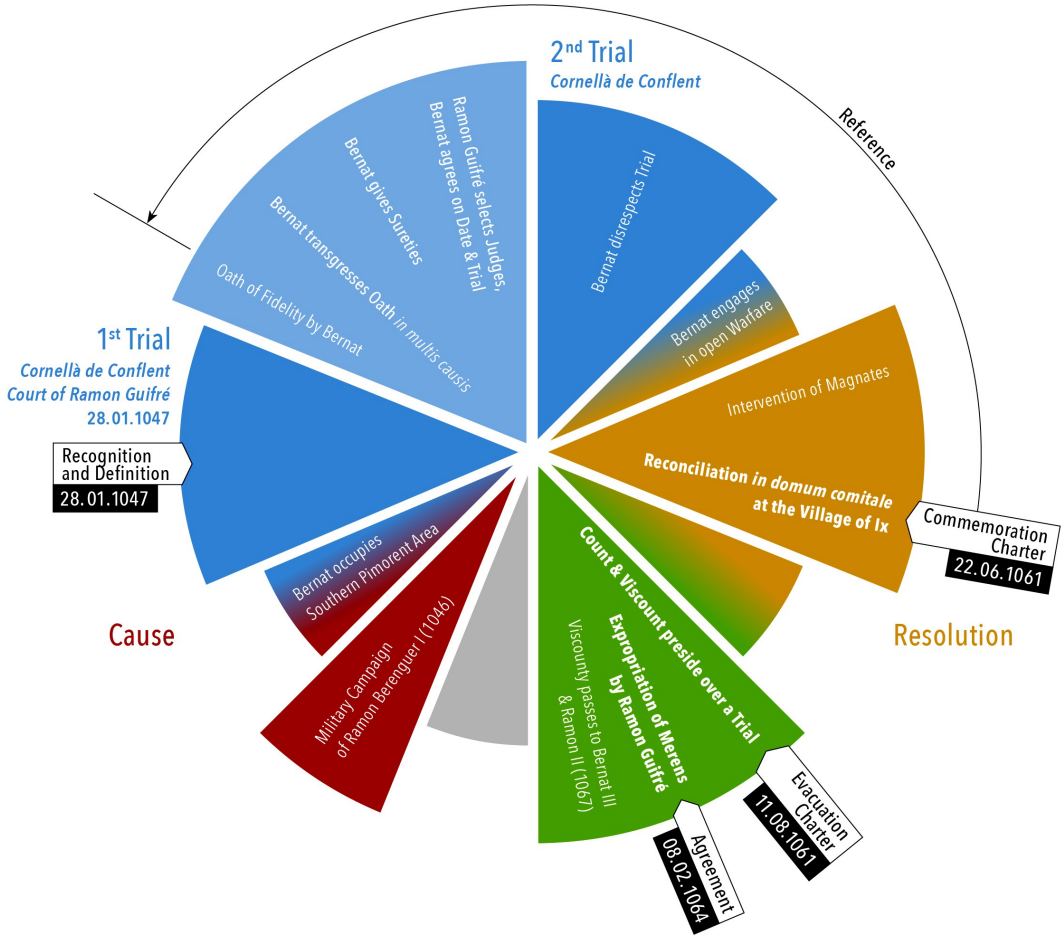

Fig. 14: Dispute Between Count Ramon Guifré and his Viscount Bernat

Going to court could lead to frustration and violence when the outcome was not even close to what one had hoped for, and could create resentments lasting over decades, something the next example illustrates.[1367] In 1066 the widow Olovara, together with her children Engilberga, Guillem Pere, Ermessenda, Ramon Pere, Bonfill Pere and other siblings, sold an allod located in the territory of Barcelona, in Provençals, to the priest Guillem Bellit and his wife Aissulina[1368] for the price of 20 ounces of pure gold.[1369] The property had belonged to her late husband Pere Ermemir and would be the starting point of a long legal struggle.[1370]

Sixteen years later in the summer of 1082 one of her sons, Ramon Pere, stated in a definition and pacification charter that he was the claimant of some allods, including lands, vineyards and houses, that had belonged to his father Pere Ermemir which Guillem Bellit had justly and legally bought.[1371] He, his brothers and his brothers-in-law had taken the case to the court of the late Ramon Berenguer I where both partiess were heard, but neither through their witnesses nor their scriptures were Ramon Pere and his accomplices able to achieve anything at all (*et non potui consequi in omnibus rebus predictis nullam rem*).[1372] Probably encouraged by the death of Ramon Berenguer I, in 1076 they tried again, this time at the court of the actual counts (*audientia nostrorum comitum*) Ramon Berenguer II and his brother Berenguer Ramon II. Once

1367 Treated shortly by Josep Balari, see: Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 379

1368 BAUCELLS, *Diplomatari*, doc. 1107: *Ego Olluvara femina u[n]a cum filiis meis vel filias, id sunt, Egilberga femina, et Guilelmus Petri, et Ermesindis femina, et Reimundus Petri, et Bonefilius Petri, uterque fratres, nos pariter in unum, venditores sumus vobis Guilelmo Belliti, qui et sacerdote, et uxori tue Eiculina femina, emptores*

1369 Ibid.: *Accepimus quoque a vobis precium propter prescriptum alodium XX uncias auri puri barchinonensis. Quas vos emptores precium nobis dedistis et nos venditores manibus nostris accepimus.*

1370 Ibid.: *Advenerunt autem mihi Ollovara per donationem et laxationem quam mihi exinde fecit viri mei Petroni, qui est condam, et ad nos filiorum vel filiarum de prelocuta Ollovara per vocem genitorum nostrorum vel per quibuslibet aliis modis.* Only mentioned by his first name Pere Ermemir was still alive in 1060 as he together with his wife Olovara sold a property, close to the other property at Provençals, to Bonfill Pedró. BAUCELLS, *Diplomatari*, doc. 1017.

1371 SALRACH, MONTAGUT, *Justícia,* doc. 442: *Hac notitia istius scripture fiat omnibus utriusque sexus hominibus cognitum et manifestum qualiter ego Raimundus Petri eram querelator de omni alodio, scilicet terris et vineis atque domibus, et universis eorum pertinenciis sive adiacentiis, que fuerunt patris mei, nomine Petri Ermemiri, et modo tenet atque habet predicta omnia Guilelmus Belliti per suam emptionem, quam inde iuste et legaliter fecit.*

1372 Ibid.: *Ego predictus Petrus, qui eram de hoc querelans cum aliis meis fratribus sive cognatis, veni ad placitum cum predicto Guilelmo Belliti de predictis rebus in presencia domni Reimundi Berengarii comitis, qui iam discessit ab hoc seculo, et suorum nobilium virorum, videlicet Udalardi vicecomitis et Bernardi Iohannis sacriste et Umberti Gauzberti et Guilelmi Raimundi, Ausonensis sacriste, et aliorum multorum virorum, quorum nomina longum est retexere. Predictum vero placitum fuit ab utraque parte auditum et diiudicatum, et non potui consequi in omnibus rebus predictis nullam rem per ullam nostram vocem vel scripturam, de qua ipse Guilelmus predictus debuisset mihi stare ad ullum responsum.*

more they were unable to obtain a favourable sentence.[1373] Annoyed because the justice system had not validated his claim, he transgressed the court's decision (*transgrediens predicta iudicia*) and together with his accomplices burned vineyards and laid waste to the allods, committing arson and not going to court for his deeds.[1374]

The brother-in-law of Ramon Pere, Guillem Bonfill, who was married to the elder sister Ermessenda, had come to terms with the priest Guillem Bellit through the mediation of some pacifying men,[1375] and on the 18th of January 1082 the couple defined and secured the rights over the properties Ollovara had sold.[1376]

Now, surely confronted with another trial, as he not yet gone to trial for the damage he had caused, and tired of lawsuits (*fatigatus de tantis placitis*), Ramon Pere agreed to a pact in which he pacified, defined and evacuated all his rights of the disputed allod in favour of Guillem Bellit and in return received the sum of 125 sous from him.[1377] The pacification, definition and evacuation charter dates to the 14th of June 1082, which meant that the legal dispute was going on for at least 6 years until they finally came to terms.[1378]

1373 Ibid.: *Item vero ego Petrus, nesciens meum directum neque cognoscens cum meis predictis sociis, iniuncxi sive congregavi alium placitum in presentia atque audientia nostrorum comitum, scilicet Reimundi Berengarii et fratris eius Berengarii. Et fuit ab utraque parte auditum et legaliter a nobilissimis eorum viris diiudicatum, et eodem modo accidit mihi et illis iam dictum iudicium, sicut prius fecerat.*

1374 Ibid.: *Insuper quoque ego, transgrediens predicta iudicia, feci cum illis iniuste plurima mala iam dicto Guilelmo in predictis alodiis, quia incidimus ipsas vineas et vastavimus alia alodia sive arsimus, et non fuimus ausi ullomodo tendere ad placitum cum predicto Guilelmo per nostrum indirectum quod inde habebamus.*

1375 Salrach, Montagut, *Justícia,* doc. 440: *Verum est satis et multis cognitum quia ego supra dictus Guilielmus et ucxor mea prenominata diu habuimus tecum altercationem ex alodiis, scilicet, terris et vineis hac domibus, quod preclamabus tibi iam dicto Guilielmo multotiens in iuditio. Unde advenerunt inter nos pacifici viri deducentes nos ad finem, ut iurgia et lites inter nos omnino sopirentur.*

1376 Ibid. [...] *ab odierno die et deincebs per hanc scripturam definicionis hac securitatis definimus omnes voces et directos, quos et quas proclamabamus in alodiis, tam terris quam vineis et domibus, que tu iam dictus Guilielmus emisti ex Ollovara femina, ucxor que fuit Petri Ermemiri, que est mater mea de me iam dicta Ermesindi, ut securus et quietus tu, iam dictus Guilielmus, ab hac proclamacione abearis et inconvulsibiliter tuo iuri retineas omne per evum.*

1377 Salrach, Montagut, *Justícia,* doc. 442: *Propter hoc vero ego, qui non eram adiutus ulla recta voces vel ratione, per quam ipse Guilelmus debuisset nobis respondere mihi vel illis, fui iam fatigatus de tantis placitis et per predicta mala a nobis iniuste facta sine ullo directa, sicut iam ab illis est definitum integriter sive pacificatum, definio et evacuo sive pacifico firmiter predicto Guilelmo omnia mea directa cunctasque meas voces, quas modo habeo vel unquam ullo in tempore habere debeo quocumque modo, in omni alodio quod fuit predicti patris nostri et modo tenet sive habet Guilelmus Belliti. Ita sicuti humano hore melius potest dici vel nominari, sic definio ei et evacuo sive pacifico predicta omnia. Propter hoc vero recepi de illo centum XXV solidos denariorum monete Barchinonensis ad numerum. Et est manifestum.*

1378 Salrach, Montagut, *Justícia,* doc. 442: *Actum est hoc XVIII kalendas iulii, anno XXII regni regis Filippi. S+num Raimundi Petri, qui hoc totum quod superius insertum est, auctorizavi et diffinivi atque evacuavi et firmavi et testibus firmari rogavi. S+num Benedicti. S+num Petri de Castela. S+num Compagni Raimundi. S+ Iohannis presbiteri.*

In the end Ramon Pere accepted that the purchase by Guillem Bellit had been legal. Within the charters there is a certain emphasis on not having received anything of their inheritance and it seems reasonable to ascribe the origin of the conflict to the frustration of the children, who felt scammed by the sale of property their mother had made. Only when faced with an inevitable court date, abandoned by at least one of his fellow accomplices and most probably threatened with punishment for the arson committed, did Ramon Pere finally accept a considerable sum which not only compensated him for what he considered his loss but at the same time spared him future trials. Avoiding going to trial seemed to have paid off for him.

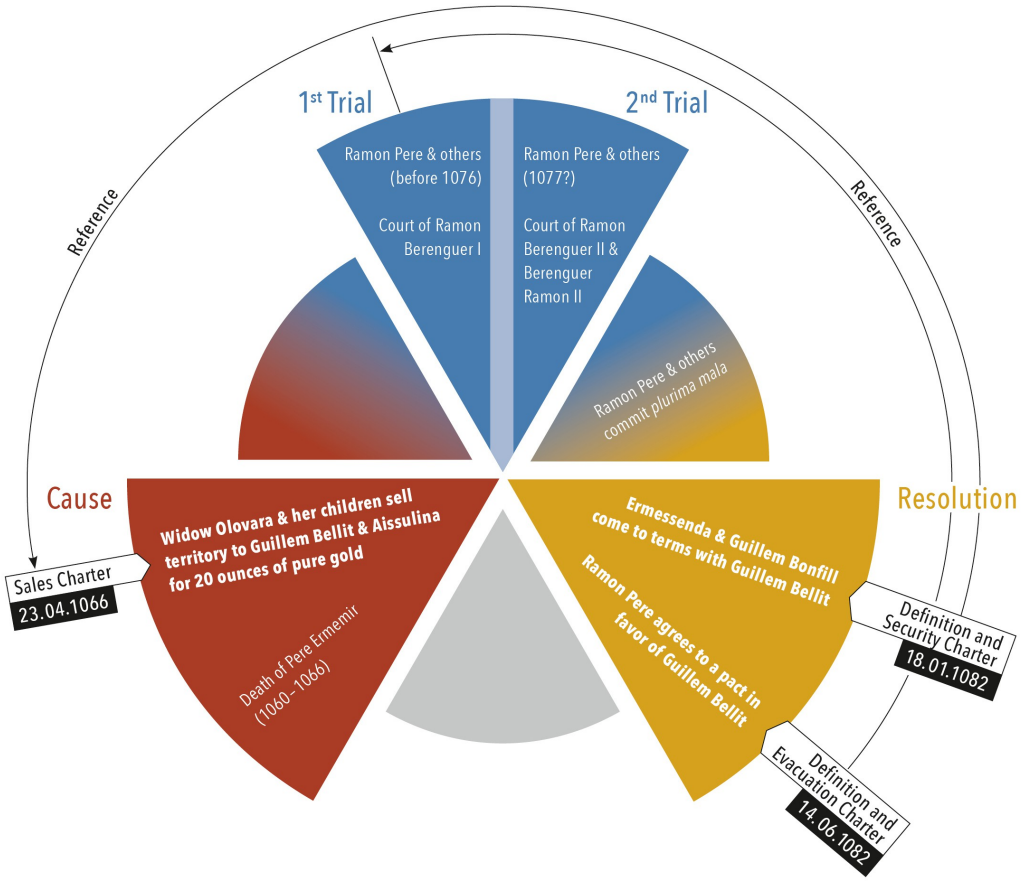

Fig. 15: The Quarrel Over the Allod of Provençals

Defying justice did not always have a strictly negative outcome for the one refusing to appear in court, for it seems resilience could be rewarded in some specific circumstances. The samples show that strategies varied with regards to social status and resources, however if not brought to a halt the cases could span over several years. Motivations to act violently are not expressed, but it seems that individuals refusing to appear in court crossed a line that then led to them feeling less reluctant to take violent action.

The dynamics at hand could be very complex as it can showcased by an excellent examples that combines both elements abandoning trial and the refusal to appear as well as that the anger and frustration lost trials generated could have long lasting effects.

IV.2.4.3. The early Mir Geribert

As it is certain that that judges have been appointed for the purpose of remedy[1379]

One of the most discussed conflicts of 11th Century Catalonia was the so-called revolt of Mir Geribert. As the son of the viscount Geribert of Barcelona and his wife Ermengarda, he was the grandson of Count Borrell II through the maternal line and after the death of Berenguer Ramon I he entered into direct conflict with the son of the former count of Barcelona, Ramon Berenguer I, from 1041 onwards, culminating in titling himself the prince of the frontier fortress Olerdola (*princeps Olerdolae*) to defy the "authority of the comital court — not simple contumacy, but mocking defiance".[1380]

The events, from the attack against the count's palace and the final establishment of a quasi-independent rulership in the south to the responsive actions of the count of Barcelona, have been widely discussed in literature over the last decades, studied from different angles and viewpoints and do not need be revised again.[1381]

An earlier conflict between Mir Geribert and the monastery of Sant Cugat which took place in the years 1032-1033 has received some attention, not only as a precursor to events, and allows for an analysis of both aspects discussed above: first to abandon a trial and secondly to not appear in one. Although knowing the rather spectacular future of Mir Geribert, it is important yet sometimes difficult not to project hindsight into the reading of the documents regarding that conflict, which was certainly an important step into the slow but steady escalation of hostilities over the decades.[1382]

1379 LV II.1.32: *Cum iudices causa remediorum constet esse creatos* […].

1380 Kosto, A. J. (2016), 'The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert', *Viator*, 47/2, p. 74.

1381 With a very complete reference to earlier work regarding the subject, most recently by Lluch i Bramon focussing on the years 1041-1058 and by Kosto from 1052 onwards with a special attention to the structure of the documentation. Before that from a dynastic and very different viewpoint by Ruiz-Domènec. Lluch i Bramon, Rosa (2018), 'El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)', *Anuario de Estudios Medievales*, 48/2: 793–820. Kosto, A. J. (2016), 'The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert', *Viator*, 47/2: 67–94. Ruiz-Domènec, J. E. (2006), *Quan els vescomtes de Barcelona eren.*: *Història, crònica i documents d'una família catalana dels segles X, XI i XII.* (Barcelona: Fundació Noguera). p. 93–134

1382 Ruiz-Domènec saw in this event the spark that would ignite the flame of rebellion, (Ruiz-Domènec, J. E. (2006), *Quan els vescomtes de Barcelona eren.*: *Història, crònica i documents d'una família catalana dels segles X, XI i XII.* (Barcelona: Fundació Noguera). p. 96) a viewpoint that was already seen as exaggerated by Lluch i Bramon (Lluch i Bramon, Rosa (2018), 'El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)', *Anuario de Estudios Medievales*, 48/2, p. 804: Anant molt més enllà, un cop més, Ruiz-Domènec insinua que Mir Geribert devia confiar en què una sentència

However, the conflict between the monastery and Mir Geribert has a past of its own, which needs to be addressed shortly to fully understand this episode.[1383] On the 31st of March 1013 a tribunal was formed at the count's palace in Barcelona by the count Ramon Borrell and the countess Ermessenda, under the thorough handling (*Sub pertractacione episcoporum*) of the bishops of Barcelona, Urgell, Vic, Girona and Elna and a crowd of numerous magnates (*obtimatum katerva*). Therein the abbot of Sant Cugat Guitard initiated a litigation claiming the rights over the lake of Calders and the surrounding land for the monastery.[1384] He based his claim *veritatem habentis* on precepts from Charlemagne and his son Louis the Pious that assigned these lands to the monastery, which were lost during the attack of al-Mansur (985), but the assignation was reconfirmed by a precept from Lothair (986).[1385]

In opposition Adelaida, widow of the vicar Guillem de Santmartí, claimed that she rightfully possessed these lands through the father of her late husband (*omnia iuste habere per vocem cuiusdam pater viri*), who had established rights through the cultivation and long-term possession (*aprisio*) of the territory in question as he had put up landmark signs, and therefore her son Guillem would have the right to possess the lake and the land.[1386] As no one legal right clearly prevailed over the other it was

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desfavorable *seria l'espurna que encendria la flama de la rebel·lió de la gent del Penedè*s. Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 159: […] and this dispute with Sant Cugat in the early 1030s can be seen as one of the early skirmishes in a more protracted conflict.

1383 For this pretext of the conflict and more context, see: Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo), p. 224-228. Ruiz-Domènec, J. E. (2006), *Quan els vescomtes de Barcelona eren.*: *Història, crònica i documents d'una família catalana dels segles X, XI i XII.* (Barcelona: Fundació Noguera), p. 74-80.

1384 Salrach, Montagut, *Justícia,* doc. 161: *In iudicio domni Raimundi, comitis, coniuxque ipsius, dompna Herminsindis, gratia Dei comitissa. Sub pertractacione episcoporum, id est, Deusdedit Barchinonensis, Hermengaus Orgillitensis, Borrellus Ausonensis, et Olibane Helenensis, obtimatum katerva, Sindredus Gurbensis, Amatus Soricensis, Gondeballus Boserensis, Hugone Cerviliensis, Sunifredus Rirubensis, Bernardus Sancti Vincencii, Gilelmus de Lavancia, Riculfus Bergadensis, Sunifredus Barralis, et aliorum promiscui virorum, intus in palatium Barchinone civitatis. In horum presentia litigabat Guitardus, Sancti Cucuphati cenobii abba, cum quadam Adalaizis, femina, qui quondam uxor fuerat Gilelmi, quondam, vicarii Sancti Martini. Contendebat cum ea de uno stagno que dicunt Kallerio aliisque stagnis circumquaque convivinis, seu de terras heremas que ibi dilatate sunt et posite.*

1385 Ibid.: *Unde hostendit prefatus abba causam narracionis veritatem habentis qualiter erat eadem omnia prescripta in iure et possessione Sancti Cucuphati cenobii confirmata per preceptum domni Karoli Magni imperatoris oblacio, filioque suo Hulidolco principe, cuius muneris oblacio primis temporibus extat facta, quando sevicia sarracenorum confregerunt. Et quoniam prefatum preceptum in exterminacionem prefate urbis fuit perditum, surrexit quondam Odoni, cenobii prelibati abba, Franciam petens, in comitatu domno Borrello, quondam comite, et in conspectu Leutharii, regis, auctorizante domno Borrello comite, testificantes illustros et honorabiles viros qui in eius obsequium fuerant, et fuit renovatum in regis presentia prefatum perditum preceptum et in robore firmatum, ubi prefatos stagnos ac terras prefixas resonant esse munificatas ad cenobio sepe nominato Sancti Cucuphati.*

1386 Ibid.: *Et e contra Adalaicis prefata asserebat se prefixa omnia iuste habere per vocem cuiusdam pater viri sui quondam Galindoni, qui per vomerum aracionis cultro, circumquaque obduxerat signo, et ibi*

decided to divide the territory in half, including the fish from the lake, and even agreeing that the two parties would built a defence tower together against the threat of a Saracen attack.[1387] This pact of division of rights (*Factum definicionis pactum*) left both sides subject to this decision with no right to sell the property or pawn it.[1388]

Three year later, right after Easter, on the 9th of March 1016 the widow Adelaida, now acting on behalf of her underaged son Bernat (*agens vicem filii sui Bernardi, in minoribus annis constituti*), presented herself at the palace to discuss these legal matters again, still convinced that she and her son had better claims than Sant Cugat (*melius sui iuris et filii sui quam Sancti Cucuphatis*).[1389] The short court record is only preserved as a pretext for a *carta precaria* to a certain Bonet and thus misses signatures. Nevertheless, it is most certain that this time Ponç Bonfill Marc, the levite Guifré, and Vivas acted as judges.[1390]

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priscam introduccionem fecerat per nomen per prisionis et karacterum designacionis. Ex cuius cause accionis et ipsum stagnum et locum possederat, filioque suo Gilelmo ad habendum dimiserat proprialiter.

1387 Ibid.: *Et cum utrasque prefate partes vehemencius ex hoc in invicem litigassent, prefatus comes et coniuge sua comitissa, cum cetu pontifficum ac potentum vel ad firmacione iudicum, talem consilium inter utrasque partes dederunt et posuerunt: eo quod non valebant proprialiter expedire cuius iure liberior transisset, et eo quod difficile erat unius familie domi, ipsum solitudinis locum excolere, et ad culturam opus reducere, turremque municionis construere, et pro iugi sarracenorum adventu, non modica vicinorum solacia ibidem congregare, ut ex eausdem terras duas eque porciones fecissent, simulque communiter in unum turrem ibidem construant, ut una medietas sit Sancti Cucufati dedita, alia medietas sit prefate Adalaizis conlata, et ipsa turre, ut dictum est, comuniter eam construant, communiter eam cum felicitate possideant et ipsos stagnos conmuniter eos expiscari faciant, ipsosque pisces conmuniter iuste dividant per medium.*

1388 Ibid.: *Et ipsa Adalaizis prefata et filiis suis; ipsa tamen decima donari fideliter faciant de ipsis tantummodo piscibus, quod in captione Deus ibi dederit, ad cenobium prelibatum Sancti Cucufati. Sub huius taxacionis ordine, ut ad Adalaizis prefata filiisque suis illorum prefata medietate sic ea fruant et obtineant, ut non liceat eis ipsa prefata medietas vendere, nec inalienare nec opignorare, nec alium patronum vel defensorem seu baiulum ibi obducere, nisi Sanctem Cucufatem, suosque servientes cenobicos. Et si forte prefatis illis necessitas emerserit vendendi, omnino eis sit inlicitum, nisi solummodo ad cenobium prefatum iuste conpensacionis precio adpreciatum vel estimatum. Similiter confirmamus ad viros Sancti Cucufati, ut si necessitas vindendi eos conpulerit, non eis sit licitum agere et facere alicui, nisi ad iam dicta Adalaizis, filiisque suis in aderacionis, iusteque compensaciones pretii, taxacionisque commerti. Huius quippe taxacio utriusque partibus placuit sub taxacionis pene transgressoris, ita ut qui hoc transcenderit, componat in vinculo D^{tos} auri solidos fisci iuribus iungendos, et in antea huius pacti taxacio firmitatem obtineat iugiter in secula.*

1389 Salrach, Montagut, *Justícia,* doc. 169: *Notum sit cunctis hominibus quod in anno Domini XVI° post millesimum, era LIIII^{a} post millesimam, anno XX° regnante Roberto, rege Franchorum, VII° idus marcii, venit quedam femina, nomine Azalaudis, uxor que fuit quodam Gilelmi castri Sancti Martini, agens vicem filii sui Bernardi, in minoribus annis constituti, intus in civitate Barchinona, in comitali palacio, causavitque cum Guitardo, abbate Sancti Cucuphatis, ob causam terre hereme quam prescriptus abbas proclamabat esse iuris sui cenobii et ipsa Azalaidis asserebat esse eam melius sui iuris et filii sui quam Sancti Cucuphatis.*

1390 The three are listed in the court record but only two signed the donation, which was also written by Ponç Bonfill. Salrach, Montagut, *Justícia,* doc. 169: *Ad quam audienciam presidebat inclitus princeps Raimundus, Borrel comitis proles, et coniux eius Ermessindis, suique nobiles, Deusdedit Barchinonensis, presul, Borrellus Ausonensis antistis, Gondeballus Bisorensis, Ugo Cervilionensis, Geribertus Supiratensis, Odolardus, vicecomes Barchinone, Seniofredus Riorubensis, et iudices*

Adelaida again insisted on her right to the land through the grandfather of her children, while the abbot had added some Papal bulls to the precepts.[1391] The dilemma could not be solved as it was unclear if the land-taking took place before the precepts, while the judges observed that the land lay barren for many years (*per multa annorum curricula herema permansisse*).[1392] Again, the judges were not sure how to proceed and let the count Ramon Borrell decide as he was the highest authority and who, moved by the fear of God (*compulsus timore Domini*), gave the disputed property to Sant Cugat.[1393]

Another issue is also addressed. Sant Cugat already had given the property in precarial tenure to a certain Isembert[1394] which could have sparked the conflict in the first place as the *carta precaria* predates the first trial (26th of July 1011).[1395] The judges consider this first donation as invalid as Sant Cugat did not yet have the right to

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Bonusfilius Marchus et Guifredus, levita Ausonensis, et Vivas sacer, et alii nobiles viri, et mire magnitulines vulgaris populi. RIUS, *Cartulario*, doc. 464: [...] *Vuifredus, levita, qui et iudex sub SS.; S+m Poncius, cognomento Bonusfilius, clericus et iudex, nos iudices qui hoc edidimus*, […] *S + m Poncius, cognomento Bonusfilius, clericus et iudex, qui hec scripsi* […].

1391 SALRACH, MONTAGUT, *Justícia,* doc. 169: *Unde prenotatus Guitardus ostendit privilegia que pape Romenses fecerant, sive preceptum regis Francie aecclesie Sancti Cucuphatis ob recordacionem rerum diversarum quas per collaciones multorum fidelium prescripta aecclesia possidebat, ex quipus multe auctoritates scripturarum videbantur et multe imparebant.*

1392 SALRACH, MONTAGUT, *Justícia,* doc. 169: *Ventum est autem ut perlegerentur privilegia et precepta et perquirerentur voces petentis, nec inventum est quis primum predicto cenobio promulgatam terram heremam dedit, nec inventum est supranominata ecclesia possedisse eam, sed per multa annorum curricula herema permansisse. Etenim a parte petitricis non est inventum quis ipsorum aut eorum unde prefatam vocem successionis se habere dicebant umquam ullam possessionem in ipsa terra habuisse, sed similiter per multa amorum inveterata curricula erema permansisse et sine possessoribus solitaria.*

1393 SALRACH, MONTAGUT, *Justícia,* doc. 169: *Propterea iudicatum est in ipso iudicio melius et verius esse hec terra iuris principalis sicut et cetera spacia heremarum terrarum quam aut ipsius iuris que hoc petebat, aut iuris supra meminiti monasterii. Idcirco conclamatum est ab omnibus permanere debere hec terra, cum his que infra eius terminos sunt, in potestate principis Raimundi, sicuti et mansit; sed ille, compulsus timore Domini, concessit atque donavit prenotatam terram heremam cum aliis terrarum positionibus, cum omnibus que infra illorum terminos sunt iuri et dominio et in potestate Sancti Cucuphatis et serviencium ei, simul cum coniuge sua Ermesinde et filio suo Berengario.*

1394 RIUS, *Cartulario*, doc. 449, dating the charter in the year 1012. The only preserved document is a copy dating in the year 1208 and delivering the whole argument of Charlemagne and Luis the Pious, together with words found in later documentation like "*in extremitatum limitum marchiarum*", makes the whole charter at least suspicious.

1395 SALRACH, MONTAGUT, *Justícia,* doc. 169: *Sane notum sit et hoc quod in istius pagine noticie inter reliqua a iudicibus exaratum est et a super scriptis iuris roboratum et condamatum. Ante enim quam prescriptum celebraretur placitum et predicta terra herema donaretur atque contraderetur sive firmaretur a principe cum uxore sua et filio in iure et potestate prelibati cenobii, suprascriptus abbas Guitardus fecerat cartam cum suis fratribus monacis, cuidam homini Isimberto ex prefata terra ad condirigendum ad opus sui monasterii et ad opus edificatoris. Quam etiam cartam Raimundus, princeps supralibatus, nesciens hanc terram esse sui iuris firmavit illi ad condirigendum. Postquam autem in postmodum per supra meminitum placitum et iudicium recognovit hanc terram cum suis terminis esse sue vocis et iuris prefixo anno donavit eam et tradidit simul cum aliis rebus et cum ipsis stagnis et omne quod infra predicte terre terminos est, in potestate et dominio atque iure prefati cenobii, una cum uxore sua et filio.*

hand out the land surrounding the lake.[1396] As Isembert was considered to have not taken good care of the land as was necessary to build castles and fortifications (*necesse est edificare castela et municiones facere*), they also advised the abbot to look for a new subject to fortify and cultivate the land, and consequently on the 26th of April 1017 it was given to a man called Bonet.[1397]

1396 SALRACH, MONTAGUT, *Justícia,* doc. 169: *Unde patet invalida esse ipsa carta donacionis precaria, quia in ipso tempore quo facta fuit non erat hec terra iuris Sancti Cucuphatis; propterea abbas ipsius ecclesie non potuit exinde facere cartam ullius definicionis aut donacionis. Etenim ex altero modo invalida esse dicenda est predata donacio, quia ipse princeps Raimundus inscius firmavit eam quam nesciebat res unde confecta erat ipsa carta esse sui iuris. Patet autem cunctis iudicibus et eloquentioribus quia postquam Sancti Cucuphatis cenobium adquisivit a principe prescripto, sicut in ipso precepto vel privilegio resonat, iam dictam terram possunt facere et iudicare servientes ipsius ecclesie et abbates, sicut et faciunt de aliis munificentiis illius ecclesie. Igitur quia necesse est edificare castela et municiones facere in marchiis eremis et in solitariis locis contra paganorum insidias, et quia ipse Isimbertus non condirexerat ipsam terram, sed erema et solitaria remansit, consiliatum iussumque est supranotato Gitardo, abbati, et fratribus suis cenobicis, ab indole comitissa Ermesisinde et a filio suo Berengario, comite, et a viris subter scriptis, ut inquirerent talem virum qui in servicio Dei et Sancti martiris Cucufatis edificasset et condirexisset ipsam heremam terram, sicuti et requisierunt, et illi per hanc precariam donacionis cartam ad condirigendum ita dederunt.*

1397 RIUS, *Cartulario*, doc. 464.

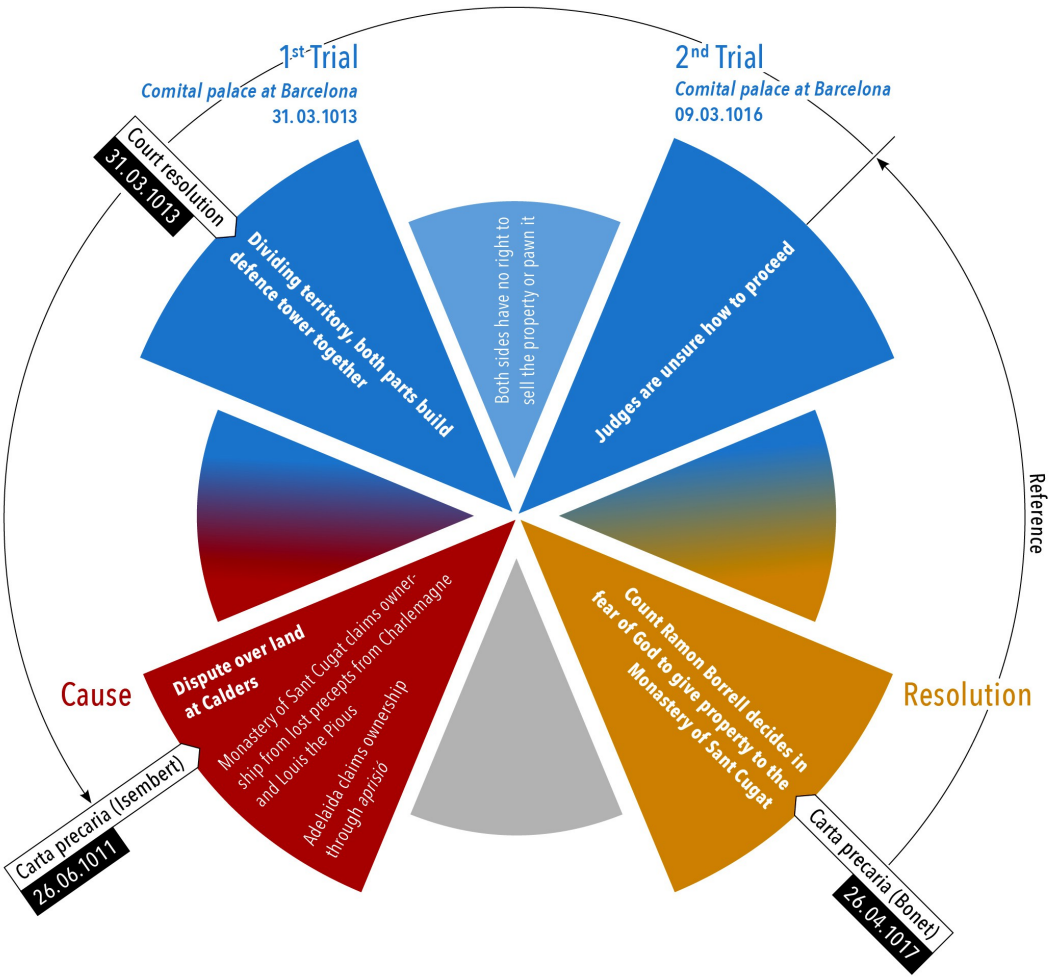

Fig. 16: Graphic of the Trials Between Adelaida and Sant Cugat

Leaving these precursors behind, by 1032 Mir Geribert was the father of two sons, Bernat and Geribert, by his first wife Dispòsia de Santmartí to whom he had been married since 1015 and who had died two years earlier in 1030. She was the daughter of above-mentioned Adelaide and the vicar Guillem de Sant Martí Sarroca, and thus the granddaughter of Galí de Santmartí. As the head of the family Mir Geribert represented his sons in the trial as their tutor and again invoked the property in their favour with the argument that the ancestor Galí had achieved the land through *aprisio.* The abbot, however, claimed to have rights over the ground due to the Carolingian precepts, especially that of Louis IV lost as a result of the assault of al-Mansur, which would predate Galí's *aprisio* and would therefore take precedence.

The whole episode is relatively well documented and therefore drew the attention of historians early on,[1398] and has been re-examined more recently by Salrach.[1399] The chronological order of events is quite complex, and the coherent use of the Visigothic law nevertheless invites a revision.

The original documents are lost but copies from the 13th Century exist, which were also copied into the cartulary of Sant Cugat. The first three had been written by the judge in charge, Ponç Bonfill Marc himself, who had already administered justice in the last case regarding property of the Santmartí clan in the Penedès. The first dates on the 28th of June with the next two dating at the beginning – the 3rd – and the end – the 30th – of July 1032[1400], while the last one dates over seven months later on the 18th of March 1033.

After Saint John's Eve on the 28th of June preparations for the forthcoming trial were in motion, as the abbot of Sant Cugat had arranged for the testimony of three witnesses from two different locations for the trial in the upcoming week. In the church of Sant Pere d'Octavià at the monastery of Sant Cugat, Godmar and Guilarà

1398 Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899, p. 371 – 379. Carreras i Candi, F. (1903), 'Lo Montjuich de Barcelona:. memoria llegida en la Real Academia de Buenos Letras de Barcelona los diés 7 y 21 de juny de 1902', *Memorias de la Real Academia de Buenas Letras de Barcelona*, 8, p. 341-344.

1399 Salrach i Marés, Josep Maria (2013), 'La recreación judicial de diplomas perdidos. Sobre la escritura y el poder en los condados catalanes (siglos XI-XII)', in J. Escalona and H. Sirantoine (eds.), *Chartes et cartulaires comme instruments de pouvoir. Espagne et Occident chrétien (VIIIe-XIIe siècles)* (Méridiennes. Études Médiévales Ibériques, Madrid: Consejo Superior de Investigaciones Científicas; Toulousse: CNRS), p. 220-223. Salrach, Josep M. (2013), *Justícia i poder a Catalunya abans de l'any mil,* Vic, Eumo editorial, p. 227-231. See also: Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press), p. 158-160.

1400 Josep Rius Serra dated the charter in the year 1033, which easily can cause confusion, see: RIUS, *Cartulario*, doc. 529

testified about the content of the precept granted by King Louis IV to the monastery of Sant Cugat del Vallès, that was lost as a result of the assault on al-Mansur.[1401] For this *reparatio scripturae* as both men were in bad condition, very weak and held down by age (*gravati infirmitate sumus sive senectute depressi*), they had gathered sixteen witnesses that assured that they had heard the first witnesses' declaration. The document thus presents us with the oath of the two elderly man stating that they saw and heard the document being read aloud (*nos vidimus atque legi audivimus preceptum*), which is then confirmed through another oath by locals who declared that they had heard their words.[1402] The age of the two old witnesses was important as they could confirm firsthand that the king through his precept had granted the site of Santa Oliva to the monastery, which had since then owned it uninterruptedly for the past sixty years.[1403] While the mobility of Godmar and Guilarà may have been reduced, that

1401 SALRACH, MONTAGUT, *Justícia,* doc. 241: *In Christi nomine. Ego Godmarus et Guillara vobis Guitario et Vivano Poncii, et Atoni, fratri eius, et Riculfo Baldomari, et Sesguto, et Remundo, et Aicio, et Bardine, et Isarno Ermemiri, et Guilelmo, fratre eius, et Suniario Guifredi, et Speraindeo, et Iohanni clerico, et Guadallo, et Adalberto presbitero, et Agilani. Rogantes vos atque obsecrantes, eo quod gravati infirmitate sumus sive senectute depressi, hoc mandatum facimus vobis ut vice nostra in quacumque audientia necesse fuerit pro nobis testimonium detis ex hoc quod per subter anotatas condiciones iurare nos audituri estis, scilicet, ob confirmandam veritatem precepti quod domnus Hludoicus rex fecit ex rebus subter adscriptis in iure dominacionis aecclesie Sancti Cucufatis cenobii Octavianensis, quod per infestacionem paganorum combustum aut deletum esse novimus, atque postmodum renovatum a domno et gloriosissimo Leutario, rege Francorum, filio supradicti Hludoici piae memorie. Et ut hoc mandati nostri scriptum firmitatem in omnibus obtineat, testimonium nostrum per seriem harum condicionum iureiurando confirmavimus ita dicentes: «Iuramus nos testes, Godmarus et Guillara, unum dantes testimonium primo per Deum Patrem Omnipotentem et per Iesum Christum Filium eius, atque per Sanctum Spiritum confitentes hanc Trinitatem unum et verum Deum esse, et per istud altare consecratum sancti Pauli Apostoli quod situm est in aecclesia Beati Petri Apostoli, que non longe constructa est ab aecclesia Sanctissimi ac Beatissimi Cucufatis Martiris Octaviensis, quod nos vidimus atque legi audivimus preceptum Sancti Cucufatis cenobii praedicti quod domnus Ludoicus, rex Francorum, genitor Leutarii, regis similiter Francorum, fecit ad confirmandas res aecclesiasticas huic cenobio collatas aut in postmodum concedendas.*

1402 A possibility considered by the law and executed correctly. LV II.4.5: *Ne testes per epistolam testimonium reddant et qualiter iungi testimonio possint.* […] *Certe si idem testes aut parentes vel amici sive etate decrepiti vel infirmitate gravati aut in alia longinqua provintia constituti, de re, que ipsis est cognita, testimonium aliquibus iniungendum patuerint, et si non sunt omnes de uno territorio, qui testimonium dicendum committunt, in eo tamen territorio, ubi iudex commanet, qui ex ipsis videntur idonei, congregentur et ante eiusdem territorii iudicem vel coram his, quos iudex elegerit et mandatum faciant idoneis iurare procurent qualiter, quibus testificandi vicissitudo committitur, id indubitanter, ubi necesse fuerit, suo sacramento confirment, quod iurare mandatores suos iustissime et evidentissime per semetipsos audierint.* […]. Comp. SALRACH, MONTAGUT, *Justícia,* doc. 244: *Et quia gravati senectute vel infirmitate erant, congregatis in Octavianensi territorio idoneis viris Guisliberto, levita et Barchinonensi vicecomite, et Remundo sancte Sedis Barchinonensis archilevita, et Compagno levita, et Mirone levita, et Isarno Guilelmi, et Remundo Seniofredi, coram supradicto iudice mandatum facientes idoneis viris testimonium suum illis iniunxerunt, taliter dicentes*: […].

1403 SALRACH, MONTAGUT, *Justícia,* doc. 241: *Et illic post multas alias res possessionumque per eumdem preceptum in iure praedictae aecclesie confirmate erant, resonabat quod supradictus rex Hludoicus confirmabat atque concedebat aecclesiam Sanctae Olivae cum ipso alodio in latitudine de ipsa guardia de Bagnarias usque in villam Domabuis, et in longitudine de villa Domenio usque ad ipsum mare, simul cum ipsos stagnos, cum decimis et primiciis, decimas quoque et primicias uti consuetum est dicti loco ab antiquis temporibus accipere. Et nos haec, quae dicimus, vera esse scimus, et supradictam*

of the judge Ponç Bonfill Marc was not and he then made the short journey to the church of Santa Maria de Martorell, where he took the testimony of another man, the priest Gelmir, who made a similar declaration about the precept (*ego vidi et legi audivi*), confirming the statement of the two previous witnesses and clarifying that he knew of no fraud nor malicious nature in their declarations (*nullamque fraudem nullumque malum ingenium in isto testimonio impresum scio*).[1404] As both witness declarations are on the same charter this could even have happened on the same day. Be that as it may, the abbot had made sure to have the statements of a minimum of three witnesses, the most common quantity used, prepared and ready for the trial. These preparations were planned and executed between abbot and judge as the pragmatics involved relied on timing and communication. Ponç ensured that the abbot was presenting witnesses that knew the content of the precepts well and that they would receive the full authority of the count for the case at hand.[1405] So far, and completely understandably, Mir Geribert was not involved at all.

Things now started to get complex. The trial most probably took place on the 3rd of July in the church of Santa Maria de Martorell, next to the market place (*iusta forum*)[1406] with the three judges – Ponç Bonfill Marc, Guifré Guillem and Vives –

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aecclesiam Sancte Olive cum ipso alodio, sicuti supra determinatum est, simul cum ipsis stagnis in iure aecclesie Sancti Cucufatis predicti per hos annos LX[a] videndo et cognoscendo retentam esse scimus sine ulla legali interrupcione. Et ullam fraudem aut ullum malum ingenium hic in isto nostro testimonio impressum non est, sed secundum quod supra in textum est, veraciter a nobis datum est per super adnexum iuramentum in Domino».

1404 SALRACH, MONTAGUT, *Justícia,* doc. 241: *«Et ego Gelmirus sacer iuro per metuendum atque tremendum nomen Domini et per altare consecratum sancte beateque Virginis Marie Matris Domini, cuius aecclesia sita est in comitatu Barchinonensi, in foro Martorelio, quod ego vidi et legi audivi supradictum preceptum unde supra notati testes Godmarus et Guillara testimonium suum dederunt, et audivi quod illic resonabat quod supradictus rex Hludoicus confirmabat atque concedebat in iure aecclesie Sancti Cucufatis aecclesiam Sancte Olivae cum ipso alodio in latitudine de ipsa guardia de Bagnarias usque in villa Domabuis et in longitudine de villa Domenio usque ad ipsum mare, simul cum ipsos stagnos, cum decimis et primiciis, decimas quoque et primicias uti consuetum est ipsi loco ab antiquis temporibus accipere, et haec supradicta omnia nosco retenta fuisse sine legali interruptione in iure Sancti Cucufatis predicti, videndo et cognoscendo per hos LX[o] annos; nullamque fraudem nullumque malum ingenium in isto testimonio impresum scio, sed secundum quod supradicti testes et ego testificati sumus verum est, atque a nobis fideliter confirmatum per adnexum iuramentum supra atque datum in Domino».*

1405 As later confirmed by Ponç in his court record he gave eight days to present witnesses (comp. LV II,1,22 and esp. LV X.2.6 cited later by Ponç). SALRACH, MONTAGUT, *Justícia,* doc. 244: *Iccircho, a parte predicti abatis requisierunt si habebat testes qui eundem preceptum Hludoici regis vidissent et legi audissent, et pleniter cognovissent quod ipse res unde intencio vertebatur in hoc eodem precepto resonassent. Ille vero postulatis sibi legalibus octo dierum induciis attulit idoneos testes Bonofilio Marci, iudici, qui iussus atque informatus a principe et a primatibus patrie est dirimere causas, Godmarum, scilicet, atque Guillaranum, qui se dixerunt hoc plenissime nosse.*

1406 The date being taken from the second witness declaration why the later court record details the exact place and confirms that the trial took place after the witness declaration of the elderly Godmar and Guilarà. SALRACH, MONTAGUT, *Justícia,* doc. 244: *Postquam autem hoc testimonium a testibus*

directing the trial in the presence of the viscount Guislabert,[1407] cousin of Mir, and many men.[1408] The document preserved, however, is not a court record but a witness declaration in which six of the sixteen witnesses[1409] declare that they had witnessed and heard the testimony of Godmar and Guilarà on the content of the precept granted by King Louis to the monastery,[1410] followed by the same confirmation that Santa Oliva had been legally owned by the monastery for the last sixty years.[1411] In the *eschatocol* of the charter there is a short note to say Mir accepted the witnesses, and if he was to

secundum leges iure iurando datum est, et supradictum mandatum factum est atque utrumque legaliter confirmatum, sicut inspici potest in conscriptis pro hac causa condicionibus, utreque partes convenerunt ad constitutum termini diem in aecclesia Sancte Beate (Marie) iusta forum Martorelium sita.

1407 The viscount Guislabert, cousin of Mir will become bishop of Barcelona shortly after this conflict in 1034, and will be a central figure in the upheaval and attack against the count's palace. Ruiz-Domènec sees the viscount as presiding over the trial, but it was conducted in his presence and the question of who had the authority to judge – the count's authorised judges or the viscount – is unclear. Ruiz-Domènec, J. E. (2006), *Quan els vescomtes de Barcelona eren.*: *Història, crònica i documents d'una família catalana dels segles X, XI i XII.* (Barcelona: Fundació Noguera). p. 96: El resultat va ser idèntic, davant de l'estupor de la gent del Penedès que no podia entendre que Mir hagués perdut en un tribunal presidit pel seu cosí. ¿On havia quedat la solidaritat del clan?

1408 SALRACH, MONTAGUT, *Justícia,* doc. 242: *Condiciones sacramentorum ad quarum ordinacionem residebant iudices Bonusfilius Marci, et Guifredus Guilelmi, et Vivanus sacerdos. In presentia Guisliberti vicecomitis, et Alamagni, et Remundi archilevite, et Suniarii Borrelli, et Bonifilii Guilelmi, et Remundi, fratris eius, et Bernardi Audgerii, et Amalmarici Aitii, et Riculfi de Parietibus, et Remundi de Matrona, et Bernardi Gelmiri, et Sendredi Aiaberti, et Mironis de Bisora, et Mironis de Clarmonte, Guandalgaudi Sendredi, Bernardi Borrelli, et Remundi, fratris eius, et Guilelmi de ipsa Vite, et Compagni Maieri, et Aianrici Geriberti, et Datonis, et Mironis Fedachi, et Riculfi Bollomari, et Vivani Poncii, et Adalberti iuvenis, et Isimberti, et Ermemiri sacriste, et Guilelmi Iotoni, et Isarni Baroni, et Onofredi Riculfi, et Remundi, fratris eius, aliorumque multorum quorum nomina longum fuit texere.*

1409 Listed in the same order as found in the previous charter. SALRACH, MONTAGUT, *Justícia,* doc. 242: *Testificati sunt testes his nominibus Guitarius et Atto, et Sesgutus presbiter, et Bardina, et Isarnus Ermemiri, et Aielanus, unum dantes testimonium et iureiurando ita dicentes:*

1410 SALRACH, MONTAGUT, *Justícia,* doc. 242: *«Iuramus nos testes supradicti, primo per Deum Patrem omnipotentem et per Iesum Christum Filium eius atque per Sanctum Spiritum confitentes hanc Trinitatem unum et verum Deum esse, super altare consecratum sancte beateque Marie Matris Domini quod situm est in aecclesia fundata subitus castrum Rodanas, prope forum Martorelium, quod quidam homines Godmarus et Guillara, etate decrepiti atque infirmitate gravati, iniunxerunt nobis per illorum mandatum suum testimonium, et nobis presentibus in presencia iudicis Bonifilii Marci, et Guisliberti vicecomitis, et Remundi archilevite, et Compagni levite, et Mironis levite, et Gadamiri Ermemiri, et Isarni Guilelmi, et Remundi Seniofredi, et Gelmiri presbiteri, iureiurando testificati sunt per seriem conditionum super altare consecratum sancti Pauli quod situm est in aecclesia Beati Petri Apostoli, que non longe constructa est ab ecclesia Sanctissimi ac Beatissimi Cucufatis Martiris Octavianensis, quod ipsi viderunt atque legi audierunt preceptum Sancti Cucufatis cenobii predicti quod domnus Hludoicus, rex Francorum, genitor Leutarii, regis similiter Francorum, fecit ad confirmandas res aecclesiasticas huic cenobio collatas aut in postmodum concedendas, et illic post multas alias res possessionum quae per eundem preceptum in iure predicte aecclesiae confirmate erant resonabat, quod supradictus rex Hludoicus confirmabat atque concedebat aecclesiam Sancte Olive cum ipso alodio in latitudine de ipsa guardia de Bagnarias usque in villam Domabuis, et in longitudine de villa Domenio usque ad ipsum mare, simul cum ipsos stagnos, cum decimis et primiciis, decimas quoque et primicias uti consuetum est ipsi loco ab antiquis temporibus accipere».*

1411 SALRACH, MONTAGUT, *Justícia,* doc. 242: *«Et nos haec, que dicimus atque testificamur, sic iurare vidimus supradictos nostros mandatores, Godmarum et Guillaramum, sicut et ipsi sciebant videndo et cognoscendo supradictam aecclesiam Sancte Olive cum ipso alodio, sicut supra determinatum est, simul cum ipsis stagnis in iure aecclesie Sancti Cucuphatis per hos annos LX[a] retenta erat sine ulla*

object then he had a period of six months in which to challenge the witness declarations and legally invalidate Gomar and Guilara's testimony due to infamy, but if he was not able to do so then that would confirm the rights of Sant Cugat (*infra hos sex menses legibus infamare non potuero*).[1412] In comparison to other examples of one side leaving trial, Mir did leave but under certain conditions, and the presence of his signature is puzzling. How can one stay to sign but leave at the same time?[1413] The answer is given right away by Ponç Bonfill himself using the legal vocabulary for one side abandoning trial without the permission of the judges, but also saying that he respected the rights of Mir Geribert (*et vocem supradicti Mironis qui se abstraxit de placito absque consultu iudicum, legaliter observavi*).[1414] The first two documents are thus witness declarations (*Condiciones sacramentorum*) and are of fairly normal length for this type of charter.[1415]

At the end of the month on the 30th of July Ponç Bonfill Marc finished the memoir of the trial that took place at the beginning of the month. The date on which this court record was signed falls on a Sunday, which could have been a convenient day to assemble all the men necessary signing the charter as they would have been attending mass beforehand. It is a well-drafted account of what happened on the 3rd of July including some details that would otherwise not have been preserved. With it in mind that it is not the only document of its type, the motivation behind it is simple. As Mir Geribert left trial the meticulous Ponç deemed it necessary to give an account of what had happened. Before heading into examining the document – which due to its nature is over 2000 words long – it is worthwhile to emphasise the importance of time.[1416] Ponç gave Mir six months to, to use a modern term, do some revision and to prove the

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legali interruptione, in ipsis condicionibus ad quas ipsi iuraverunt resonat, et sicut hic nos testificamur atque iuramus per super adnexum iuramentum in Domino».

1412 SALRACH, MONTAGUT, *Justícia,* doc. 242: *Ego Miro Geriberti, qui has possessiones supranotatas aiens tutelam filii mei Guilelmi Mironis in iudicio atque supradictorum audientia requisivi, et supradictos testes recepi, et si ipsos testes supradictos qui ipsum testimonium aliis testibus presentibus qui ad has condicionibus iuraverunt iniunxerunt infra hos sex menses legibus infamare non potuero, omnem meam vocem quam in supradictis rebus propulsatis habeo in iure Sancti Cucufatis aecclesie confirmo.*

1413 That the *S+m Mironis* is one of the other men, also named Mir, is unlikely but would be theoretically possible (*Mironis de Bisora* or *Mironis de Clarmonte*).

1414 SALRACH, MONTAGUT, *Justícia,* doc. 242: *S+m Poncii, cognomento Bonifilii, clerici et iudicis, qui hoc ordinavi atque in iure possessorum consignavi sicut supra insertum est, et vocem supradicti Mironis qui se abstraxit de placito absque consultu iudicum, legaliter observavi.* LV II.1.25.: *Si vero, hordinante iudice, una pars testes adduxerit et, dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se absque iudicis consultu substraxerit* […].

1415 Leaving out the *eschatocol.* SALRACH, MONTAGUT, *Justícia,* doc. 241: 567 words. Ibid. 242: 454 words.

1416 Leaving out the *eschatocol.* SALRACH, MONTAGUT, *Justícia,* doc. 244: 2045 words.

fraudulence of the witnesses and as such he had more than enough time to consult the *liber* properly, organise the signatures and most importantly, inform the bishop and the count of Barcelona about what had happened at Martorell. This is confirmed by Ponç himself as he explicitly clarifies that the court record was *postmodum conscripta atque confirmata* so that he could opt to have it legally confirmed by the *potestas* of the count, the bishop, their judges and other apt men.[1417] A clear expression of the most prominent judge of the palace working independently but under the count's authority, carefully knowing and respecting his legal limits.

The document starts off with a short preamble giving the motivations behind writing such a document while at the same time showing off Ponç's profound knowledge of the law, stating that judges *causa remediorum constet esse creatos*.[1418] The first words of the sentence are taken from a chapter of the Visigothic law that deals with the penalties for judges who touch the property of others for their own benefit.[1419] Ponç takes this phrase and uses it as an stylish entrance but also gives it an interesting twist by putting it in an opposite context, making it clear that a decent judge acts within the frame of legitimacy and thus the truth of what had been spoken must be recorded for the future.[1420] It is not the only time that he used this kind of spin that was a feature of his legal repertoire.[1421] After this learned introduction the context of the quarrel between Mir Geribert and the monastery is presented again, now with added detail.

1417 SALRACH, MONTAGUT, *Justícia,* doc. 244: […] *et postmodum conscripta atque confirmata IIIº kalendas augusti, anno IIº supradicti regis Henrici. S+m Poncii Bonifilii Marci, clerici et iudicis atque Canonice Barchinonensis prepositi, qui hoc legaliter confirmavit et potestatibus, comitibus, episcopis seu iudicibus hoc confirmari optavit, seu ceteris idoneis viris.*

1418 Ibid.: 244: *Cum iudices causa remediorum constet esse creatos, iustum esse perpenditur, ne ad futurum qualibet mota intencione vertatur in dubium qualiter cause negocium ad fines usque legitimos sit deductum, ut iudicii serie specialiter sit anotatum.*

1419 LV II.1.32: *De dampnis iudicum aliena contingentium. Cum constet iudices remediorum causa esse creatos, quidam ex his per contrarium, quod debuerunt iudicii aequitate defendere, inlatis contendunt presumtionibus inpugnare. Accepta namque auctoritate iudicii, presumunt non debitam in alienis rebus exercere licentiam et, prout cuique libet, non metuunt aliorum bonis inferre dispendia noxie potestatis. Proinde quicumque iudicum contra iussa et ordines legum de alienis rebus quippiam auferre vel in eis aliquid noxium presumserint agere, iuxta omnem censuram dampni, quod poterant alios iudicare, severitas illos legis debeat condempnare.*

1420 Which is especially the case for documents that relate to one side abandoning trial. See, LV II.1.25.: *Iudex sane de omnibus causis que iudicaverit exemplar pene se pro compescendis controversis reservare curabit.*

1421 SALRACH, MONTAGUT, *Justícia,* doc. 223: *Cum, in nomine Domini, diversorum causa remediorum constet iudices esse creatos, decet ipsos ut, qualiter eorum audientiis lites negociorum finem accipiunt, conscriptis iudiciis ordine pandant tam presentibus quam futuris. Igitur ego Bonusfilius Marci, iudex palacii, quomodo terminum causa accepit,* […].

Mir demanded the rights for his children and the fortification *in extremis finibus abitate Marchiae,*[1422] again bringing forward the argument that their grandfather Galí seized those lands by means of his own hands, putting up *notas atque signa* and so did his children after him, who defended the territory with their men against pagan invasion building fortresses and cultivating the land.[1423]

After a long dispute between the parties, the judges saw *tantam rei veritatem* on the side of Sant Cugant and proceeded with the declaration of Gomar and Guilara being read *in audientia silencio,*[1424] after which the judges then urged Mir Geribert to accept this testimony and to recognise Sant Cugat's superior right.

But Mir refused to accept the resolution, arguing that he could present witnesses that would be favourable for his cause. The court rejected his proposition as in any case Galí's *aprisio* had been illegal since it had been carried out on lands that already rightfully belonged to Sant Cugat.[1425] According to Ponç that was the moment when Mir Geribert lost his temper, as he saw that that he could not win the claim for his children. He did not accept the witnesses but instead obstinately shouted that the

1422 SALRACH, MONTAGUT, *Justícia,* doc. 244: […] *acta est altercacio inter Guitardum, abbatem monasterii Sancti Cucufatis Octavianensis, et inter Mironem Geriberti, agentem tutelam filiorum suorum pupillorum, quis genuit ex uxore sua cui nomine fuit Disposia, ex quadam municione quae sita est in comitatu Barchinonensis, in extremis finibus abitate Marchiae, ad ipsum Caldarium, nec non et pro ipsa possessione terrarum, partim ad culturam ductarum ac per maxime ducendarum que modo adiacet prefate municioni, et pro ipsis stagnis.*

1423 SALRACH, MONTAGUT, *Justícia,* doc. 244: *Aiebat enim iste Miro supranotatus in suis peticionibus quod suprascripte res ad hanc peticionem pertinentes iuris filiorum suorum predictorum debebant esse, eo quod, uti ipse asserebat, Galindo, avus eorum, per suam propriam apprisionem eas capuerat, et notas atque signa ad terminos earum faciendo, terminosque figendo ad possessionem suam deduxerat, et ipsa stagna quandiu postmodum vixerat ad opus suum pisces ex ipsis capiendo de ceteris hominibus defensaverat. Post obitum quoque eius, Guilelmus, filius eius, hanc possessionem heremi et stagna similiter ad opus suum retinnerat. Adiecit autem quod, eo ab hac vita discedente et infestacione paganorum a supradicta Marchia cessante, Adalaizis, uxor predicti Guilelmi, aiens tutelam filiorum suorum quos ille ex ea genuerat, voluit municionem ibi construere et ad culturam eandem possessionem perducere, sed obieccionibus iam dicti Guitardi, abbatis, permotus, comes Remundus, Borrelli filius, repulit eam ab eadem apprisione et possessione, et iniusto ordine, sicut predictus petitor adfirmabat, in iure Sancti Cucufatis aecclesie confirmaverat.*

1424 SALRACH, MONTAGUT, *Justícia,* doc. 244: *Et cum diu litigassent, videntes iudices tantam rei veritatem a parte aeclesiae Sancti Cucufatis, requisierunt testium supra me[mi]nitas condiciones ad quas iuraverant in territorio predicto Octavianensi. Et facto in audientia silencio, eas legi fecerunt.*

1425 Ibid.: *Et iccirco non fuit iustum a parte Mironis testes recipere, quoniam si ita fuit ipsa apprisio Galindonis ex supradicta possessione unde intencio vertebatur, quemadmodum Miro per allatos in audiencia testes paratus erat comprobare, iniusta penitus et evellenda in postmodum fuit quia quacumque ibi Galindo capuit atque signavit vel apprisiavit in rebus et de rebus sancti Dei Aeclesie haec fecit. Et si aliquid ibi ipse aut posteritas eius retinuit, contra ordinem iusticie et legis sive per presumptivam novitatem hoc retinuit, quoniam sicut iam diximus, anterior est vox aecclesiae et largior voce Galindonis et eius posteritatis, ut tempus dive memorie Hludoici qui eundem preceptu[m] fecit approbat, nec non et ut scripturae eadite ex possessionibus que circa sunt que hanc possessionem Sancti Cucufatis esse testantur proclamant atque edocent.*

claim of Sant Cugat would be unjust while the one of his children would be just.[1426] The judges nevertheless continued in accordance with the law and accepted the witnesses.[1427] In the following section of the charter the two witness declarations of the first document, the testimony of the two elderly men and the priest are inserted with only minor modifications.

The last paragraph cites four chapters of the Visigothic law code, introduced by the same phrase "through the authority of the law" (*per auctoritatem legis),* but the citations are not listed in accordance with the chronology of argument or deeds but instead follow the order of the *liber* itself, with the first stemming from the second book (LV II.4.7.), the second from the fifth (LV V.1.1.) and the last two from the tenth (LV X.2.6; X.3.4.). As the books are not mentioned by number or chapter this order is still useful for anyone reading the charter and wants to navigate through the law code, but also could have just been done reflexively by the judge, reading the *liber* and taking out the relevant passages as he proceeds. The first law cited actually contains the six-month space in which a witness can be discredited (*quo testem liceat infamare*).[1428] But Ponç does not cite this paragraph regarding the time limit, which clarifies that one may object in disapproval of the testimony presented.[1429] Instead he puts emphasis on another passage that states that if a party desires to accelerate the progress of their case then they should produce a witness in court, while if the adversary is present and should declare that he cannot offer anything to contradict said witness, the matter in question should be settled by the judge in favour of the party whose witness had

1426 Ibid.: *Miro namque iamdictus, videns niliusticie obtinere filiorum suorum vocem, sed hoc recognoscere contendens, noluit supradictos recipere testes, sed pertinaciter vociferabat iniustam esse vocem aecclesie Sancti Cucufatis et vocem filiorum suorum iustam.*

1427 Ibid.: *Unde quia lex iubet, iudices receperunt suprafatos testes, quibus testimonium iniunctum fuit per condicionis seriem qui ita testimonium suum confirmaverunt dicentes:*

1428 LV II.4.7: *De his qui falsum probantur testimonium protulisse et de spatio sex mensium, quo testem liceat infamare seu super mortuum non liceat testimonium dare.*

1429 SALRACH, MONTAGUT, *Justícia,* doc. 244: *His autem omnibus sacramentis a testibus datis per auctoritatem legis in qua resonat: «Si quis cause sue cupiens accelerare propositum testem in iudicio protulerit si ille contra quem causam habet presens adfuerit, et quid in reprobacione oblati testis opponat nescire se dixerit, res siquidem ipsa de qua agitur per oblatorum testimonium testium in iure illius ad cuius partem testificaverunt iudicis instancia contradatur».* Which would continue, LV II.4.7: *Ille tamen persone, que se in derogatione prolati testis nescire dixit, quod obicere possit, licentiam consulta pietate porrigimus qualiter infra sex menses et vitia ignorati testis perquirat et cause sue negotium reparare intendat. Quod si infra sex menses non potuerit vitia predictorum testium querere et coram iudice eorum infamiam comprobare, aexactis sex mensibus nullum ei ultra temporis spatium dabitur, quo aut prolatum testem infamem esse convincat aut alium testem pro eadem causa in iudicio proferat, sed quod testimonio eorum extiterit adligatum, valebit perpetuo modis omnibus inconvulsum.*

testified.[1430] The next citation concerns donations granted to churches[1431] but only cites the second half, which refers to donations *per principum.*[1432] This is followed by a short reference to the law of the interruption of the period of thirty years of possession,[1433] clarifying that *what one possesses without interruption for the time span of thirty full years, can in no way be lost afterwards by the legal action of another who claims it*.[1434] Ultimately Ponç cites the law regarding the issue of one claiming land within someone else's limits or boundaries,[1435] clarifying that a property holder who publicly possesses a place with evident signs, without residence of another, claims it in its entirety and for no reason may the integrity of its possession be dismembered, no matter the time that has passed. Therefore, if another introduces himself in an abusive manner, they would not be allowed to harm the holder in any way.[1436]

This selection is a stunning use of the written law as the charter has to work as a standalone document and thus not only refers to the previous charters but fits them into a chronological framework. The selection of words from the chapters cited has an inherent logic – the vocabulary allowed the charter to be a valid document even if Mir did not present any allegations against the witnesses which could result in their infamy, while at the same time referring to the King's precept and still clarifying the decision to grant the rights to the monastery of Sant Cugat as a whole, as the last law does not allow the property in dispute to be divided in half, even though this could have been an agreement acceptable for both sides and had been done in the past.

But the legal argument is not over; the final document, again rather long, functions as a confirmation of the sentence in favour of the monastery of Sant

1430 I mostly follow the translation by Samuel Parsons Scott here, that is for once exceptionally close to the original, see: Scott, S. P. (1910), *The Visigothic code (Forum judicum)* (Boston: Boston Book Co.), p. 59.

1431 LV V.1.1: *De donationibus aecclesiae datis.*

1432 Salrach, Montagut, *Justícia,* doc. 244: *Et per auctoritatem legis inter alia dicit: «Quapropter quaecumque res sanctis Dei basilicis aut per principum aut per quorumlibet fidelium donaciones collate repperiuntur votive ac potencialiter, pro certo censetur ut in earum iure inrevocabili modo legum aeternitate firmetur».*

1433 LV X.2.6: *De interruptione tircenii.*

1434 Salrach, Montagut, *Justícia,* doc. 244: *Et per auctoritatem legis que inter alia insonat: «Nam quod XXX quisque annis completis absque irrupcione temporis possidet, nequaquam ulterius per repetentis calumpniam amitere potest».*

1435 LV X.3.4: *Si alter intra terminos alienos possidere dicatur.*

1436 Salrach, Montagut, *Justícia,* doc. 244: *«Verum et ubi unus possessor sine alterius domini mansoribus publice possidens per evidencia signa locum ex integro vendicare videtur, nulla racio sinit ut eius possessionis integritas decerpatur. Unde si alter illic se per presumptivam introduxerit novitatem, nihil nocere poterit possessori».*

Cugat.[1437] Once more its length can be explained through Mir's refusal to appear in the last court session, as we will see, and thus one is presented with a longer narrative that justifies the final verdict. Again, this court record dates on a Sunday, this time on the 18th of March 1033.

The charter repeats and sums up the several incidents, only to then add some new information about what had happened so far, giving it a slightly different tone before elaborating on the events. Mir arguing for the rights of his son is mentioned briefly while the long answer of the abbot is given more attention. He told Mir that he does not know about the *aprisio* of his children's grandfather, but rather that the Frankish Kings and the *marchiones istius patriae comites* granted his monastery the rights through their authority and scripture, and that at great cost, hard work and dangers he made the barren land grow while building fortifications against the pagan attacks.[1438] After a short summary of their arguments the reader is informed that after the first court session Mir Geribert went to see the judge Ponç Bonfill Marc in Barcelona,[1439] with the dual purpose of invalidating the abbot's testimonies with various accusations and demanding a warrant from the judge to collect the testimony of two witnesses of his own, named Giscafred and Llobató, who would testify in regard of the *aprisio* of Galí. According to Ponç, Mir Geribert made several accusations in an attempt to discredit the integrity of the witnesses[1440], which he as a judge patiently listened to (*pacienter audivit*), as the law decreed he should.[1441] Mir first accused

1437 Leaving out the eschatocol. SALRACH, MONTAGUT, *Justícia,* doc. 246: 1209 words.

1438 SALRACH, MONTAGUT, *Justícia,* doc. 246: *Dicebat iste petitor Miro, quod iuris filii sui predicti debebat esse per aprisionis vocem, quam proavus suus Galindo fecerat ex predicta possessione. Ad hoc autem dicebat abbas supradictus: «Hanc autem aprisionem, quam dicis, nescio, sed scio quod reges Francie et Romanorum presules necnon et marchiones istius patriae comites confirmaverunt per illorum auctoritates et scripturas in iure aecclesie mei monasterii hanc possessionem, quae a me requiritur, et ego retineo, quam de heremi squalore magnis dispensis et duris laboribus atque periculis ex parte ad culturam perduxi, et municiones contra infestacionem paganorum ibi construxi». Hec autem, eo dicente, ostendit privilegia et precepta regum et scripturas comitum ex his et aliis possessionibus supra meminite aecclesiae decenter confecta.*

1439 SALRACH, MONTAGUT, *Justícia,* doc. 246: *His autem testibus receptis a iudicibus et confirmata ipsa possessione ab eis in iure iam dictae aecclesiae, sicut lex iubet, postquam Miro predictus abstraxit se sine consultu iudicum de ipsa audientia, et quod noluit recipere supra notatos testes, venit ante iudicem Bonumfilium Marchi Barchinone et dixit illi quia habebat quod racionabiliter acusare valebat contra testes supra meminitos, qui iam dictum testimonium dederant.*

1440 Comp. LV III.5.3: *De viris ac mulieribus tonsuram et vestem religionis prevaricantibus.* […] *Personis vero talibus accusandi vel testificandi atque aliena negotia presequendi licentiam penitus abnegamus, quia non poterunt in negotiis secularibus fideles existere, qui devotionem sanctam ausu comprobantur sacrilegio temerasse.*

1441 Ibid.: *Iudex quoque ipse, sicut lex iubet, pacienter audivit quod idem Miro unicuique ipsorum testium obitiebat.*

Gelmir of breaching celibacy as a monk and of fathering children with concubines.[1442] Against Guilarà he brought forward the claim that he had committed adultery with a married woman and had even admitted it in front of the abbot,[1443] and finally he accused Godmar of having himself circumcised (*circumcisionem carniis prepucii sui exercuerat*) in imitation of the Islamic religion (*fidem muthleemitarum imitando*).[1444]

Mir agreed to prove his accusations with witnesses and[1445] furthermore presented his own pair, Giscafred and Llobató, insisting their testimony be heard.[1446] Ponç, however, warned Mir that if he failed to defame the witnesses of Sant Cugat the testimony of his own witnesses would have no value in the face of the older rights of the monastery.[1447] Nevertheless, Ponç accepted the declaration of the witnesses on the 31st of December 1032.[1448] Ponç notified the abbot Guitard of Sant Cugat and the viscount Guislabert that *ut reiterarent ipsam audienciam et audirent quid supradictus Miro contra sibi prolatos testes dicere asserebat.*[1449] They considered it unjust as more than six months had passed but nevertheless agreed to have another trial on the matter at the church of Santa Maria de Cornellà on the 8th of March 1033.[1450] Despite

1442 Ibid.: *Obiciebat siquidem Gelmiro, sacerdoti, quod ipse monachus cum benediccione habitus et ordinis monacorum fuerat, et apostatizando ad laicalem conversacionem redierat, concubinas apetendo et filios ex his procreando, habitu religionis monacorum derelicto.*

1443 Ibid.: *Guillarano quoque obiciebat quod alienam uxorem adulteraverat et in audientia domni Guitardi, predicti abbatis, hoc recognoverat, et petitori pro hoc satisfecerat.*

1444 Ibid.: *Gondemaro quippe quod circumcisionem carnis prepucii sui exercuerat, a fide christianitatis deviando et fidem muthleemitarum imitando.*

1445 Ibid.: *Hec audiens iudex prefatus requisivit eundem Mironem utrum per idoneos et ad hoc sufficientes testes convincere valebat quod testibus obiciebat, an non. Et quia ibi non habebat sufficientes ad hoc testes, dixit se inquirere alios illis meliores quibus infamiam a se obiectam, contra se, prolatis testibus, comprobasset. Nec non et rogavit eundem iudicem, ut mandatum faceret idoneis susceptoribus de testimonio aprisionis praedictae, quam Galindo fecerat.*

1446 Ibid.: *Iudex autem in suis responsis dixit ei: «Hoc vero mandatum, quod a me requiris fieri, propter metum preocupacionis mortis testium supradictae aprisionis, eo quod unus illorum gravi detinetur infirmitate et alter iam manet in decrepitate aetate, semper erit invalidum, et omni auctoritate iusticie carebit, nisi prius testes contra te prolatos infames esse conviceris, aut falsum contra te dedisse testimonium secundum ordinem legis prius eos comprobaveris».*

1447 The use of word *ductus inutili acceleracione* is a reference to the above mentioned law LV II.4.7. Ibid.: *Ipse vero iam dictus Miro, ductus inutili acceleracione, tandem compulit eundem iudicem quod fecit ipsud mandatum de testimonio quod Giscafredus, qui adhuc gravi detinebatur infirmitate, et Lobatonus, qui aetate decrepitus erat, dederunt de prefata aprisione, sub eo scilicet modo et ordine, ut si iustum atque necesse fieret hoc quod mandatoribus suis iurare audierunt, ipsi, qui illud mandatum susceperunt, suo testimonio confirmarent, non ante, sed quando iudices hoc iuste iudicassent.*

1448 Ibid.: *Facto autem supradicto mandato, idem iudex iterum monuit eundem Mironem ut vel tunc ageret de infammacione testium contra se prolatorum quod prius facere debuerat antequam mandatum fieri imperasset, si cupiebat quod ipsud mandatum aliquam vocem auctoritatis retinuisset in futurum, quod fuit factum pridie kalendas ianuarii, anno II regni regis Enrici.*

1449 Ibid.: *Qua causa idem iudex monuit Guitardum, supradictum abbatem, et domnum Guislibertum vicecomitem, qui eandem possessionem per ipsum retinebat, ut reiterarent ipsam audienciam et audirent quid supradictus Miro contra sibi prolatos testes dicere asserebat.*

1450 Salrach, Montagut, *Justícia,* doc. 246: *Et quamquam ipsi dicerent quod iniuste eos compellebat*

having been reminded of the date at the door of the Cathedral in Barcelona by the judge, in front of the bishop with many men standing around, Mir Geribert did not appear on the agreed date.[1451] Ponç even waited for another 10 days after that[1452] *ultra placitum constitutum* for him to appear and to ensure that the legal prerequisites were given so that *iudicii scriptura valorem perpetuum obtineat*.[1453]

Finally, as Mir still did not appear Ponç fully confirmed the rights of the monastery over the possessions at Calders,[1454] adding that the abbot would have been prepared for the trial.[1455] He signs as a judge[1456] but in contrast to the other documents this charter was actually written by a scribe named Bellhom.[1457]

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reiterare audientiam, quoniam spatium sex mensium infamandi testes iam transierat, utrique tamen venerunt ad audientiam ad diem constitutum VIII iduum martii, anno II Henrici, regis, in loco constituto ad ecclesia Sancte Marie in territorio Barchinonensi quod dicitur Cornelianum.

1451 SALRACH, MONTAGUT, *Justícia,* doc. 246: *Supradictus autem Miro, qui similiter a iudice ante domnum Guadallum episcopum multosque alios idoneos viros circunstantes ad osteum catedralis aeclesiae Sancte Crucis comonitus fuerat ad diem constitutum venire ad audientiam, non venit, sed de placito constituto se abstraxit.*

1452 The time span of 10 days is mentioned several times in the Visigothic law; the closest instance for this case would be LV II.3.5. Nevertheless, the law is not really fitting and it seems that Ponç waited 10 days more out of convention instead of in regards to a special law, and to leave no doubt about the validity of his final verdict. That Ponç mentions *XI diebus* probably is due to him also counting the day of the trial. The charter dates exactly 10 days afterwards.

1453 SALRACH, MONTAGUT, *Justícia,* doc. 246: *Et ut haec: iudicii scriptura valorem perpetuum obtineat ultra placitum constitutum et supra determinatum, expectavit idem iudex supra dictum Mironem XI diebus, ut vel ad diem super adieccionis veniret ad placitum, quod si aliquid habebat quod rationabiliter accusaret vel diceret, licentiam habuisset. Unde quia neque ad diem super adieccionis noluit venire, sed contempsit, iudex supradictus confirmavit hanc iudicii scripturam in iure donacionis aecclesie Sancti Cucuphatis ex supra meminita possessione, unde intencio vertebatur, ut aeternaliter vigorem plenitudinis obtineat.*

1454 Ibid: *Unde quia neque ad diem super adieccionis noluit venire, sed contempsit, iudex supradictus confirmavit hanc iudicii scripturam in iure donacionis aecclesie Sancti Cucuphatis ex supra meminita possessione, unde intencio vertebatur, ut aeternaliter vigorem plenitudinis obtineat. Et si quis contra hoc iniuste venire temptaverit, componat XII libras auri aecclesie prenotate, et insuper huius iudicii scripturam firmitatem in omnibus obtineat.*

1455 Ibid.: *Sub istorum et aliorum presentia multorum supradictum placitum stabilitum fuit, et supradictus abbas Guitardus paratus fuit ad respondendum si haberet cum quo placitus fuisset.*

1456 Ibid.: *S+m Poncii, cognomento Bonifilii, clerici et iudicis, qui hoc legaliter examinavit, et iuste definitum sciens subscripsit, et testibus firmare optavit.*

1457 Ibid: *S+m Bellihominis, cognomento Geraldus, levite, exarator et SS et sub die et anno prefixo.*

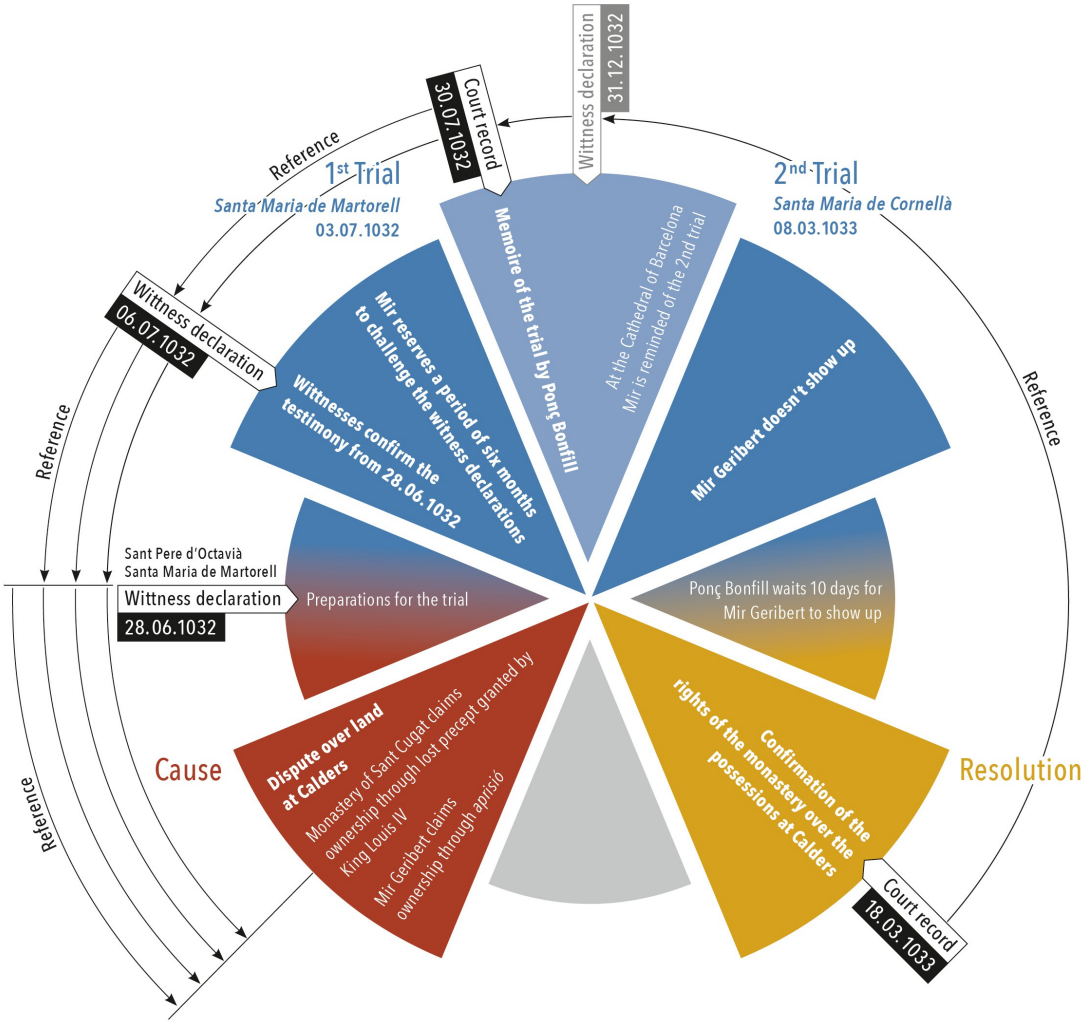


Fig. 17: Graphic of the Trials Between Mir Geribert and Sant Cugat

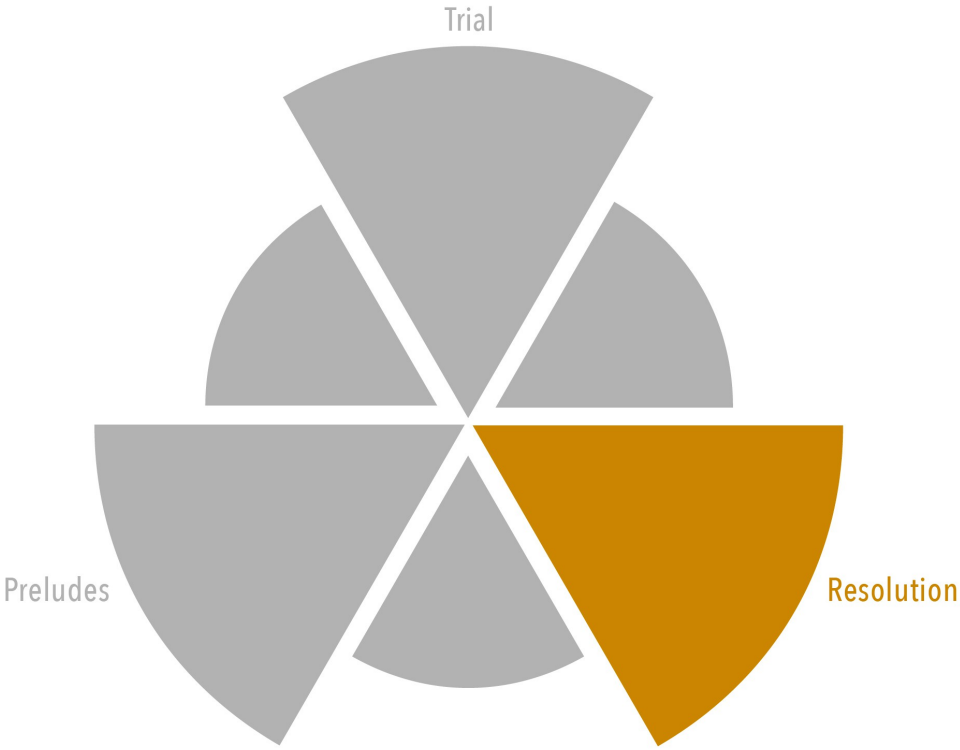
There are certain similarities to other examples in which one side abandoned trial. Mir Geribert was confronted with the legal expertise and a well-prepared witness list from Sant Cugat and lost his case because of the resurfacing of scriptures from the past. He went to trial anyway and the question is: what expectations did he have? Surely he was aware that in the past the property had already been shared and divided once; he had every reason to hope for at least a similar outcome or perhaps some kind of compensation payment. After the first session he must have understood that his odds were low but was well aware that the weak spot in the abbot's whole legal argument was the three witnesses, as the scriptures predating the *aprisio* were lost. To attack their moral integrity through infamy, discrediting the witnesses while then presenting some of his own, seemed to have been the only possible legal strategy at that time and he proceeded with it. Was it his own legal expertise or was it Ponç clarifying that this would be the only legal way?

Mir Geribert, according to Ponç, does everything wrong. He is an ill-tempered, impatient individual that tries to bend the laws to his advantage. During the first trial he leaves early, then leaves others waiting at the second. The two court records are written afterwards and show the end result, which included the rather preposterous accusations against all three witnesses, which Ponç patiently listened to, advising him on the law only to find out that Mir had nothing to back up his claims, thus discrediting any believability in these allegations for someone hearing or reading this account. The change in narrative from one court record to the next is striking; the reasons can be found in the first still being considered open, and thus not yet having a positive disposition towards one narrative and of course therefore not explicitly marginalising the other. This is clearly the case in the final verdict. While the effort of Mir's grandfather to fortify and defend the frontier is articulated as an argument by the descendants, it is the abbot who is depicted as the active defender and cultivator of land. The marginalisation of Mir's viewpoint and accounts must have made it impossible for him to even consider that he could achieve what he considered just through a court of law. Moreover, if credit is given to the narrative presented by Mir as a castle-holder in frontier territory, then the ideological background of defending the land is colourful and the continuous intrusion by the monks of the hinterland must have felt like an insult to the ones facing the real threat.

The episode surely foreshadowed events and set the stage for future drama, however Mir Geribert's behaviour was not out of the ordinary in the sense that he was not particular rebellious; he abandoned trial like others did to show his disdain over the decision while he continued to fight his case still within the framework of the law. for a bit.[1458] Unlike others the future self proclaimed "Prince of Olèrdola", however, was capable of establish a legally independent power base in the south due the political situation the new count of Barcelona navigated into years in the future. His emotions are hidden behind the narrative of anger and the ignorance of the law, however it is the future disdain of the comital court that gives this early episode a certain credibility hard to ignore.

1458 For a similar reading of the future conflict, comp. Lluch i Bramon, Rosa (2018), 'El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)', *Anuario de Estudios Medievales*, 48/2, p. 817: Personalment, em sembla que la terminologia utilitzada per la historiografia ens indueix a pensar que el que va fer Mir Geribert era destructiu, era il·legal (si és que podem parlar de legalitat en aquell temps). S'assegura que es va revoltar, que va atacar al poder establert, que va actuar amb traïdoria, s'utilitzen conceptes negatius que posen l'accent en el suposat mal comportament dels senyors de la frontera. Quan potser el que pretenien era obtenir el màxim benefici possible en un context de canvis en el qual els poders tradicionals també estaven canviant i, a més, tenien altres problemes que els feien descuidar la frontera. Jo no qualificaria el que va fer Mir Geribert de revolta ni de sublevació sinó que ell mirava de protegir-se i probablement de defensar a Sanç i els interessos de Gombau de Besora i, si aconseguia més quotes de tot, millor, i ho feia mentre el comte estava ocupat en altres qüestions i territoris.

IV.3. Resolution



IV.3.1. Security Charters & Waivers of Complaints

Charters were defined in the *eschatocol* according to the legal matter they were drafted for. Strictly speaking one can therefore make a distinction between a security charter defined as such by contemporaries as a *carta securitatis*[1459] or *scriptura securitate*[1460] and other charters that are defined, for example, as an evacuation of property but also serve as a security charter.[1461] The emphasis in the latter usually lies on the legal issue, for instance, the evacuation of the rights of the property, but as certain securities are guaranteed these documents also function as security charters. That this is not just a simple use of terminology but has real legal implications – and how far these reach – will be examined in this chapter.

Securitas as a term in the legal documentation analysed here has two important meanings attached to it.[1462] Firstly, the word is used as the acknowledgement of someone else's right.[1463] On the other hand the winning side can be assured to be *securiter* for the future, in the sense of being undisturbed about the case they won or that was resolved legally.[1464] In that sense a standardised expression like *quiete et secure* has to be understood as not having to worry or not being bothered legally thus

1459 SALRACH, MONTAGUT, *Justícia,* doc. 369: […] *nos qui ista carta securitate firmamus et testes firmare rogamus.*

1460 Ibid*,* doc. 113: *Facta ista scriptura securitate III kalendas aprelis, anno III regnante Ugone rex.*

1461 Ibid*,* doc. 150: *Facta securitate et exvacuatione IIII nonas iunii, anno XIII regnante Robertorege, filium condam Ugoni. S+m Bella femina, S+m Uristia, nos qui ista exvacuacione fecimus et testesfirmare rogavimus.*

1462 Schrimm-Heins attributes a change in meaning to the 16th and 17th Century, seeing the word *securitas* undergo a change from Antiquity to the Middle Ages where it is reduced to a topos within the legal documentation. The author focuses on contracts of protection (Schutzverträge) and the performance of oaths (Eidesleistungen) but leaves aside the notion of documents as artefacts of guarantees: Schrimm-Heins, A. (1991), 'Gewissheit und Sicherheit: Geschichte und Bedeutungswandel der Begriffe certitudo und securitas (Teil I)', *Archiv für Begriffsgeschichte*, 34, p. 150: Als Konkretisierung des allgemeinen Begriffs tritt also der rechtliche Aspekt in den Vordergrund und führt zu einer die Bedeutung von securitas mindernden Einengung des Geltungsbereichs. Securitas wird zu einem Topos in Verträgen, förmlichen Abmachungen und Eidesformeln und bezeichnet entweder ein Ziel des Vertrages (nämlich den Schutz bestimmter Personen oder Güter in Schutzverträgen) oder die Garantie bzw. den Eid für die Gewährleistung bestimmter versprochener Leistungen. See also: Conze, W. (1984) 'Sicherheit, Schutz', *Geschichtliche Grundbegriffe*, 5, p. 831-862.

1463 Niemayer, *securitas*, p. 951-952. Besides the word is used to describe a guarantee or surety, for example in the case of receiving hostages, to ensure a contract, or that the outcome of a trial by combat is secured. SALRACH, MONTAGUT, *Justícia,* doc. 482: […] ut acciperet securitatem per hostaticos […]. SALRACH, MONTAGUT, *Justícia,* doc. 541: *De his, autem, omnibus sacramentis, uno facto et victo, sit de supradicto castello diffinicio et securitas facta ipsi parti que potuerit conquirere eum per hoc iudicium*. Comp. Kosto, A. J. (2012), *Hostages in the Middle Ages* (Oxford: Oxford Univ. Press), p. 41-48.

1464 Niemayer, *securiter*, p. 952.

being *sine* [...] *inquietudine et molestia*.[1465] The difference between the acknowledgement of rights and the assurance of not having to go to court for the same allegation or dispute anymore is indeed small, but is expressed in the sources.

This chapter first deals with the security charter as its own type and then moves on to have a closer look at the notion of *securitas* and its relationship with disputes about inheritance. As waivers of complaints also serve as a guarantee to end legal quarrels and thus work in a very similar fashion, they are examined at the end of the chapter.

1465 SALRACH, MONTAGUT, *Justícia,* doc. 141: *Et in antea easdem vias et exios prefatos prenotati habitatores eos habeant, prossideant quiete et secure.* Ibid, doc. 171: *Quantum iste affrontationes includunt, nos prescripti iudices legaliter sic confirmamus et consignamus in subditione prenotate ecclesie sive episcoporum famulancium illi: ut ab hodierno die et tempore quiete et secure habeant ibi ipsam supra scriptam dominationem et subditionem sine cuiuslibet inquietudine et molestia.*

IV.3.1.1. Security Charters and Accusations

Keep far from a false charge, and do not kill the innocent and those in the right, for I will not acquit the guilty.[1466]

The concept of a security charter as a document type in its own right, that serves as a legal guarantee and a reminder that a case is closed and that the accused can never again be prosecuted for the same matter, is only preserved in a few examples.

In 990 Ramió had a security charter drawn up for a man called Juli who often stole bread and wine out of his cellar, amongst other belongings, while in his house.[1467] Through this charter Ramió assured the thief that neither counts, viscounts nor any other authority, nor any of his own descendants will prosecute him for the thefts he had committed.[1468] This security charter is special as it concerns what could be considered a minor crime and as such raises the question of how common these charters actually were, as one can imagine a whole variety of scenarios wherein one party desires to have a certain legal security for the future.[1469]

The other three examples are related to the more severe accusation of homicide, for which assurances to avoid future prosecution seem more crucial. Charters of this type cannot be found in Catalan formularies;[1470] it did exist as a category in the Carolingian world from at least the middle of the 8th Century onwards, but only started to appear in Catalonia during the 11th Century.[1471]

1466 Exod. 23:7.

1467 Dated March 30, 990. SALRACH, MONTAGUT, *Justícia,* doc. 113: *In nomine Domini. Ego Ramio donator. Certum quidem et manifestum est enim quia placuit animis meis et placet nullus pioegentis imperio nec suadentis ingenio set propria et expontanea hoc elegit mihi bona voluntas ut tibi homine nomine Iuliu scriptura securitate facio tibi de istum furtum quod tu mihi fecisti intus in domo mea plures vices et furasti mihi panem et vinum de meo cellario et de alio meo avere dum maneres in domo meo privatus sic fecisti mihi istum furtum de multas res.*

1468 Ibid: *Et ego Ramio facio tibi Iulium securitatem nec ullus comes nec vicescomes nec nullus asertor nec nullus de posterita mea inquirere nec inquietare faciat tibi. Quod si ego Ramio aut ullus homo qui contra ista securitate venerit ad inrumpendum aut ego venero componat in vinculo auri libra I, et in antea ista scriptura securitate firmis et stabilis permaneat omnique tempore. Facta ista scriptura securitate* […].

1469 Comp. Kosto, A. J. (2005), 'Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia', *Speculum*, 80, p. 44.

1470 Neither in the *Formulae Visigoticae* (ZEUMER, *Formulae*, p. 572-595), nor in the formulary from Ripoll, comp. Zimmermann, M. (1982), 'Un formulaire du Xème siècle conservé à Ripoll', *Faventia*, 4/2, p. 76-86.

1471 Zeumer dates the *Formulæ Turonenses* to the middle of the 8th Century and the charter model *Securitas de homicidio* comes close to the examples presented here, see: ZEUMER, *Formulae*, p. 156. Ian Wood suggests Teutsind, the father and abbot of the monastery of St Martin of the church of Tours, who was elected in 734, as a possible compilator of the formulary, comp.: Wood, I. (2010), 'Teutsind, Witlaic and the history of Merovingian precaria', in W. Davies and P. Fouracre (eds.), *Property and Power in the*

Through a very peculiar court case that must have received quite some attention in the city of Barcelona in the spring of 1023, besides shedding some light on this type of charter, one also gets some insight into the spheres of legal competence between the court of the count and the episcopal see.[1472] The case was first held in the *audientia* of Berenguer Ramon I, count of Barcelona, Girona and Osona, his wife, Sança de Castilla and the canons and clergy of the see of Barcelona. The case was brought in front of the count with the attendance of a big crowd and the three judges Tudiscle, Giscafred and Joan.[1473] A *levita*, also named Joan, was accused of having killed some of his confrères.[1474] Joan was interrogated by the judges and the charter only gives his words of defence, stating that his conscience is clean while at the same time questioning the authority of the *seculari iudicio.* The count agreed upon Joan's right of substitution as Berenguer Ramon did not want justice to be ruined[1475] and consequently the case was moved to the ecclesiastical court so that *episcopus aut ecclesiastici iudices* could judge the petition.[1476] In the church, probably the cathedral of Barcelona, the "ecclesiastical judges" from the see discussed the allegations and heard the testimony only to finally pronounce the sentence that Joan had to cleanse his conscience through an oath that he neither committed nor instigated the killing of the men.[1477] After receiving his oath the secular judges then had to swear and guarantee that Joan will never be prosecuted by them again. This *pactum hoc securitatis* also involved a pecuniary guarantee in the

Early Middle Ages (Cambridge University Press), p. 43. For the relationship between the Formulae Turonenses and the Epitome Aegidii, the *Lex Romana Visigothorum*, see: Faulkner, T. (2016), *Law and Authority in the Early Middle Ages* (Cambridge: Cambridge University Press), p. 231-238.

1472 For this case, see: Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10, p. 65-66.

1473 SALRACH, MONTAGUT, *Justícia,* doc. 203: *Anno Dominice Trabeacionis post millesimum XXI, orta est audiencia in conspectu domni Berengarii, marchionis comitis, coniugisque sue domne Sancie comitisse, assistente chaterva tam primatum quam aliorum, cui interfuerunt quidam causidici,* […].

1474 Ibid., doc. 203: *Dicebant enim adversum eum quod occiserat iniuste viros illis iunctos propinquitate germanitatis.*

1475 Ibid.*,* doc. 203. *Attamen predictus Iohannes respondens dixit: «Hoc enim quod contra me malum obicitis, non egi mundamque conscienciam meam ab hoc facinore debeo. Set non est michi licitum causa per vobis cum in seculari iudicio nisi exsores exefficiar cannonice regule». Ad ista quippe iurgia sopienda supra memoratus comes ita locutus est: «Volo enim ut iusticia ne depereat set, me aut meo assertore presente, cito compleatur, conservatis nichilhominus cunctis que Sancti Patres ad honorem Sancte Dei Ecclesie statuerunt et cunctis institucionibus atque stabilitatibus que reges et antecessores mei specialiter Barchinonensi ecclesie et illi presidentibus aegerunt et annuerunt».*

1476 Ibid.*,* doc. 203. *Aquapropter petitores alloqutus est ita: «Cesset ab inceps vestra annosa pulsacio et ite intra sinum Ecclesie. Et illic aut episcopus aut ecclesiastici iudices vestram peticionem definiant, secundum quod norunt sibi cannonice stabilitum».*

1477 Ibid.*,* doc. 203. *Discussis namque ab utraque parte inpugnacionibus et requisitis testibus a parte pulsancium et minime profertis, ecclesiastici iudices talem dederunt sentenciam: «Debet Iohannes levita expiare conscienciam suam sacramentis quod non occisit prefatos viros neque iussit aut consiliavit occidi eos».*

sanctio of the considerable sum of 300 solidus if they should appeal to the court again.[1478]

The lack of information, like the exact accusations or the names of the litigating party, is because the charter guaranteed that Joan would not be brought in front of the court again and was drafted with that goal in mind. That is also the reason why his defence was recorded as it is important for the narrative structure of the charter. His words deliver the main argument by giving an explanation of why the secular judges had no right to bring him in front of the count's court in the first place. The absence of detail leaves a lot of space for speculation. Was Joan guilty but protected by the higher clergy, making it a bold move of the plaintiffs to bring him before the count's court, or is it the other way around and Joan was innocent but was brought there because public opinion was against him – or, on a third hand, did the count just act outside of his sphere of legal influence? The accusations did not seem to have been very solid, in any case, as a simple oath was enough to set the alleged free. Anyhow, the case was definitely a political issue as well as a legal one and shows how the counts of Barcelona respected the immunity of the see of Barcelona in legal affairs, and this detail may well have helped the charter to be preserved as a "remarkable" case.[1479]

In a very similar fashion in 1037 a woman named Ermessenda commissioned a security charter for a man named Domènec.[1480] The key details of the circumstances are explained briefly in the charter. Ermessenda initiated a legal case together with her sons at Sant Pere in Vic because of the death of her husband. They suspected (*putare*) that Domènec had killed her husband but were never able to prove it in court. As Domènec desired to expurgate himself legally from the crime Ermessenda agreed to forgive him for divine charity and a remuneration, a total of two gold mancus.[1481] Again

1478 Ibid., doc. 203: *Uunde ne ad futurum reiteraretur peticio, ista est ab eis confirmata paccio: «In Christi nomine. Ego Teudisclus et Giscafredus et Iohannes, [...] facientes tibi Iohanni levite pactum hoc securitatis, ut ab odierno tempore quietus et sine aliqua pulsacione nostrorum supra dictorum mortis maneas propinquorum Stephani, scilicet, levite et Raimundi, inducimus super nos huius instruccionis penam ut, si in postmodum temptaverimus te propter hoc apellare, CCCtos solidos aureos componamus tibi. Et insuper hoc firmum permaneat».*

1479 The notes on the verso of the original from the 16th/17th Century speak for themselves, BAUCELLS, *Diplomatari*, doc. 362: *Notabilis carta / super forma iudiciorum / antiquorum.*

1480 SALRACH, MONTAGUT, *Justícia,* doc. 259. For this case, see: Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10, p. 65.

1481 Ibid., doc. 259: *Ego Ermesinda petivi te, Domenicho, pro me et pro filiis meis per morte viri mei, pater illorum, in placito gudichum et seniorum in sancta sede Sancti Petri Vicho, eo quod putabam ut occidiset eum quem nullatenus probare potui set tu voluisti te legaliter ex oc crimen expurgare quem nos ut vidimus te contra nos satisfacere te dimitimus tibi pro divina caritate vel remuneracione omnem molestiam vel inguriam quod exinde tibi accidere debet, ut Deus omnipotens absolvat prefati viri mei et nos et omnium observiancium oc abens vinchula peccatorum.*

details are missing but it is hard to imagine this agreement being anything other than the result of intervention by skilled judges seeking a permanent solution. The charter is defined as a security charter as it guaranteed that Domenèc could never again be prosecuted for the matter, but is also a definition because Ermessenda, not unlike many cases of complaints, gave up the accusation she had initiated.[1482] She did so not only for herself but also for her sons, as they were the potential risk factor since they would be the ones most likely to attempt to reopen the case.

In the last example from the turn of the century (1096) we get an insight into the veguer's office of the city of Barcelona.[1483] A certain Baró Tudiscle, accused of having killed a man named Berenguer Gotard in the suburbs of Barcelona, did not appear in court and therefore was most probably found guilty of the crime. As a consequence the two veguers, Albert Bernat and Berenguer Bernat, had his property confiscated. After the death of Baró Tudiscle, his son Guillem Baró delivered some unspecified goods and consequently received his father's property back. But what is more important is that the charges (*querimonia*) against him and his father were waived and from that point on he could hold the property *securus atque quietus*.[1484] The charter functioned in the same way as the security charters mentioned above but was not considered as a security charter itself per se.[1485] The tendency to create waivers of complaints fits into the growing notion of pacifying conflicts, in the sense of finding a final resolution that closes the case in a way that involves the plaintiffs and establishes a new undisputed legal reality, as an open unresolved *querimonia* was understood as an ongoing conflict that could transcend even the death of the perpetrator.

These few cases show that security charters were used to guarantee the defendant that the case would be put to rest. The difference between these examples, and the model for a charter in the formulary of the 8th century, is clearly one of

1482 Ibid., doc. 259: *Facta difinicione vel sechuritate. S+m Ermesinda, qui a vice filiis meis et me medipsa anc peticionem vel difinicionem feci et firmare rogavi.*

1483 SALRACH, MONTAGUT, *Justícia,* doc. 522.

1484 Ibid., doc. 522: *Ego presscriptus Arbertus Bernardi, una cum Berengario Bernardi prefati, pacificatores atque definitores sive evacuatores sumus tibi Guilelmi Baroni omnes illas querimonias quas habebamus ex patre tuo et ex te ex interfeccione predicti viri vel per alio quolibet modo. Insuper reddimus tibi ipsas domos et orto atque alodio, quod habebamus abstractum a potestate patris tui et tue, ita ut ab odierno die et deincebs securus atque quietus teneas et possideas pleniter atque firmissime, ad faciendum tibi quicquid placuerit.*

1485 Ibid., doc. 522: […] *et insuper fecissent illi scripturam definicionis atque evacuacionis sive pacificacionis, sicuti inferius videtur esse scriptum in hac pagina.*

vocabulary and not of application.[1486] The general concept is that if the compensation for homicide was paid no further allegations were permitted. Nevertheless the difference is that the model of a charter is specifically designed for the homicide of family members of the plaintiff.

Accusations themselves are immaterial but start to exist within the community when vocalised. Even when the plaintiff is losing the case because of missing evidence, the determination to go to court could invoke infamy through talk within the community. The desire to have a material counterweight in form of a charter must be understood in that context, as it allows the accused to have an official statement that gives legal certainty suppressing further allegations.

This also explains why this type of document is so rare, as it is not linked to property and the motivation to preserve such a charter is lower as it is of no use to future generations after the death of the accused. Abiding by this logic the notion of legal *securitas* is far more frequently attested to in matters regarding some sort of property, rights or goods.

1486 ZEUMER, *Formulae*, p. 156: *Securitas de homicidio. Fratri illo ego enim ille Dum et omnibus habetur percognitum, qualiter tu ante hos dies, instigante adversario, germano meo, vel quolibet parente, interfecisti unde et postea ex hoc conprobatus apparuisti, et ante me apud illum iudicem exinde in rationes fuisti et pro integra conpositione pro iam dicto parente meo pro ipsa morte, sicut mihi bene conplacuit, argentum soledos tantos dedisti: ideo hanc epistolam securitatis tibi ex hoc emittendam decrevi, ut neque a me neque ab heredibus meis neque a quolibet opposita vel emissa persona nullam calumniam neque repetitionem de iam dicto homicidio habere non pertimescas, neque to neque ullus de parte tua, qui tecum commorantur, sed ducti atque securi in omnibus exinde valeatis residere. Si quis vero, si fuerit aut ego ipse aut ullus de heredibus meis seu quislibet persona, qui contra hanc securitatem venire aut agere vel refragare temptaverit, et a me vel ab heredibus meis defensatum non fuerit, sociante fisco, qui litem intulerit soledos tantos conponat, et sua repetitio nullum obteneat effectum, sed sit inter nos vel heredibus nostris ex hac re omnique tempore calcanda causatio. Et hac securitas meia vel bonorum hominum manibus roborata cum stipulatione inserta diuturno tempore maneat inconvulsa.*

IV.3.1.2. Inheritance and security charters

Those who trouble their households will inherit wind, and the fool will be servant to the wise.[1487]

The examples show that the term *securitate* was used to give the party who won a trial the security of knowing that no one would be permitted to reopen the resolved case. The biggest part of the preserved documentation, again, revolves not around crimes but around property. Security charters were used in the above-mentioned way after quarrels about inheritance had been resolved judicially. Nearly all cases that were brought to court that involved quarrels about inheritance with the potential threat of the case being reopened by family members or future generations are in some way or another expressed through the notion of *securitas*.

The motivation to avoid future claims by family members, heirs or successors is only sometimes expressed explicitly and is more typically reduced to the notion of possessing the disputed property *securi et quieti*.[1488] Consequently in these cases where one side abandons a right we find the term linked with an evacuation,[1489] or a donation in the case of ecclesiastical institutions.[1490] On many occasions if an agreement between the two sides was reached it was seen as a pact of insurance[1491] or if the legal situation needed it the security charter explicitly mentioned both pact and evacuation.[1492] Sometimes this was expressed directly as a *scripturam sequritatis*[1493] or

1487 Prov. 11:29.

1488 SALRACH, MONTAGUT, *Justícia,* doc. 467: […] *et per istam scripturam facimus vobis talem securitatem* […] *vobis et heredibus et successoribus vestris, ut nos aut ullus homo iam non requirat.* Ibid., doc. 461: […] *ut ab hodierno die et tempore securi et quieti de hac repermaneatis*. Ibid., doc. 535: […] *ut ab hodierno die et tempore securi teneatis* […].

1489 SALRACH, MONTAGUT, *Justícia,* doc. 150: *Et in antea hanc securitatem vel exvacuacionem firma permaneat modo vel omnique tempore. Facta securitate et exvacuatione* […]. Ibid., doc. 154: *Igitur nos prefati Gitardus et Borrellus recognoscimus illorum directum et facimus illis hanc securitatem et exvacuationem* […] *Facta exvacuatione vel securitate* […]. Ibid., doc. 192: […] *et hanc pacta vel securitatis aut exvacuacionis non sit disrupta nec modo nec postmodo.* Ibid., doc. 440: *In Christi nomine. Hec est scriptura definicionis hac securitatis* […].

1490 SALRACH, MONTAGUT, *Justícia,* doc. 227: *Ego Ilia et Dagoberto, nos insimul donatores ha]nc securitatem promto animo facimus.* […] *et in antea ista securitate vel evacuatione sive donatione firma permaneat modo vel omnique tempore*.

1491 SALRACH, MONTAGUT, *Justícia,* doc.247: *Actum est hoc pactum securitatis et firmitatis* […]. *S+ Sicardis femine, que hoc pactum securitatis, nullius cogentis imperio nec suadentis ingenio, fecit et firmari rogavit.* Ibid., doc. 281: […] *nos hoc pactum sequritatis fieri iussimus et firmavimus et firmari rogavimus.*

1492 SALRACH, MONTAGUT, *Justícia,* doc. 342: [...] *pactum definicionis atque evacuationis* […]. Ibid., doc. 432: *Hec est pacta vel placita sive securitate aut exvacuatione qui est facta interdomno Reimundo Arnall et Bernard Radolf et fratris suos Compann et Petro deipsum alodium qui est in villa Favan.*

1493 SALRACH, MONTAGUT, *Justícia,* doc. 240: […] *et viro tuo predicto Borrello facere scripturam sequritatis expiare sacramentus* […]. Ibid., doc. 523: […] *hanc eis exinde securitatem facimus*.

achieved *hanc securitatem* in the court, as in cases like the one between the two brothers Ramon and Guillem and their probably older brother Bernat, in which the younger brother demanded part of an inheritance.[1494]

The connection between inheritance issues and securities formulated in the charters leave no doubt that this was a concern of contemporaries and the varieties in how the charters are drafted is closer to a modular approach, as the legally relevant parts like a definition or evacuation can be added as simply as the notion of *securitas*.

The clearest example is a short straightforward charter dating in the year 1047 which shows a lot of the different elements in a very concise way. After the short *invocatio, In nomine Domini*, a man called Rossell states that he made a pacification to the priest Bonfill.[1495] The reason why this is considered a *pacificatio* is given straight away as they have had long-lasting contentions and complaints regarding a piece of land that had belonged to Rossell's father.[1496] They came to a peace because of the intervention of *bonis hominibus*[1497] and thus Rossell received half a mancus for his pacification from Bonfill[1498]. The evacuation and security charter was drafted so that from that day on Bonfill firmly possessed the disputed property.[1499] The charter explicitly marks the end of a conflict (pacification), the transference of property rights to a new holder (definition) and the willing withdrawal of the old owner (evacuation).[1500]

The document does not look like an agreement reached in court at first sight, but all the elements, including the "good men," the definition of securities, and the notion of the pacification of a conflict are given, the document is structured like other court documents and all points towards an arbitrary settlement, which raises the question

1494 Salrach, Montagut, *Justícia,* doc. 206: *Et ego Bernardus, si vobis hoc disrumpere voluero, libram auri, cum iam dicta omnia, in duplo vobis componat, et hanc securitatem firmam perseveret.* Ibid., doc. 233: *Ego Guilielmi et Preciosa et Bella et Iohannes, nos simul in unum hanc securitatem facimus vobis* […].

1495 Salrach, Montagut, *Justícia,* doc. 298: *Ego Rocello hanc pacificationem fatio tibi Seniofredo, que vocitant Bonifilio, sacer.*

1496 Ibid: *Manifestum est enim quia fuit inter me et te magna contencio et abui ex te multas querellas de pecia I de terra, qui fuit de genitori meo.*

1497 Ibid: *Sed intervenerunt inter nos bonis hominibus et fecerunt nobis venire in pacificatione.*

1498 Ibid: *Et tu dedisti mihi pro ipsa pacificatione medio mancuso de auro bono recipiente.*

1499 Ibid: *Idcirco facio tibi hanc securitatem et exvacuacionem: ut ab odierno die et tempore nec ego nec ullus vivens homo nec ulla subrogata mea persona tibi de hac causa inquietare presummat. Quod si ego aut aliquis homo utriusque sexus contra hanc pacificationem vel exvacuationem venero aut venerit, ad nihilum veniat et insuper componam aut componat tibi Ve uncias auri obtimi. Et in antea ista securitate et exvacuatione sive definitione firma permaneat omnique tempore.*

1500 Ibid: *S+num Roscello Sedol, qui ista pacificatione et exvacuatione sive definitione feci et firmavi et testes firmare rogavi.*

of whether these agreements were reached before or during the trial.[1501] For example, Gausbert, the son of a deceased priest named Aventí, waived all his complaints in relation to the movable and immovable goods of the departed and evacuated the property in favour of Bonfill Vivà, and therefore clearly went to the legal authorities.[1502]

A very similar agreement was reached between the siblings Ramon Ponç, Bertran, Nèvia and Aïssulina and their mother Riquilda and her husband Guifrad Enric. Again the charter is defined as a *pactum sequritatis*[1503] but arbitration was most likely not achieved beforehand and the case probably reached court, as the legal intervention can be seen through the levite Ramon who signed as a judge.[1504] The reasons behind the quarrel is rooted in the remarriage of Riquilda, as the belongings in dispute – all *rebus mobilibus*, gold, horses, donkeys, tableware of different sizes, weaponry, chainmail and swords[1505] – were understood to have belonged to her late husband Ponç and her children thought that she possessed them unjustly.[1506] They wanted their share of the personal objects of their father but their newly wedded mother went so far as to swear an oath in front of several witnesses that these objects belonged to her. The siblings thus agree in this charter that they won't claim any of these belongings in the future and received the considerable sum of twelve mancus in exchange.

Sometimes the cases are more complicated than a simple division of property between the children of a recently deceased person. For example a women called Grudela got her rights over some property defined and secured by the three siblings Miró, Basilissa and Ermetruit. The three claimed that Grudela, together with her late

1501 For a very similar document that on first sight seems extrajudicial but could be the result of an agreement reached in front of a court, see: SALRACH, MONTAGUT, *Justícia,* doc. 288: […] *hanc sequritatem vel exvacuationem facimus.* […] *Facta difinitione vel securitate* […].

1502 SALRACH, MONTAGUT, *Justícia,* doc. 316: *Ego Gauebertus, prolis Aventini, tibi Bonefilii Vivani hanc securitatem vel exvacionem facio. Manifestum est enim quia exvacuo me et securum et quietum te facio ex omnibus querelis quas de te abeo, tam de mobile quam de imobile, de terris atque omnibus utensilibus qui fuerunt patris mei Aventini sacer, ut ab odierno die et tempore sis quietus et securus de hoc quod suprascriptum est ex omnibus querelis quas de te abebam.*

1503 SALRACH, MONTAGUT, *Justícia,* doc. 281: *S+ Remundi Poncii, S+ Bertrandi, S+ Neviae feminae, S+ Eizulinae, nos hoc pactum sequritatis fieri iussimus et firmavimus et firmari rogavimus.*

1504 Ibid., doc. 281: *S+ Remundi, levite et iudicis, qui hoc scripsit et die et anno quo supra SSS.*

1505 Ibid., doc. 281: *Ideoque hoc pactum sequritatis vobis facimus ut ab hodierno die et tempore, sequri et quieti, permaneatis de ipsis omnibus rebus mobilibus quae fuerunt patris nostri predicti, id est, in auro et argento, et chavallis et mulis, et vasculis maioribus vel minoribus, et alsbergis et spatis; et neque nos neque aliquis homo sexus utriusque de predicta petitione amplius vos requirere presumamus aut presumat.*

1506 Ibid., doc. 281: […] *quas dicebamus vos iniuste possidere* […].

husband Llobet, had seized the property when the siblings became orphans. This is also reflected through an indirect citation of the Visigothic law code at the start of the charter making it clear that the judges consulted the book on the issue.[1507] According to the law the three would fully regain their property.[1508] However, in this case the assembled locals united at the church of Sant Julià de Vilatorta gave counsel and an agreement was reached between the two sides.[1509] The siblings would make a definition of the property and their complaint thus securing the allod to Grudela,[1510] which would pay them one golden mancus as a compensation. The family ties between the litigants are unclear but as no charter of sale or other document was brought forward it looks to be a family dispute that was reopened, possibly because of the death of Llobet who may have been their uncle. Essentially, however, the case looks like an extrajudicial agreement reached between the parties that had agreed to meet and resolve the issue. The citation of the law points in the direction of the involvement of a professional judge, who in this case we must assume was the priest Bonfill who was chosen to resolve the differences outside of ordinary justice procedures and issue a security charter.[1511]

Sometimes affairs are more complicated, for example if there are illegal purchases in the midst, but even then charters are explicitly defined as security charters when the issue revolves around inheritance.[1512] On some occasions the reasons to use the specific notion of *securitas* in a resolution are more indirect. That was the case when in 1011 Amblard, the abbot of Sant Quirze de Colera, appeared at

1507 SALRACH, MONTAGUT, *Justícia,* doc. 248: *In Dei nomine. Cunctis pupillis dat lex indubitanter consultum ut reddat ratione de illorum rebus securitates procurrent ab ipsis pupillis accipere.*

1508 LV IV.3.4: *Dum minorum etas in annis pupillaribus constituta,nec se nec bona sua regere posset, bene legibus est decretum, eos et sub tutoribus esse et in eorum negociis, quo statuti anni debeant computari. Quia vero quidam tutores aut suasione aut indignatione circumveniunt, eos, quos tueri gratissime debuerunt, et de rebus reddende rationis securitates accipiunt vel certe diversarum obligationum scripturas ab illis exigendas ixsistunt,* […].

1509 SALRACH, MONTAGUT, *Justícia,* doc. 248: […] *in illorum consilio sic fecisti nobis in loco iamdicti viri tui satisfactionem et emendationem de omne facultate tua secundum tuam possibilitatem et nostram voluntatem, id est mancoso I de auro, quod nos recepimus pro emundatione omni voce de alode. Et ideo sic [nos] exvacuamus, ordinantes suprascriptos bonos ominibus nostros libentes animos in conventu vicinorum, ut amplius secura permanete a prefata inquisitione ut in eternum sine molestia et damno et sine ulla calumnia permanet*

1510 Ibid., doc. 248: *Facta difinitione vel securitate VIII kalendas aprelii, anno II regni Enrigo rege. Sig+m Mirone. Sig+m Basilissa. Sig+m Ermetruit. Qui omnibus vocis vel querellis quod super te abebamus nos exvacuamus et hanc securitatem tibi confirmamus et firmatores accedere rogamus.*

1511 A possibility considered by law: LV II.1.15.

1512 SALRACH, MONTAGUT, *Justícia,* doc. 369: *Et in antea ista carta securitatis firma permaneat modo vel omnique tempore.* […] *S+ Belucia femina, S+ Trudgards, S+ Ermessendis, S+ Arssendis, S+ Belucia, S+ Guilelmus, nos qui ista carta securitate firmamus et testes firmare rogamus.*

the door of the church of Sant Martí de Peralada to complain in front of Hug I, count of Empúries and Peralada, the judge Guillem and the generic *boni homines* that the viscount Dalmau II of Peralada withheld an allod that was handed in as a donation by some individuals. The viscount argued that his forefathers cultivated the barren land in the first place and had possessed it more than thirty years.[1513] As the abbot brought forth documents proving his point and the viscount was not able to prove his claims he gave in and the charter was drafted as a *professione vel securitate,*[1514] as the viscount was in a certain way also renouncing what he and his descendants could consider inheritance.[1515]

The notion of *securitas* in charters was predominantly used in cases of inheritance, however not exclusively.

In 1016 Deodat, bishop of Barcelona, evacuated to the woman Emmo the rights of a piece of land which included a house, well and courtyard in Cubelles, within the boundaries of Trullols in the county of Barcelona. The allod had been given to Emmo as a donation by the former bishop Vives but the current bishop believed that it belonged the see of Barcelona and had thus claimed it, but he finally backed out after receiving notice of a previous sentence from a former trial in which the late judge Oruç had already ruled in favour of Emmo.[1516] Seeing the truth, Deodat dismissed the rights of the see[1517] and consequently made a charter of security and evacuation.[1518]

1513 SALRACH, MONTAGUT, *Justícia,* doc. 158: *Ad illius peticione vel ab interrogacione de supradicto comite et iudice predictus Dalmacius in suis responsis dixit: «Iniuste non tenuimus nos ipsum alode sed avus meus et genitor meus tenuerunt ipsum alode et de eremio ad culturam duxerunt per hos annos XXX seu et amplius».* Basing his argument on the right of the *aprisio.*

1514 SALRACH, MONTAGUT, *Justícia,* doc. 158: *Facta professione vel securitate*.

1515 SALRACH, MONTAGUT, *Justícia,* doc. 158: *Et ego predictus Dalmacius audivi huius rei veritatem et legali constituciones ordinatum de hoc sum professus quia non possum abere scripturas. Nec ullum veritatis indicium nisi hoc quem dictum est et me exvacuo in vestrorum iudicio et facio vobis talem securitatem ut expreserit die et futurum temporis securu et quietu abeatis et possideatis prefatum alode sine mea vel cuiuslibet inquietudine.*

1516 SALRACH, MONTAGUT, *Justícia,* doc. 168: *Partis posesor qui prefata terra posidebat era de prelibata Emmo, qui possidebad per carta donacionis quem condam Vivas aepiscopus ei fecerat; et cum inter se veemencius varias et plures raciones contendisent et de prefata terra dubii exctasent, et domno Deusdedit prefatas proclamabat quia plus directum erat de Sancta Cruce Sancteque Eulalie quam de prefata Emo, inventum est ipsum iudicium de condam Aurucio, unde domno Deusdedit episcopus putabat ipsam terram fiere de prelibata eclesia et non erat.*

1517 SALRACH, MONTAGUT, *Justícia,* doc. 168: *Et cum tali vidisem, ego prefatus Deusdedit episcopus orum veritate in ipso iudicio evacuo me cum omni clero mihi subdito sedis Sancte Crucis Sancteque Eulalie de pretaxata terra, qui per veritatem repertum et inventum abemus quod in pretaxata terra nullam vocem abemus nec abere debemus.*

1518 SALRACH, MONTAGUT, *Justícia,* doc. 168: *S+ Deusdedit, gratia Dei ac si idignus episcopus, qui ista securitate vel evacuacione fecid et firmare rogavit.*

The most common feature of the above-mentioned examples is one side securing certain rights over property and therefore guaranteeing that the other party cannot invoke the justice system on the matter again. Very similar in design are waivers of complaints in which one side waives their accusations or possible rights.

In a rather complicated property case on the 15th of June 1077 the levite Ramon Geribert signed a charter handing over the rights to several possessions that had belonged to his grandparents to a man called Bonuç Vives.[1519] Moreover, he made peace and defined and evacuated the complaints he had against Bonuç regarding the allods that belonged to his grandfather Guimerà and his great uncle Borrell, which he claimed but that his father, Geribert, sold. It is clarified that this meant all the *querimonias* he had up to this day, whether just or unjust.[1520] He also declared and acknowledged in favour of Bonuç the third part of the allods that his great aunt Bonadona bequeathed in a will to Bonfill, Bonuç's brother, a legacy that Geribert had already acknowledged in written form[1521] and so he waived all complaints he had in this regard as well.[1522]

Waiving complaints started to become a key part in ending ongoing conflicts and finding compromises during the 11th Century. Usually the party waiving the allegations would receive a compensation in return, the contents of which could be from a wide range of various benefits such as a simple monetary payment, certain rights, the exchange of property or an agreement of fidelity.

1519 SALRACH, MONTAGUT, *Justícia,* doc. 412.

1520 SALRACH, MONTAGUT, *Justícia,* doc. 412: *Sit etiam cunctis manifestum qualiter definio, pacifico et evacuo tibi omnes querimonias quas de te usque in presentem diem habui de alodiis que fuerunt avi mei Gimarani et patrui mei Borrelli que exigebam a te iuste vel iniuste.*

1521 Ibid., doc. 412: *Recognosco etiam atque profite[or] habere te terciam partem in omni ereditate que contigit amitam meam nomine Bonamdomnam in universis alodiis in quibus eadem Bonadona concessit atque reliquid eandem terciam partem Bonefilio fratri tuo ad suam ultimam voluntatem in suo testamento, cum universis terminis et ceteris omnibus ad eandem terciam partem quocumque modo pertinentibus, secundum quod continetur in testamento prescripte amite mee et in scriptura illa recognitionis in qua pater meus prefatus recognovita atque professus est eandem terciam partem tocius hereditatis prenominate amite mee esse iuris atque dominii Bonifilii fratris tui, quam etiam scripturam idem pater meus manu propria solito more punctim firmavit et testibus illam firmari rogavit.*

1522 Ibid., doc. 412: *Secundum quod superius scriptum est pacifico et definio atque evacuo tibi easdem querimonias cum omnibus rebus tuis mobilibus quas hodie qualicunque modo habes sive tenes.*

IV.3.1.3. Waiver of Complaint

They also ruled that, once complaints were made by both sides, if the parties involved in a case afterwards enter into homage, an oath of fealty, or even a pact of friendship by an exchange of good faith and if the aforesaid suits were not maintained, they shall be perpetually null and void and considered terminated.[1523]

While the Visigothic Law code is quite strict regarding unjust complaints the *Liber* does not foresee the necessity to explicitly waive complaints or grievances. However, starting from the 11th Century onwards, within the documentation there are several documents that serve the sole purpose of waiving complaints.

On the 6th of January 1112 Ramon Berenguer III and his mother Mafalda[1524] draft up a charter (*hac scriptura indice facio)* in which they defined all the grievances that they had against Garsenda and her sons, Ramon, Berenguer and Arnau, so that from that day neither he, nor his mother, nor anyone else could recall them to a trial (*revocare ad placitum*), so they could remain safe and at peace.[1525] That charter probably came into being alongside an agreement or some other charter that entrusted them with some feudal obligations.[1526]

Contemporaries did not see waivers of complaints as a category in their own right, and within the legal vocabulary the notion of waiving complaints does not receive its own terminology but instead is treated like the acknowledgement of a right and thus usually adopts the same wording as in, for instance, property issues. A complaint is therefore evacuated or defined to the other party, sometimes adding the note that the two sides are at peace now and thus pacified. Waivers of complaints are initially closely

1523 Usatge 72, translation by KAGAY, *The Usatges of Barcelona*.

1524 For Mafalda, see: Aurell i Cardona, M. (2010), 'Jalons pour une enquête sur les strategies matrimoniales des Comtes Catalans', *Memorias de la Real Academia de Buenas Letras de Barcelona*, 23, p. 330-331.

1525 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 417: *Sit notum cunctis presentibus atque futuris quoniam ego Raimundus, Dei gratia comes Barchinonensis ac marchio, hac scriptura indice facio tibi difinicionem Garsindis femina et filiis tuis Reimundo, Berengario atque Arnallo de omnibus querimoniis quas ego et mater mea, nomine Mahalt, usque modo habuimus nos et homines nostri vel femine de vobis ex usibus vel ex aliquibus causis que dici vel nominari possint. Ita ut ab hodierna die neque ego neque iamdicta mater mea Mahalt neque aliqua utriusque sexus persona possit vos revocare ad placitum ex his que acta vel perpetrata sunt usque modo, sed secure et quiete habeamini ex omnibus his usque in perpetuum, excepto de honore quantum per directum invenire potuerimus. Hanc autem difinitionem facimus vobis propter avere vestrum atque servicium quod modo a vobis accipimus in presentia Raimundi atque Guilelmi Reinardi fratrum et Berengarii Bernardi et Amelii et aliorum multorum hominum.* Compare, Shideler, J. C. (1987), Els Montcada, una familia de nobles catalans a l'Edat Mitjana, 1000-1230: Una família de nobles catalans a l'edat mitjana (1000 - 1230) (Col·lecció Estudis i documents, 39; 1ª, Barcelona: Edicions 62), p. 52.

1526 Compare: BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 75, 137.

linked to security charters as the mechanism of acknowledging a dispute being finalised is very similar, and the very first waivers of complaints are indeed classified as security charters. The following examples also show that the word *rancura, querimonia* and more frequently *querela* are used nearly synonymously within the documentation as all can be waivered.

An early example of waiving complaints related to family-owned property and thus again linked with securities is dated in the year 1046. Isarn, son of the levite Gausfred, signed a security charter, a c*artulam sequritatis,* for Bovet Renard concerning two allods, one near the walls of Barcelona and the other situated in Provençals, also close to the countal city.[1527] After hearing that upon inspection the sales charters his father had issued and that were presented by Bovet were considered valid, he accepted legal defeat and with the council of *honestorum virorum* received one mancus in exchange for renouncing his complaint so *ut hanc querellam tibi evacuassem.*[1528]

Four years earlier, Bernat Amat, *custus Terracia*, presided over a trial at the Church of Sant Pere d'Ègara in which a certain man named Guadamir, son of Moro, filed a complaint against Domnuç accusing him of having unjustly and illegally sold an allod of his father.[1529] An agreement was reached and Guadamir accepted a compensation of 4 gold coins (*numos*) paid to him[1530] and consequently issued a charter in which he clarified that *me esvachuo supradicta qu[e]rimonia.*[1531]

1527 SALRACH, MONTAGUT, *Justícia,* doc. 293: *Quapropter ego prelibatus Isarnus tibi Bovetus hanc cartulam sequritatis tibi facio, ut ab hodierno die et tempore quietus et sequrus permaneas de predicta inquisicione, unde tibi requirebam. Quod si ego evacuator aut aliquis homo utriusque sexus amplius tibi inquetare presupersero aut presuperserit de hac, ad nihilum mihi vel illis eveniat et insuper componat aut componam tibi in vinculo uncias quattuor auri purissimi. Et in antea hanc pagina sequritatis et evacuacionis firmum permaneat omni tempore.*

1528 Ibid., doc. 293: *Et tu hostendisti mihi scripturas firmas et stabiles, quas exinde tibi fecit pater meus Gaucefredus venditionis. Et ego, ut audivi ipsas cartas veridicas esse, quod tibi fecit pater meus ex supra dicto alodio, et propter consilium honestorum virorum, accepi de te mancusum unum aureum, ut hanc querellam tibi evacuassem et ipsum iam dictum alodium, sicuti et facio.*

1529 SALRACH, MONTAGUT, *Justícia,* doc. 275: *In iudicio divino Bernardus Amatus, custus Terracia, et in audiencia Bernardus Minestral et Miron Atone et Guilielmo Guilmon et Guad[am]iro presbiter et Bonefilii Sesmon et Iohanes Stefanus et Rikarius presbiter et aliorum virorum qui inde aderant ad eclesia Sancti Petri Egara venit omo nomine Guadamirus, prole Moro, et apetivit ibi omo nomine Donnocius, quo modo tenuit alaudem de prememoratus Moro et venundavit illum iniuste et absque leie.*

1530 Ibid., doc. 275: *Propterea venit iamdictus Guadamirus in supradicto placito et accepit ibi directum de suo iamdicto alodio, id est numos IIII auro bono placibile.*

1531 Ibid., doc. 275: *Et ego Guadamirus, prole Moro, sic me esvachuo supradicta qu[e]rimonia de iamdicto alode in supradicto placito, ut non pertimescas me supradicto Donnucio nec nullus vivens [homo ut]riusque sexus, nec odie nec post odie neque in nulloque placito, vel ab odierno die et tempore quietus adque liberus et secur[us perm]aneas sine ulla inquietudine. Et qui contra ac ista securitate venerit pro inrumpendum aut ego venero aut nullus vivens om[o ut]riusque sexus, non hoc valeat vindichare, set componat aut componam tibi in vinculo solidos CC de arientum ex moneta curribile perpetim abitura.*

Henceforth, it was legally regarded as a *pacifichacione* and *esvacuacione* and the document is defined as a security charter (*facta securitate)*.[1532] The charter is rather short and leaves the modern reader doubting who was right; was the sale really so *iniuste*? However, as the importance of the document does not reside in establishing the legal details but instead in clarifying that the complaints were evacuated by Guadamir and thus functions as a guarantee that the case is settled, this information was considered irrelevant and was not included. From a legal perspective, after the case was settled the issue was not important anymore and instead the importance lies in the fact that the conflict was settled and the sale was legit.

Waivers of complaints were not, however, limited to property issues. That can be seen in a case between the bishop Berenguer of Barcelona and Bonuç Vives that was resolved in the spring of 1063, on the day of the Ascension of Christ. The issue at hand was that the men of Bonuç injured and scourged a *milite* of the bishop named Ramon Gerovard.[1533] The two sides probably met in a trial-like scenario as again arbitration through the intervention and counsel of *boni homine* helped to find a resolution. The parties agreed that Bonuç Vives had to pay 28 Barcelonian mancus of pure gold as a compensation to the complainant.[1534] Consequently the bishop "pacified" the complaint and guaranteed Bonuç that the case was considered closed[1535] and therefore the charter was labelled as a security charter in the subscription of the *eschatocol*.[1536] Bonuç's family had close ties to the see of Barcelona and as we are not given more details, the creation of the charter could be because tensions regarding the jurisdiction of Sant Martí de Provençals led the men of Bonuç Vives to attack the *milites* of the bishop.[1537] The

1532 Ibid., doc. 275: *Et inantea ista pacifichacione seu esvacuacione firma permanead omnique tempore. Facta securitate IIII kalendas februarii, anno XI regnante Enrici regi.*

1533 SALRACH, MONTAGUT, *Justícia,* doc. 353: *Pateat hominibus cunctis tam presentibus quam futuris placitum quod accidit inter Berengarium episcopum et Bonucium Vivanum de uno milite, nomine Remundo Gerovardi, quem homines supradicti Bonucii vulneraverunt atque flagellaverunt.*

1534 Ibid., doc. 353: *Pro inde, intervenientibus inter illos bonis hominibus, consiliaverunt ut Bonucius Vivani dedisset predictis querellantibus XXti VIIIº mancusos auri puri monete Barchinone, sicuti et fecit.*

1535 Ibid., doc. 353: *Ego Berengarius, Barchinonensis episcopus, atque querellans Remundum Gerovardi predictus pacificamus tibi predicto Bonucio Vivani, necnon et illis hominibus qui me vulneraverunt atque flagellaverunt, et definimus predictis vulneris placitum atque flagellacionis ut ab hodierno die et deincebs, nec nos predicti nec ullus homo vivens, hoc inquietare presumamus aut presumat. Quod si fecerimus aut fecerit, nil valeat, set componamus aut componat vobis libras X auri puri. Et insuper hoc maneat firmum omne per evum.*

1536 Ibid., doc. 353: *Berengarius episcopus, Sig+num Remundus, nos qui hanc securitatem facimus et firmamus firmarique rogamus.*

1537 The former bishop and the family of Bonuç agreed in 1052 that the jurisdiction of Sant Martí de Provençals went to Santa Maria del Mar and Bonuç and his brother Bonfill shared the rights of Sant Martí, see: Carreras i Candi, F. (1916), *La ciutat de Barcelona* (Geografia General de Catalunya, 6, Barcelona: Establiment Editorial de Albert Martin), p. 312.

document clearly shows that the mighty were responsible for the actions but also for the protection of their men, and that it was considered a responsibility of the Bishop to stand up for his *miles* and to initiate legal actions on his behalf. The charter is more complex than simple compensation payment.[1538] It also serves as a document to pacify the conflict and avoid further quarrels that could have led to an all-out feud. That can be seen in the fact that both the bishop and the victim of violence, Ramon, signed the charter and consequently the episode had to be considered over by their contemporaries. Bishop Berenguer of Barcelona most probably held mass that very day, surely with the attendance of Bonuç Vives, both celebrating that Jesus took his seat at the right hand of God and thus visually showing the community that they are at peace.

The cause of conflict can also be rooted in issues about revenues and rights. Guillem Amalric, his wife, Beliarda, and his sister-in-law Senegonda gave Vivà Guillem, a levite, an allod including half of the censuses and services that it generated. To the donation they added the waiver of the lawsuit they filed against him[1539] and again the presence of a judge, to a certain degree, points towards the notion that this agreement was reached in court.[1540]

Very similarly Miró Olibà made peace and defined and evacuated all the complaints he had with Ricard Guillem and his wife, Ermessenda, over a channel they had built. Their construction caused water to pour over the patio of Miró when there was rainfall. In exchange he received an ounce of gold.[1541] He did so renouncing *omnes alias meas rancuras que unquam abebam de vobis,* and the right of common use of the water was also guaranteed in the agreement; it seems that the case was settled at court.[1542]

Domnuç Miró and his sons Ramon, Guillem and Berenguer evacuated, pacified and defined some mills near the sea in favour of Bertran, bishop of Barcelona, and the canons

1538 Fidel Fita already pointed out the relationship this case could have with the Usatges, especially the Usatges 5 and 6. The new law code did not yet exist in written form but here customs would precede the written law. Fita i Colomé, F. (1891), 'El obispo Guisliberto y los Usajes de Barcelona', *Boletín de la Real Academia de la Historia*, 18 <http://www.cervantesvirtual.com/nd/ark:/59851/bmcdn4g4>.

1539 SALRACH, MONTAGUT, *Justícia,* doc. 383: *Insuper autem definimus tibi Vivano levita omnes ipsas querimonias, quas de te faciebamus, ut ab odierno die et deincebs, dum tu vivis, securus et quietus permaneas.*

1540 Ibid., doc. 383: SSS S Guilielmus iudex.

1541 Ibid., doc. 389: *Suprascripta quoque omnia vobis pacifico et definio et evacuo cum omnes alias meas rancuras que unquam abebam de vobis, ut ab odierno die et deinceps securi et quieti permaneatis exinde. Et ut meliorem vobis posseat optinerem valorem hanc pacificationem accipio a vobis unciam unam auri puri monete Barchinone.*

1542 At least the Laws of the Goths are mentioned. Ibid., doc. 389: *Et qui ec omnia disrumpere voluerit, duplam composicionem ibi persolvat et donet sicut in Gotice Legis scriptum est in libro de omni sue inmelioracione. Et super hec omnia firmitatem optineat in perpetuum.*

of the see. The canons and the bishop had claimed the mills, while Domnuç maintained that he and his children possessed them through a *cartam precarie donationis* which had been granted to his ancestors. The lawsuit was settled by good men,[1543] who decided that Domnuç and his sons would cede the mills in exchange for a lifelong possession of six wetlands subject to tithes and an annual census. The agreement is explicitly described as a *pactum.*[1544] The charters starts off with an interesting line, using the word *documentis* instead of the more common *scripturae.*[1545] The only place within the Visigothic Law code where this wording is used is the chapter titled "Of the pursuit of justice if the witness says one thing, and the scriptures, another."[1546] This makes it probable that the *Liber* was consulted and the legal standoff between the two parties led to the intervention of the *boni homines* and finally the reaching of the above-mentioned solution.[1547]

In a property exchange agreement between Pere Arnau and the spouses Bernat Ramon and Guilla in which the former donated an allod that had belonged to his parents, situated at Solerols, in the area of the castle of Callús, to the spouses[1548] while in return the latter gave him a property located in the same place while also defining and evacuating their grievances against him.[1549] The fact that the charter mentions the

1543 SALRACH, MONTAGUT, *Justícia,* doc. 495: *Ad pacificandam igitur querelarum huiuscemodi dissensionem, nostris autenticis scripturis et vocibus, que minus nobis sufficere videbantur, ostensis, bonorum hominum intercessione amicabiliter laudatum est, ne aliam ulterius in querimoniis dilationem pateremus, quatenus ad amoris nostri et servitii adquisitionem et retentionem et honoris vestri augmentationem daretis nobis modiatas VI terre vestre.*

1544 Ibid., doc. 495: *Quod et fecistis hoc pacto: ut nos, predicti Raimundus et Guilelmus atque Berengarius, fratres, filii Donnucii prefati, teneamus eas sine potestate alienandi et possideamus eas quamdiu vixerimus; mortuoque uno, alii succedant et sic usque ad ultimum; donemusque vobis per unumquemque annum ipsam decimam totam et ad festivitatem Sancti Andree quarter I olei puri ipsi vestre Canonice causa recognitionis. Damusque vobis ad presens uncias VI auri Valentie propter hanc itaque donationem, quam nobis facitis in vita nostra, ut post obitum nostrum solide libere cum omni sua melioratione reventatur in ius et dominium predicte Canonice.*

1545 Ibid., doc. 495: *Quia legalibus instruimur documentis ut omnes cause se data iuste querelarum occasione ad pacificationis finem deducantur, idcirco ego* […].

1546 LV. II.4.3: *De investiganda iustitia, si aliut loquitur testis, aliut scriptura. Quociens aliut testis loquitur, quam ea scriptura continet, in qua ipse subscripsise se dinoscitur, quamvis contra scripture textum diversa verborum a testibus sit inpugnatio, scripture tamen potius constat esse credendum. Quod si testes dixerint eam, que offertur, scripturam minime roborasse, prolator eius probare debebit utrum ab eisdem testibus scripturam fuisse roboratam constiterit. Et si hoc ipse quibuslibet aliis documentis convincere fortasse nequiverit, experiencia iudicis id requirere solerter curabit, ita ut per manus contropationem testis ille, qui negat, iudice presente scribat, qui etiam plus cogatur scribere, ut veritas facilius innotescat;* […].

1547 SALRACH, MONTAGUT, *Justícia,* doc. 495: […] ne aliam ulterius in querimoniis dilationem pateremus […].

1548 Dated between the 16th of May and the 15th of June 1125. BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 572: *Ego Petrus Arnalli donator sum vobis Bernardo Raimundi et uxorie tue [Guilia. Per hanc scripturam donatio]nis dono vobis ipsum alaudium quod abeo in Solerols, in domos vel in terris cultis et eremis, [que advenit mihi per] [...] [vel] per ullasque voces. Et est hec omnia in comitatu Minorise, in terminio castrum Callariis [...] paternam sive maternam vel per omnesque voce.*

1549 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 572: *Et ego Bernar[dus et uxormea Guilia] donatores sumus*

querimonias being waivered even though it is a donation from Pere Arnau to the spouses can be explained through a possible non-preserved charter from the opposite viewpoint, in which Bernat Ramon and Guilla would be the donators and the grievances also would be waivered. In this fashion, if one side were to reopen the case in the future, for example the eventual offspring of the spouses, even one charter would be enough to clarify that the grievances had been considered settled at that moment in time. So if, for example, one document was intentionally not presented by one side and only witnesses would testify that the *campus*, now in the possession of Pere Arnau, once belonged to the spouses, the judges would have enough information to work with even with only one charter in their hands.

Waiving complaints can also be found in the feudal agreements of the higher layers of society, for example, in an agreement between the long-time trusted man Bermon Sunifred[1550] on the one hand, and his lords the viscounts Ramon Folc I of Cardona and Ermessenda on the other, regarding the castle and parish of Mirambell and the fortress of Clariana.[1551] Bermon agreed to hand in the fourth part of the tithe of the parish of Mirambell, entrusted one man into the hands of the counts, and promised both military service and that all the men stationed in the castle would participate in any *hostes et chavalchadas* of the viscounts. Ramon Folc in return promised to give the possession of the castle to no one other than Bermon and his heirs, and also promised him the *castlania* of the castle of Clariana that was already held by Bermon's father Sunifred.[1552] The re-establishment of feudal bonds comes hand in hand with the definition of all the complaints the viscounts had regarding some allods in Cardona.[1553] The document can be

tibi Petro Arnalli, propter Deum et remedium animarum nostrarum, ipsum campum qui [est] super ipsa riera. Et ego Bernardus et uxor mea Guilia difinimus et evacuamus tibi Petro [Arnallo] [...] querimonias quas abuimus tecum. Quod si quis homo vel femina qui contra ista carta venerit a[d inrumpendum, non valeat], sed pro sola presuncione in quadruplum componat. Et in antea ista scriptura firma et stabilis per[maneat omnique tempore].

1550 RODRÍGUEZ, Col·lecció, p. 38-41

1551 RODRÍGUEZ, *Col·lecció,* doc. 186: *Hec est convenientia qui fuit facta inter Bermundi Seniofret et Raimundus vicecomite et Ermessindis vicecomitissa, que convenerunt inter illos ut habeat predictus vicecomite et vicecomitissa in ipsa parrochia de Mirambellum ipsa quarta parte de ipsas decimas exceptus quantum reliquid Seniofret, pater Bermundi ad Sancte Marie Pugensis et ad Sancti Petri Roma.*

1552 Ibid., doc. 186: *Et habeat predictus Raimundo vicecomite Guilelmus Saborellus apud suum servicium; et habeat preditus vicecomes et predicta vicecomitissa hostes et chavalchadas de ipsos chavallarios qui fuerint logatos de kastrum Mirambellum; et ista dominicatura predicta non donet predictus vicecomes et vicecomitissa \nec posterita illorum/ ad nullum hominem nec feminam nec ad Sanctis nisi ad preditus Bermundi aud posterita sua. Et donet predicti vicecomes et vicecomitissa ad predictus Bermundi ipso castro de Cleriana apud ipsa castlania quomodo tenebat Seniofret pater Bermundi per Atone, seniorem suum.*

1553 Ibid., doc. 186: *Et definivit predictus vicecomes et predicta vicecomitissa ipsasque omnes querelas que habet de Bermundo predicto, de ipsos alodios que emit Bermundo in Cardona, in Cleriana; et donet*

dated in the month of April 1060, most probably right before Bermon actually received the castlania of Mirambell from Ramon Folc.[1554] As the two families were already bonded together for a long time this case presumably needed no judicial intervention but the logical steps were the same. Some issues regarding the allods was expressed by the viscounts and it had to be addressed to be solved, and thus those issues found their way into the agreement as they were waivered.

These types of agreements can be extended up to the highest levels of society. As the viscount negotiated the feudal bonds with his vassal, so did he with the count. On the 24th of September 1115 the count of Barcelona, Ramon Berenguer III, and the viscount Bernat Amat de Cardona signed an agreement of peace and concord between them. They agreed to respect their previous pacts and those of their predecessors, while the count promised to destroy the market of Cervera and to give the viscount the fiefs of Tortosa that he had already promised to Ramon Berenguer's father. The viscount also promised him his allegiance and that of his men. They mutually defined their complaints to be finished without deceit.[1555]

In a very similar fashion Ramon Berenguer III and viscount Guerau II of Cabrera reached a peace and concord on the 27th of May 1113.[1556] They agreed that the count entrusted the castle of Montpalau to Guillem Umbert in such a way that he had certain feudal obligations, among others, to participate in the actions of war, as much in the count's host and the cavalcades as in the count's curia and the judgments, thus recognising the count's power over the castle.[1557] Like in the other two examples complaints are dealt with at the end of the documents. In this case the two sides reached peace and concord regarding several complaints the count had about the honor of Besalú.[1558]

Bermundus potestatem de ipso castrum de Mirambellum ad predictum vicecomite quantasque vices illi adquisierit sine suum enganno de vicecomite.

1554 RODRÍGUEZ, *Col·lecció,* doc. 185.

1555 RODRÍGUEZ, *Col·lecció,* doc. 331: *His ita ordinatu difiniunt sibi iamdicti comes et vicecomes omnes querelas et contrarietates quas unquam habuerunt per fidem sine engan.*

1556 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 450.

1557 Ibid., doc. 450: *Hec est scriptura concordie et pacificationis facta inter domnum Raimundum, Barchinonensem comitem, et Gerallum, vicecomitem Gerundensem. Comendat iamdictus comes iamdicto vicecomiti Guilelmum Umberti cum castro Montis Palacii hoc modo ut in hostes et in cavalgatas et in placita et sequimenta et in curias ubi vicecomes fuerit cum comite predictus Guilelmus sit cum iamdicto vicecomite et hospitetur cum eo. In quibus autem sepe dictus vicecomes non fuerit cum comite, faciat iamdictus Guilelmus iamdicto comiti hostes et cavalcatas et placita et sequimenta et curias ut supra scriptum est.*

1558 Ibid., doc. 450: *Pro his vero omnibus comes et vicecomes veniunt ad concordiam et pacificationem de diversis querimoniis nominatim de Besellunensi honore, super quo sepe fatus vicecomes frequenter*

This small sample of agreements shows that waiving complaints was already the basis for reconciliation and compromise. Understandably, it also served as a useful tool for conflict resolution within the dynamics of a war-like feud when there were moments of standstill and negotiations, or even in failed political marriage agreements.[1559] If both sides had suffered personal losses and thus had open complaints, it must have been extremely difficult to bring parties to the negotiating table in the first place. In moments of a balance of power, disclaiming grievances served as a kind of prerequisite to create a tabula rasa situation that allowed negotiations to begin.

Grievances were considered ongoing demands until officially given up and thus the conflict was considered pacified. The need or urge for security and the certainty that the wheel of justice has stopped turning and no further claims will disturb either side in the future is clearly expressed through security charters and waivers of complaints. The risk is lowered if both sides are at peace with the judicial decision or agreement reached, and a higher involvement by both sides was surely helpful in that regard.

The modular flexibility of the charters and the scribes adapting to changes in society introduced a new approach that allowed the active renunciation of claims by the accusing party, and therefore enforced their involvement in the legal process first through security charters and then through waivers of complaints. These new mechanics invited agreements in which one side compensated the other, be it through property being handed over or exchanged or, as is the case in most examples, simply through a monetary compensation being paid. The aim of avoiding future trials and conflicts is clear but was not always achieved.

One key issue is whether these waivers of complaints can be seen as sign of change. They are definitely a new tool within the legal toolbox and overlap with the use of security charters to resolve conflicts. As security charters they rarely appear on their own but rather are added as an extra clause in agreements. The mentality of finding lasting solutions and preventing legal issues from being brought up again, together with the tendency to find agreements, points in the direction of change. Waivers of complaints became a typical instrument in the hands of the judges, allowing more arbitration during trials or hearings and this nurtures Catalan society towards a more vindicatory legal

conquestus est quod eum exinde non inquietet nisi propter servitium quod ei exibiturus est vel ob amorem sui.

1559 For the case of Llúcia de la Marca, see: Salrach i Marés, Josep Maria (1996), 'Les difícils relacions dels comtes de Besalú i de Barcelona els anys 1054-1057. VIII Assemblea d'Estudis sobre el comtat de Besalú', *Amics de Besalú*, 1996: 299–308.

approach based on composition and reconciliation, while the waiver's appearance is at the same time an indicator of that change.[1560]

For the more powerful magnates and their men, this change was also a tool to negotiate their feudal relationships and while waivers of complaints did not cease to exist during the second half of the 12th Century, they became quite rare. This could be explained by the impact of the *Usatges*, which established that if a peace or an agreement was reached that included oath, homage and fealty the complaints were considered to be terminated automatically.[1561] It is rather difficult to pinpoint exactly when waiving complaints became implicit in agreements, nevertheless, as shown, the foundations had already been laid out in the early 11th Century. Waivers of complaints are thus documents showing the transition from the Visigothic Law code, which does not contemplate this kind of legal arrangement, to the *Usatges* which, especially for the higher strata of society, made them implicit when a feudal agreement was struck.

1560 Terradas Saborit, I. (2012), 'Què és la justícia vindicatòria? (Definició i característiques fonamentals)', *Recerques: Història, economia i cultura*, 64: 13–30.

1561 Bastardas, *Usatges,* 72.

IV.3.2. Pilgrimage & Exile

All who will not obey the law of your God and the law of the king, let judgment be strictly executed on them, whether for death or for banishment or for confiscation of their goods or for imprisonment.[1562]

Pilgrimage started to become a more visible phenomenon during the 11th Century in Catalonia[1563], while the severe sentence of exile was already well established and applied under special circumstances. While pilgrimage is seen as the personal desire for salvation, that religious fervour was also used to resolve quarrels at hand.

From very early on people in Catalonia went on pilgrimage for salvation and the forgiveness of their sins. Going on a pilgrimage was associated with many risks, therefore it is understandable that one of the main sources, especially when we are dealing with early documentation regarding journeys to pilgrimage sites, is wills.[1564] Reasons to travel varied and some may not have been clearly expressed, like the urge for adventure, the prestige of homecoming[1565] or the hope of curing diseases by visiting the holy sites. By the very nature of these documents the eschatological worldview mostly prevails; fear of damnation, penitential anxiety, the burden of sins and the longing for salvation are clearly expressed. The risk of death is considered a

1562 Ezra 7:26.

1563 Literature regarding the Catalan sources on early pilgrimage was augmented considerably over the last years, see: Gudiol, J. (1927), 'De peregrins i peregrinatges religiosos catalans', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 3: 93–119. Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (1, Barcelona), p. 290-292. Bach i Riu, A. (2002), 'Pelegrins als grans santuaris medievals', *Butlletí de la Reial Acadèmica de Bones Lletres*, 2002: 547–562. Homs Guzmán, A. (2003), 'Relats de pelegrinatge a Terra Santa en llengua catalana. Un cami de set segles', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 76: 5–44. Baraut, C. (2003), 'Pelegrins de Terra Santa de l'antic comtat d'urgell', in C. Baraut (ed.), *Església i Bisbat d'Urgell: recull de treballs* (La Seu d'Urgell: Societat Cultural Urgel·litana), 509–13. Benito i Monclús, Pere (2007), 'Els primers pelegrins catalans a Sant Jaume de Compostel·la (segles XI-XII). Identitat, perfil social i procedència geogràfica', in , *El camí de Sant Jaume i Catalunya*. *Actes del congrés internacional celebrat a Barcelona, Cervera i Lleida, els dies 16, 17 i 18 d'octubre de 2003* (Biblioteca "Abat Oliba". Sèrie il·lustrada, 21; 1a ed., Barcelona: Publicacions de l'Abadia de Montserrat), 111–23. For more examples and an analysis of the Catalan documentation in regards to the first crusade see, Jaspert, N. (2015), 'Eleventh-Century Pilgrimage from Catalonia to Jerusalem: New Sources on the Foundations of the First Crusade.', *Crusades*, 14: 1–48.

1564 For testaments, see: Bach i Riu, A. (2002), 'Pelegrins als grans santuaris medievals', *Butlletí de la Reial Acadèmica de Bones Lletres*, 2002, p. 551-558. Bonnassie calculated that one out of seven wills in the 11th Century give the reason of pilgrimage as the motive of redaction. The probability that charters of people of a certain social standing are preserved must be considerably higher. Compare: Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (1, Barcelona), p. 291.

1565 Home-comers seemed to be proud of the journey, probably even assuming the addition *Peregrinus* to their name. Dating in the year 1066, Rius, *Cartulario*, doc. 674: *Benedictus Peregrinus.* Dating in the year 1075, Baucells*, Diplomatari*, doc. 1284: *Peregrinus Sendredi*;

possibility, especially in long-distance pilgrimages, and is expressed implicitly or explicitly in many wills.

Travelling with one's spouse, friends or family, thus forming groups of pilgrimage, was a way to lower the risks of travelling while sharing the experience. The very unique Catalan document type, the sacramental testament, gives insight into the composition of these groups.[1566] On many occasions the time between the death of the subject and the homecoming of those who witnessed the oral last will was longer than the sixth month period established by the Visigothic Law codes as the legal window for enacting wills, and therefore the witnesses had to give reasons for surpassing the legally established deadline.[1567] In most cases in front of a professional judge, justifications were added and the will was still considered to be legally binding, even though promulgated late.[1568]

Departing meant leaving properties, family and friends behind for a long period of time.[1569] Making peace and settling disputes beforehand while also arranging the voyage and getting a blessing for such a dangerous undertaking seems only logical. In this manner the wish to travel to the holy sites also left some traces in the documentation – as they are regarding conflicts that are not wills they have not drawn much attention for analysis yet, but they do give an understanding of the dynamics of events preceding a pilgrimage.

1566 Jaspert, N. (2015), 'Eleventh-Century Pilgrimage from Catalonia to Jerusalem: New Sources on the Foundations of the First Crusade.', *Crusades*, 14, p. 21.

1567 For instance, a certain Ramon Seniofred died in Piacenza on his way back from visiting the Holy Sepulchre. The travelling group probably returned over Venice on the road back to Ripollet. The promulgation of the will dates to the 25th of January 1046, while Ramon died on a non-specified day in August 1045. This may have caused the judge Guillem to add a citation of the Visigothic law code (LV II.5.13; Zeumer LV II.5.11) specifying that because the death happened under the circumstances of travel the will is still legally binding even though it had surpassed the deadline of six months. ALTURO, *L'arxiu*, doc. 52: *Et ego prescriptus iudex hos testes fideliter recepi cum iuramento. Per auctoritatem legis Gothicis ubi dicit: "Moriens in itinere aut in espeditione publica si ingenues secum non habet, volumptatem suam propriam servis insinuet corum fides coram iudicem probare deberunt et sic volumptas ipsius habeat firmitatem", nos prescripti testes qui prescriptam volumptatem iuramus recte scimus quod prescriptus Reimundus qui prescriptam volumptatem hordinavit, postea vixit tribus diebus et sic migravit de hoc seculo in mense augustus iste primus transhacto. Sig+num Guilielmus iudex.* Interestingly enough the judge also modified the citation of the law from *quorum fidem episcopus atque iudex probare debebunt* to *corum fides coram iudicem probare deberunt*. That is in line with the legal reality in which judges are the ones organizing the *iudicium* and bishops are usually not present.

1568 Comp. Udina i Abelló, Antoni (1995), 'La adveración sacramental del testamento en la Cataluña altomedieval', *Medievalia*, 12, p. 57.

1569 A longer stay in the holy land, lasting up to seven or even ten years, was contemplated especially during and after the first crusade see: Jaspert, N. (2015), 'Eleventh-Century Pilgrimage from Catalonia to Jerusalem: New Sources on the Foundations of the First Crusade.', *Crusades*, 14, p. 23.

Three examples from Urgell, dating in the years 1111, 1114 and 1118, show that the desire to travel afar was a good incentive to finalise ongoing quarrels, and illustrate how canons used this occasion to their advantage.[1570]

For a long time, the bishop and the clergy of Santa Maria de la Seu maintained complaints related to the parish of Àreu, claiming that a man called Tedball and his men held it unjustly and demanded its return.[1571] When Tedball wanted to make a pilgrimage to Jerusalem the clergymen seized the moment and called him to the chapter to complain about the parish. Thereupon Tedball acknowledged that he had sinned against God, the virgin Mary and Christ, and that he had possessed the parish of Àreu unjustly. Finally Tedball, together with his wife Ermessenda, following the advice of the viscount Pere Arnau with the approbation of his men restored the parish to Urgell with all the belongings and tithes.[1572] The evacuation and donation charter is not only signed by the couple but also by the homonymous son Tedball. The viscount and other local magnates testify to ensure the stability of the charter, while the father is absent.

In a similar fashion the canons of Urgell, who had a dispute regarding an allod with a *miles* named Carbó, used the momentum of his desire to go on a pilgrimage to Jerusalem to their advantage. He resigned the allod to the canons for the duration of his journey and in the event of his death he would cede the part of the rights he

1570 All three examples fit into the new profile of far-travelling pilgrims that are not magnates, compare: Benito i Monclús, Pere (2007), 'Els primers pelegrins catalans a Sant Jaume de Compostel·la (segles XI-XII). Identitat, perfil social i procedència geogràfica', in , *El camí de Sant Jaume i Catalunya*. *Actes del congrés internacional celebrat a Barcelona, Cervera i Lleida, els dies 16, 17 i 18 d'octubre de 2003* (Biblioteca "Abat Oliba". Sèrie il·lustrada, 21; 1a ed., Barcelona: Publicacions de l'Abadia de Montserrat), p. 117: En canvi, a partir deis darrers decennis del segle XI fan aparició dos nous perfils de pelegrí propis de la societat feudalitzada: el noble, propietari aloer de castells, i el cavaller detentar en feu de castells i castlanies.

1571 Probably Sant Feliu de la Força d'Àreu in todays Pallars Sobirà. BARAUT, «Els documents», IX, doc. 1265: *In nomine Domini. Ego Tedioballus cum coniuge mea nomine Ermesen audientes querimoniam episcopi atque clericorum Sancte Marie Sedis per longum tempus de parrochia de Arau, que erat Sancte Marie quam nos iniuste tenebamus, hostenderunt nobis multociens ecclesiasticas res auferre sacrilegium esse et rogaverunt ut nos vel nostri homines qui illam iniuste tenebant Sancte Marie reddidissemus.*

1572 Ibid: *Idcirco ego Tedioballus, volens pergere Iherusalem, predicti clerici vocaverunt me ad capitulum et fecerunt mihi querelam de iamdicta parrochia ut reddidissem illam Sancte Marie eiusque canonice. Ego vero cognoscens veritatem illorum et cognoscens me pecasse adversus Dominum et beatam Mariam matrem eius, cum filio atque laudamento vicecomitis Petri Arnalli sive Bernardi Petri de Botella necnon et Raimundi Raimundi de Alannis, et cum laudamento aliorum meorum hominum qui ibi mecum aderant, relinquo atque dono domino Deo Sancteque Marie eiusque canonice predictam parrochiam* […].

intended to keep. But if it was "God's will" that he returns, the case would be resolved judicially in the presence of him and his brother Babot.[1573]

Girbert Amat of Pessonada also travelled to Urgell and sought to postpone his legal quarrels due to his desire to embark on a pilgrimage to the Holy Sepulchre. There, attentive to the complaints of the canons, he admitted that he had unjustly taken the parish of Telia and that he had retained three *modis* and the tithe of Peracalç. He restored all of this and it was established that if he made a claim for it upon his return, or if his *batlle* or his children wished to claim it, then the canons should address their demands in court. It is the local judge Pere who wrote and signed the charter and who would probably have been present at the court case in case of Girbert's homecoming.[1574]

The month of May seems to be a good point in the year at which to embark on a long journey; in all three occasions the documents were drafted in this month. Besides having the advantage of organising the travel preparations early in the year, all charters are drafted after Easter, more specifically the Saturday after the Ascension of Christ[1575], Wednesday after Pentecost[1576] and Sunday before the Ascension of Christ,[1577] and therefore, though not explicitly mentioned, it is a reasonable assumption that the desire to travel to the grave of Christ was articulated or at least influenced by Easter or the festivities that preceded the charters. The canons surely used that religious momentum to their advantage. Quarrels and issues had to be resolved before leaving, and the religious fervour and the desire for pilgrimage helped to find solutions and agreements for issues that otherwise may have caused more serious trouble. The moment at which the donation charters were created was surely carefully selected,

1573 BARAUT, «Els documents», IX, doc. 1281: *Si autem in hac peregrinatione obierit dimittat suas voces ipsam suam partem de ipsum alaudem ad Sancta Maria solidum et quietum. Et si est voluntas Dei ut revertatur placitent ipsi canonici ipsum alaudem ad eum et ad suum fratrem nomine Baboth, et si habere poterint per directum habeant sicut superius est scriptum.*

1574 BARAUT, «Els documents», IX, doc. 1310: *Omnibus notum sit hominibus qualiter Girbertus Amati de Peconada adfuit in villa Sede causa eundi Sancti Sepulcri, de quo fuerunt querelati canonici Beate Marie, quod ipse abstulerat eis parrochiam de la Tella et modios tres in Petracalz et decimum de alodio de Geslino de Petracalz, unde ipse ad ultimum recognoscit se et dimisit Beate Marie Sedis et eius canonice predictam parrochiam de la Tella, excepti mansi qui fuerunt de Isarn et de Guilelm. Ab quos retinuit secum, et dimisit ei predictos III modios et iam dictum decimum. Sub tali videlicet racione ut hoc habeat et teneat Sancta Maria et illius canonici, et si prefatus Girbertus fuerit reversus de hac peregrinacione et requisierit hoc, canonici Sancte Marie faciant ei directum, si autem ipse in hoc obierit et sui baiuli aut eius filii hoc requisierunt, iam dicti canonici faciant eis directum.* [...] *Sig+num (Signe) Petri iudicis, qui hoc scripsit et signavit.*

1575 Ibid, doc. 1265. Dating on the 13th of May 1111, two days after the Ascension of Christ.

1576 Ibid, doc. 1281. Dating on the 20th of May 1114, three days after Pentecost Sunday.

1577 Ibid, doc. 1310. Dating on the 19th of May 1118, on the Sunday four days before the Ascension of Christ.

and some prearrangements were made before the donators and their witnesses went to Urgell.

Thanks to a short preambular narrative a very particular donation of a certain Berenguer provides some context into how the festivities around Easter could have played a central role in the three examples from Urgell. Arnau Berenguer, son of the above mentioned Berenguer, expressed his desire to travel to the Holy Sepulchre to his father in the church of Santa Maria of Solsona during, most probably, the Easter Vigil.[1578] His reasoning and prearrangements before travelling to the holy land are expressed in first person. He "opens his heart" to his father some days later after mass in the presence of Bernat Blitgar a *miles* of his father, and Ramon Guitard, provost of Santa Maria de Solsona. His late brother gave him the castle of Malgrat as an allod but he wishes to make the pilgrimage and as he is still young and has no other brothers or children himself, he wants to leave the castle to his parents for their lifetime. After their death he wants to give it to Santa Maria of Solsona so that the altar there would be illuminated day and night for a whole year. We are only informed about the circumstances because Arnau felt that he could not delay his journey any longer and wanted his father to make the charter for him.[1579] The three witnesses, father, knight and provost, did as Arnau Berenguer desired and effectuated the donation charter only twelve days after the Easter Vigil, with Arnau already on his way. The short period of time from the events of the Easter Vigil to him embarking on his journey provides a lot of credibility to the narrative presented in the charter and gives a glimpse into the religious fervour when the story is otherwise only expressed through standardised formulas. It is the longing to go on a pilgrimage that drives one to settle ongoing

1578 The donation charter dates on the 23rd of April, the night between Holy Saturday and Easter Sunday would have been from the 11th to the 12th of April. BACH, *Col·lecció,* doc. 18: *Notum sit omnibus hominibus tam presentibus quam futuris quoniam Arnallus Berengarius, filius meus, venit mecum pariter in ecclesiam Sancte Marie Celsone ad vigiliam faciendam et misericordiam Domini implorandam, ut ille qui est dux omnium bonorum fieret ductor itineris eius Sancti Sepulcri, quo ille cupiebat pergere.*

1579 Ibid: *"Pater et vos alii qui mecum adstatis, volo vobis pandere cor meum; vos scitis qualiter Arnallus Petri, frater meus, dedit michi castrum quod est nuncupatum Malgradum ad proprium alodium; modo ego sum iuvenis, cupiens pergere supradictum iter, non abens fratres neque filios quibus dimitam castrum illud. Ideo audite mandatum meum: Predictum castrum relinquo ad te patrem meum et ad matrem meam in vita vestra, ut teneatis et possideatis eum sine inquietacione ullius hominis. Post obitum vero vestrum dimitto eum Sancte Marie ante cuius presenciam sto et propter benefficium dimitto ei oleum unde sit illuminatum altare istud annum integrum, nocte ac dire. Et pro eo quod ego demorare non possum, rogo vos ut faciatis ei cartam sicut vobis iniunctum habeo". Et hec dicens ille accepit ipsum missalem prefate Sancte Marie et sicut dictum est fecit ei hoc donum super altare eius. Post hec letus et gaudens recessit a nobis.*

disputes with ecclesiastical institutions without going to court or delaying the cases for a later moment.

Another tool used to put pressure on family members to respect donations given to ecclesiastical institutions was excommunication. On the first of January 1134 Pere Arbert, who wants to embark onto a pilgrimage to Jerusalem, in front of the altar of the cathedral of Barcelona and in the presence of many good men, defines and evacuates half of the tithes and all that he has by inheritance, as well as the *sagrera* of the church of Sant Cristòfol de Lliça de Vall, into the *dominium et postestatem* of Oleguer, the bishop of Barcelona.[1580] This is the second definition he was involved in, as the one effectuated by his widowed mother, together with him and his brother, was sworn but then neglected and as such they were subject to excommunication by Oleguer himself. The impossibility to embark on a pilgrimage while excommunicated forced Pere Arbert to finally respect his mother's donation. Another possible interpretation would be that the pilgrimage may have been the consequence of the unwillingness to release the inheritance, and the guilt and fear of damnation could have caused his desire to travel abroad to the holy sites. The *sanctio* of the new definition charter leaves no doubt that anyone daring to *disrumpere vel infringere hanc diffinitionem temptaverit primum iram Dei Omnipotentis incurrat et anathematis vinculo subiaceat*.[1581]

While earlier charters express the wish to see the places where Jesus and the apostles had lived on earth, in the second half of the 11th Century the expiation of sins or crimes and the fear of damnation start to appear more frequently as a motif in the motivations expressed for travelling to visit the holy sites.[1582]

1580 MARTÍ, *Oleguer,* doc. 94:

1581 Ibid.

1582 Early examples explain the motivation for going to the holy land in the service of God (BARAUT, «Els documents», III, doc. 370; BARAUT, «Els documents», IV, doc. 544, MARQUÉS, *Escriptures*, doc. 49), for the remedy of the soul (BARAUT, «Els documents», V, doc, 736) or to see the holy sites (BARAUT, «Els documents», V, doc. 816). While all these motivations are still expressed, the fear of *penas inferni* is added (BARAUT, «Els documents», VI, doc. 1024; MARQUÈS, *Cartoral de Carlemany*, doc. 162; MARCA, Marca, doc. 307). The notion of expiating crimes is most clearly expressed in a testament dating in the year 1083, MARTÍ, *Collecció*, doc. 384: *Ego Petrus Bonardelli, volens pergere Jherusalem propter remissionem omnium delictorum meorum* [...]. The distinction between sin and crime is still problematic in these documents. For the notion of travelling in the service of God and the ideal of the *imitatio Christi*, see: Priesching, N. (2010), 'Der Erste Kreuzzug als Pilgerfahrt: eine Militarisierung der Wallfahrt oder eine Sakralisierung der Ritterschaft? Ein Beitrag zur Spiritualität der Kreuzfahrer', *Annali di studi religiosi*, 11: 147–166.

Bernat Joan killed a man during the Truce of God and in accordance with "canon rule" was exiled.[1583] This was probably a reference to the recent promulgations of the peace and truce of God, and in his case that would have meant exile for *omnibus diebus vite.*[1584] However, he appealed to the bishop's mercy and got his sentence reduced. The bishop Guillem Guifré, remembering the words of Christ to the apostle Peter about forgiveness,[1585] fittingly sent him first on a pilgrimage to St. Peter and afterwards to Santiago. After coming back in 1069, Bernat Joan, together with his wife Adelaida and his sons, donated a vineyard and land in the valley of Nítols, close to Cardona, to the see of Urgell.[1586] The fact that one of his sons was a priest may also have helped him in this situation.[1587] This document is remarkable as it is a very early example of someone getting his sentence reduced through pilgrimage and arguably also shows a real application of the peace and truce of God.

According to the *Lex Visigotorum* the punishment for killing family members would be the death sentence.[1588] However in the documentation this sentence was never applied, and the judges preferred to sentence civil cases to exile.[1589] Various

1583 SALRACH, MONTAGUT, *Justícia,* doc. 384: *Nos simul in unum donatores sumus Domino Deo et Sancte Marie matris eius et Canonice eius Genitricis, pro hac causa quia ego Bernardus fui inpeditus in causa homicide in treguam Domini et pro hac culpa, secundum canonice regule, a proprio meo episcopo fui deputatus in exilio.*

1584 The dating of Puig, Ruiz, Soler seems more reasonable and would date the assembly in the year 1063. The contemporary version also slightly varies in its phrasing. Compare, PUIG, RUIZ, SOLER, *Diplomatari*, doc. 50: *Si quis autem intra hanc predictam treguam hominem occiderit, ex consensu omnium christianorum difinitum est, ut post factam composicionem homicidii omnibus diebus vite sue exilio dampnetur, aut in monesterio assumpto monastico habitu, quo actus retradatur.* and GONZALVO, *Pau i Treva*, doc. 6: *Siquis autem infra hanc trevam hominem occiderit sine aliquo casu, ex consensu omnium christianorum difinitum est, ut omnibus diebus vite sue exilio dampnetur. Si autem cum casu hoc fecerit, egrediatur tamen a terra usque ad termimum quem episcopus vel canonici existimaverint esse imponendum.*

1585 Mt 18: 21-22.

1586 SALRACH, MONTAGUT, *Justícia,* doc. 384: *Et quia ego Bernardus [...] non possum transire nec omnia que possideo derelinquere quesivi misericordiam a pontifice meo Guilelmo et ad suos archidiachonos et ad suis clericis. Et ego Guilelmus episcopus recogitavi misericordiam Domini quam dixit discipulo suo Petro, «si peccaverit in te frater tuus dimitte ei usque septies? Et non dixit Dominus sepcies set usque septuagies septies?» Et ego Bernardus quia maiora non possum facere pergi ad Sanctum Petrum et ad Sanctum Yacobum et hoc ex penitencia quod potui feci. Et quia ego secundum canones non potui quod facere deberem, per iussionem pontifici mei domni Guilelmi et sui archidiachones et suis clericis dono de meo alodio, id sunt, terras et vineas simul cum uxore mea et cum filiis meis supra dictis*.

1587 Usually sons are listed by age, so it would be his second youngest son, ibid: *Hec est carta donationis quam Bernardus Ihoannis et uxorem eius Adaledis nomine et filiis eius, id est Petrus et Eriballus et Ugonem clericus et Guilelmus.*

1588 LV VI.5.17: *Cum nullum homicidium voluntate commissum nostris legibus relinquitur inultum, illum magis oportet mortem excipere, qui consanguinitatis proximum presumpserit occidere, proinde hoc omne per euum promulgamus edictum, ut, quicumque parricidium fecerit, hoc est, patrem aut matrem seu fratrem aut sororem vel quemcumque sibi propincum proposito vel intencione prave voluntatis occiderit, confestim comprehensus a iudice eadem morte puniatur, qua ipse alium punire presumpsit.*

1589 For the development of the death penalty in Catalonia, see: Sabaté, F. (2019), *The death penalty in late-*

examples show that being exiled was a potential sentence for having committed homicide.[1590] This seems to have been a common verdict but the lack of motivation to keep a long-term record of it, as it does not necessarily involve property being handed over, reduces the probability of the records being preserved and only indirect references allow some insight. Nevertheless the few examples follow the same pattern seen in the example of Bernat Joan: clemency and mercy towards the ones faced with the harsh sentence of exile, thus avoiding its application.

Originally exile was used in the Visigothic law code as a political tool and it was understood as such by one of the best experts of the Liber.[1591] Eleven years after the uprising against Guifré II of Besalú in 957,[1592] Miró II Bonfill,[1593] *gratia Dei comes*, donated an allod at Parets that belonged to the leader of the revolt, Adalbert, to the see of Girona. The donation contextualises how the allod came into the possession of Miró.[1594] When Adalbert, the leader of the revolt, saw his cause was lost he abandoned the land like Judas and escaped into exile, depositing his property through a very "false connivance" into the dominion of the priest Sunifred, who had been one of the transgressors. He did so under the condition that while the priest is alive, he would own the property, but after his death, it would be given to the see of Girona. The judges considered the document fraudulent and gave Adalbert's property to Count Sunifred II of Cerdanya and I of Besalú, brother of Guifré and Miró. When Sunifred died, he

medieval Catalonia: *Evidence and significations* (Studies in medieval history and culture; 1st, London: Routledge).

1590 Exile is contemplated in various chapters of the Visigothic Law (LV II.1.8, III.5.2, III.5.5, III.6.2, IV.4.1. VI.5.13, IX.2.8, X.2.9, X.2.7, XII.2.2, XII.2.14, XII.3.1, XII.3.2, XII.3.4, XII.3.5, XII.3.8, XII.3.9, XII.3.11, XII.3.13, XII.3.21, XII.3.27.) but the application in cases of homicide is not considered in any of these. Probably the connection between slavery and homicide, and exile for mistreating slaves in LV VI.5.13 could have established this connection.

1591 For the genesis of the law and the confiscation of property as a political tool, see: Díaz Martínez, Pablo de la Cruz (2012), 'Confiscations in the Visigothic Reign of Toledo: A Political Instrument', in P. Porena and Y. Rivière (eds.), *Expropriations et confiscations dans les royaumes barbares*. *Une approche régionale* (Collection de l'Ecole française de Rome, 470, Rome: Ecole Française de Rome), 93–112; Martin, C. (2020), 'Ervig and Capital Penalties: The Way of Exile', in E. Dell' Elicine and C. Martin (eds.), *Framing Power in Visigothic Society*. *Discourses, Devices, and Artifacts* (Late Antique and Early Medieval Iberia, Amsterdam: Amsterdam University Press), 133–58.

1592 For the uprising, see: Salrach i Marés, Josep Maria (1973), 'El Comte Guifré de Besalú i la revolta de 957. Contribució a l'estudi de la Noblesa Catalana del segle X', *Quaderns de les Assemblees d'Estudis.*, 2: 3–36.

1593 Salrach i Marés, Josep Maria (1978), 'Miró Bonfill i la solemnitat ripollesa de 977', *Revista de Girona*, 1978. Feliu de Travy, Ignasi (1983), 'Miró, bisbe de Girona i comte de Besalú', *Revista de Girona*, 104: 207–212. Salrach i Marés, Josep Maria (1989), 'El comte-bisbe Miró Bonfill i l'acta de consagració de Cuixà de l'any 974', *Acta historica et archaeologica mediaevalia*, 1989. Salrach i Marés, Josep Maria (1990), 'El comte-bisbe Miró Bonfill i la fundació i dotació de Sant Pere de Besalú (977-978)', *Annals del Patronat d'Estudis Històrics d'Olot i Comarca*, 1990: 9–44.

1594 SALRACH, MONTAGUT, *Justícia,* doc. 80.

bequeathed the allod to his brother, Miró Bonfill, who is known for his ample linguistic skills and his notorious use of the *Lex Visigotorum*.[1595] The terminology used in the charter is interesting in that regard as it is full of indirect citations of the Visigothic law code. Adalbert's uprising caused "perturbation and scandal" in the lands of *Wifredi principis,* referring to the former count of Besalú, Guifré. The scriptures studied by the judges (*iudicibus doctoribusque nostre legis consulit)* were *concinnatione falsissima* and *fraude confectis* and therefore he had *evacuatis scripturis supradicta fraude confectis* and the count *quicquid ex his rebus idem princeps elegerit facere liberam habeat potestatem*.[1596] Everything points towards the idea that instead of citing the specific law (LV II.1.8. Zeumer: LV II.1.6.), it is transformed and adapted to the situation, using its vocabulary in a very eloquent manner.[1597] This indirect citation justified the

1595 CC VI, p. 18-22.

1596 SALRACH, MONTAGUT, *Justícia,* doc. 80: *Perspicum est igitur omnibus nobis in hac terra degentibus quia quidam homo Adalbertus nomine, cum aliquibus ex parentibus suis, in contrarietatem domni Wifredi principis populique terre huius scandala conturbationesque movere conati sunt, in tantum etiam ut prescriptum principem ex opido suo eiicientes inimicique suis illum contradentes tamdiu unanimiter illum persecuti sunt usquequo prenominatus transgressor ad instar Iude omnia que habere videbatur postposuit et sese exilio contradidit. Rebus igitur suis sub calliditatis studio et concinnatione falsissima in dominio Soniefredo sacerdoti, qui unus ex transgressoribus extitit, per scripturam contulit, sub isto videlicet ordine ut dum superstes illo sacerdos extiterit, post obitum vero suum, prefate sedis habitura relinqueret. Annuente igitur potestate divina frater supradicti principis meusque castrum quod supradicti transgressores prescripto principe subtraxerant conquisivit, et dum in eo cum suis subditis resideret, iudicibus doctoribusque nostre legis consulit quid eis de rebus tam nefariis transgressoribus agere oporteret. Ad illi perspectis venerabilium patrum scriptis dederunt sententiam ut evacuatis scripturis supradicta fraude confectis, res omnes tam nephariorum transgressorum ad ultimo in dominio supradicti principis deberent devenire, et quicquid ex his rebus idem princeps elegerit facere liberam habeat potestatem.*

1597 LV II.1.8. (LV II.1.6.): *De his, qui contra principem vel gentem aut patriam refugiunt vel insolentes existunt.* […] *ab anno regni nostri primo vel deinceps quispiam infra fines patrie Gotorum quamcumque conturbationem aut scandalum in contrarietate regni nostri vel gentis facere voluit, sive ex tempore nostri regiminis tale aliquid agere vel disponere conatus est aut fuerit, atque, quod indignum dictu videtur, in necem vel abiectionem nostram sive subsequentium regum intendere vel intendisse proditus videtur esse vel fuerit. Horum omnium scelerum vel unius ex his quisque reus inventus inretractabili sententia mortem excipiat, et si nulla mortis ulcione plectatur et pietatis intuitu a principe illi fuerit vita concessa, aut effossionem perferat oculorum, secundum quod in lege hac hucusque fuerat constitutum aut decaluatus centum flagella suscipiat et sub artiori vel perpetuo erit religandus exilio pene et insuper nullo umquam tempore ad palatini offitii reversurus est dignitatem; sed servus principus factus et sub perpetua servitutis catena in principis potestate redactus eterna tenebitur exilii religatione relinquatur obnoxius, quatinus nec civium videat quod fuerat nequiter delectatus et amarissimam vitam ducere se perhenniter doleat. Res tamen omnes huius tam nefarii transgressoris vel eius, qui morte est pro tali scelere perimendus, vel illi, qui vite propter suam nequitiam infelicissime reservabitur, in regis ad integrum potestate persistant, et cui donate fuerint ita perpetim securus possideat, ut nullus umquam succedentium regum causam suam et gentis viciaturus has ullatenus vel ulterius auferre presumat. Verum quia multi plerumque reperiuntur, qui dum his et talibus pravis meditationibus occupantur, argumento quodam fallaci in ecclesiis aut uxoribus vel filiis atque amicis seu in aliis quibuscumque personis suas inveniuntur transduxisse vel transducere facultates, etiam vel ipsa, quae fraudulenter in dominio alieno contulerant iure precario reposcentes sub calliditatis studio in suo denuo dominio possidenda recipiant, unde nihil de suis rebus visis nec amisisse, nisi solum concinnacione falsissima fictas quasi veredicas videantur scripturas conferre vel proferre; Ideoque hanc nequissimam argumentationem presentis legis decreto amputari elegimus, ut calcatis vel evacuatis seu recisis scripturis hac fraude confectis, quidquid eo quisque tempore possidere reperiatur, qui fuerit in predictis*

expropriation of the members, allies and friends of Adalbert but puts a question mark on the self-imposed exile of its leader.[1598] As far as we know Adalbert simply fled, as Judas did, and died soon after.[1599] The word exile, therefore, could be just used to make the justification more fitting as the Visigothic law uses that exact vocabulary.

Exile as a verdict for homicide was nevertheless applied on various occasions. On Good Friday, the 18th of April, 990, Sindila and his wife Maria offer themselves as slaves to the see of Barcelona, along with all their property and any descendants the couple may have. Sindila does so to atone for the crime of having killed his daughter and to avoid the penalty of exile.[1600] The scribe of the charter is none other than Ervigi Marc[1601] and the document is not a donation but a *traditione,*[1602] a delivery of their possession and themselves.[1603] The word is carefully selected and along with the judge

criminibus deprehensus, totum continuo fisci viribus ad integrum applicetur ut concedere iam dictas facultates, sicut supradictum est, cui rex voluerit vel facere exinde quidquid elegerit, sue potestatis consistat arbitrio. Alia vero quecumque ab hac fraude aliena inventa extiterint ordinata legibusque confecta vigore legum maneant solidata, illis ab huius legis sententia personis evidenter exceptis, quibus a precedentibus regibus culpa dinoscitur fuisse concessa. Nam si humanitatis aliquid quicumque perfido rex largiri voluerit, non de facultate eius, sed unde placuerit principi tantum ei solumodo concessurus est, quantum ereditatis eiusdem culpati vigesimam portionem fuisse constiterit.

1598 Salrach i Marés, Josep Maria (1973), 'El Comte Guifré de Besalú i la revolta de 957. Contribució a l'estudi de la Noblesa Catalana del segle X', *Quaderns de les Assemblees d'Estudis.*, 2, p. 17: Quan el 965 Miró Bonfill succeí al seu germà com a comte de Besalú, es féu càrrec també de les nombroses propietats que Seniofré havia confiscat als revoltats de 957, de les quals el bisbe-comte s'aniria desprenent en profit de les cases religioses del país. És precisament en les escriptures de donació d'aquestes terres, fetes el 21 de febrer de 968 per a la seu de Girona, el 2 de juliol de 978 per a Sant Pere de Besalú i el 10 de juliol de 979 per a Sant Esteve de Banyoles, a més de les disposicions testamentàries de 22 de febrer de 979, on Miró Bonfill ens informa dels esdeveniments de 957. Ibid, p. 14: Com era força habitual a l'època, la direcció de l'empresa, llevat del comandament suprem que en el nostre cas correspongué a Adalbert, el portaren, més que uns homes concrets, un grup de famílies, representades, això sí, pels seus caps respectius. El «clan» principal fou el dels descendents d'un tal Raifré representats pel mateix Adalbert, pel su germà, el prevere Seniofré, i el seu nebot o cosí Òliba.

1599 Probably referring to Matthew 26:56, where Jesus stayed to face justice but the apostles abandoned him. The scene is fitting in the sense that Judas ends up on the gallon. Salrach i Marés, Josep Maria (1973), 'El Comte Guifré de Besalú i la revolta de 957. Contribució a l'estudi de la Noblesa Catalana del segle X', *Quaderns de les Assemblees d'Estudis.*, 2, p. 31: Diem que Adalbert morí poc després perque el 28 de setembre de 958, «Odoari, prevere, Seniofré, sacerdot, i Joan, clergue», actuant en qualitat de marmessors d'Adalbert, feren donació escrita de l'alou de Parets a Santa Maria de Girona. A remarcar que el sacerdot Seniofré d'aquest document no era el germà homònim d'Adalbert, que participà en la revolta, sino un oncle seu: «dum Sonifredus presbiter avunculus eius vel helemosinarius vivus fuerit...». Comp.: CC2, II, p. 389.

1600 SALRACH, MONTAGUT, *Justícia,* doc. 115.

1601 Ibid: *S+ Eroigius presbiter, cognomento Marcho, qui et iudex, qui hec scripsi, cum itteras superpositas in verso XI, et SSS die et anno quod supra.*

1602 Ibid: Facta tradictione XIIII kalendas madii, anno III regnante Ugone rege. S+ Sindila, S+ Maria, nos qui hac tradicione fecimus et firmare rogavimus.

1603 Compare the same usage of vocabulary for slaves being handed over, SALRACH, MONTAGUT, *Justícia,* doc. 69: Qui mihi advenit pro sua tradictione, quod ille se trad[idit] in iu[di]cio constituto quoram comiti et iudices vel bonis hominibus, pro filio meo qui fui condam Arlovadi, quo ille eum interfeci et se recognovi et sui tradictioni firmavi; SALRACH, MONTAGUT, *Justícia,* doc. 75: Ego Sabida femina, vinditrix sum tibi Brunikardo, emtore. Per hanc ista scriptura vindicionis me vindo tibi servo meo nomine Samuel, qui mihi fui traditi in placito per manum saionis, ordinante iudices, pro ac causa unde

that makes it very probable that there was a trial beforehand or at least a discussion to ensure that the agreed outcome would fit the crime. The spouses handed over two pieces of land, two vineyards, a couple of bovines, some pigs and all the vessels they possessed, as well as their own selves, to the church of Santa Creu and Santa Eulàlia to serve God, so that *more servili, ut pius et misericors Dominus piacula nostra abole[re] dignetur.*

The trial, if there was one, probably happened beforehand and the date of this final delivery of property, the Good Friday, is reflected upon in the rather long *salutatio* of the short document.[1604] "Christ who threw down the old serpent wounded" is a reference to psalm 91, which is sung in the Good Friday liturgy and can be interpreted as Christ treading on the beasts thus defeating and triumphing over the devil.[1605] Sindila is a unhappy man as he was tempted by Satan, drank from the devil's cup and killed his daughter.[1606] But as Christ bore the unbearable burden (*assumpsit honus inportabilem*) the couple now has to bear their submission (*et imperare honus quod per mandatum eorum fuerimus iussi*). But most importantly Christ *himself bore our sins in his body on the cross, so that, free from sins, we might live for righteousness; by his wounds you have been healed*.[1607] Sindila bent his knee begging that he would not be made to abandon his homeland because of his guilt, and as God is merciful it is the clemency of bishop Vives of Barcelona that allows them to stay and redeem themselves by serving God. The act of becoming servants of the Church of the Holy Cross and Saint Eulalia on Good Friday was surely a public one, and no *sanctio* was

ego eum petivi quo illi occissi filio meo innocente nomine et firmavi exinde sua recognicione pro ac causa.

1604 SALRACH, MONTAGUT, *Justícia,* doc. 115. *In nomine Domini Dei aeterni miseratoris et pii, qui omnia regit, gubernat condiditque summa cum potentia, simul formans hominem ut digne preesset omnia atque inmortalem vitam degeret et amena paradisi perenniter frueret; sed transgrediendo praeceptis illius, iaculis antiqui serpenti sauciatus, amisit beatitudinem et assumpsit honus inportabilem. The initial part of the salutatio is common but then is clearly adapted for the occasion, see: Fernández i Viladrich, J. (2008), 'Estructura juridicoformal de les donacions en els diplomes de la Catalunya carolíngia', Revista de Dret Històric Català*, 8, p 79.

1605 Psalm 91, 13: You will tread on the lion and the adder, the young lion and the serpent you will trample under foot. See Breed, B. (2014), 'Reception of the Psalms: The example of Psalm 91.', in W. P. Brown (ed.), *The Oxford Handbook of the Psalms* (Oxford: Oxford University Press), p. 297–310, esp. p. 303.

1606 Comp. 1 Corinthians 10:21. SALRACH, MONTAGUT, *Justícia,* doc. 115. *Igitur cum nullus vitam degat sine peccato modernam atque adipiscis queat in tenebris sine lumine veniam, infelix ego homo, poculo diaboli potatus et a consortio christiane religionis extraneus eo quod interemi filiam meam, clemenciam domni Vivani, presul egregii, fixis genibus postulans cannonicisque religionis sedis Sancte Crucis et Sancte Eulalie veniam peto, ut Deo prestante ferant mihi iubamina, et ne exul propter culpa relinquam patria.*

1607 Peter 1, 2:24.

needed in the charter as the public exposure of Sindila's sin must have made it impossible for anybody to try to claim their property.

Begging for mercy so as not to be cast into exile also is expressed in a charter a hundred years later. On the 6th of March 1091, for the remedy of their souls, Bonfill and his wife Ermessenda donate a piece of land planted with a vineyard within the boundaries of the castle of Cardona and Matamargó, situated at a place called Molars, to the church of Sant Vicenç de Cardona for the lighting of the sacristy.[1608] They do so because Bonfill, having killed his brother, presented himself in front of the viscount Folc, the sacristan Ramon and the *senioribus* of Sant Vicenç appealing for mercy so that they would relieve him of his sentence of exile.[1609] The charter is defined as a *carta donacionis vel emendacionis*[1610] as it provides for both the illumination of the sacristy and for the compensation of the homicide. The rather mild punishment for the homicide could possibly be explained through context that is not provided.

Undoubtedly the ecclesiastical institutions profited from homicides. But even after the most despicable acts were committed, like murdering a close family member, it was still the responsibility of the Church to find a legally acceptable solution that gave the convicted an opportunity to save their souls through penance. The threat of exile was useful in pressuring the convicted into finding other solutions but was not suitable for saving their soul. The exiled would not leave any traces in the documentation, as their property would be given to their closest family members and the documentation is limited in that regard.

Pilgrimage opened up a new path of combining the established penalty of exile with the necessity of providing for the salvation of the soul. Bishop Guillem Guifré of Urgell sending Bernat Joan on pilgrimage was a forerunner of his time. While this work aims not to indulge in political history it cannot however pass by the fate of Berenguer Ramon II of Barcelona as it combines several elements discussed so far.[1611]

1608 Salrach, Montagut, *Justícia,* doc. 490: *In nomine Domini. Ego Bonefilio et uxori mea nomine Ermesendis donatores sumus Domino Deo et Sancto Vincentio, ad lumen sacristia, pecia I de terra complantata vinea, propter Deum et remedium animas nostras.*

1609 Ibid: *Videlicet, ego Bonefilius, propter culpam fratrem meum, quem occidi, veni in presentiam Fulco, archilevita atque vicecomes, et Raimundo, sacricustodi et senioribus Sancti Vincentii, qui seniores dedes mihi penitentiam et propter exilium quod debueram facere clamavi misericordiam supradictis senioribus.*

1610 Ibid: *Quod si nos donatores, aud ullusque homo, qui contra hanc istam cartam donationis vel emendationis inquietare vel disrumpere voluerit, non hoc valead vindicare* [...] *Sig+num Bonefilio, Sig+num Ermesindis, nos qui ista carta donacionis vel emendacionis mandavimus scribere et ad testes firmare rogavimus.*

1611 For a detailed discussion on the circumstances, see: Sobrequés i Vidal, Santiago (1985), *Els grans*

Ramon Berenguer I in his testament of 1076 divided his territory and opted for co-lordship. At the approach of his death he had to deal with the legacy of his long reign and the five surviving children, Pere Ramon from his first marriage and four more from his third wife Almodis. To the latter he bequeathed the considerable sum of 10000 mancusos as a dowry for his daughter Sança, while including his other daughter Agnes in the succession in case his other two sons died.[1612] The rest he divided between his most likely twin sons, not an unusual practice at the time.[1613] It was decreed that Ramon Berenguer II and Berenguer Ramon II should rule together as everything was divided equally, and in case of death the total rule should go to the other.[1614] The death of Ramon Berenguer II was attributed to his brother which led to an uprising against the new count – the most likely chosen solution saw him made the tutor of his nephew until he came of age. After his nephew took over the question of guilt was most probably cleared through a trial by combat at the court of King Alfonso VI, who was at this moment king of Castile and León, which Ramon supposedly lost and consequently went to Jerusalem, either on a pilgrimage or on the First Crusade where he died somewhere between 1097 and 1099. Combining the fact that pilgrimage for penitence in cases of homicide is attested to in the second half of the 11th Century, and the evidence for trial by combat, contemplated in the testament of Ramon Berenguer I in case of rivalries,[1615] the narrative of the fratricide dying in far of

comtes de Barcelona (4th edn., Barcelona: Vicens-Vives), p. 126-128.

1612 Taylor, N. L. (1995), 'The will and society in medieval Catalonia and Languedoc, 800-1200' (Harvard University). p. 189: Daughters were often omitted in testaments, having already been married and endowed, or were included only in an exhortation to a brother that he take responsibility for honourably marrying them off. Here, however, the cash legacy is intended to serve as her dowry; she was not yet married to count Guillem Ramon of Cerdanya. Ramon Berenguer's other daughter, Agnes, being already married, was included in the succession if Ramon's sons should die, but received no separate legacy.

1613 Ibid. p. 189-190.

1614 Feliu, Salrach, *Els pergamins*, doc. 66: *Primum quoque dimisit duobus filiis suis, scilicet Raimundo Berengarii et Berengario Raimundi, omnem suum honorem quem habebat in omnibus locis, id est, […]. Et totum ipsum honorem et omnes res pertinentes ad iamdictos honores et terras habeat Berengarius filius eius simili modo, sicut Raimundus frater eius, excepto hoc quod non faciat de ipsas terras atque honores ullum seniorem. Et de istis suis filiis duobus qualiscumque prius moriatur, hoc totum quod suprascriptum est de suo honore remaneat ad alterum. Et si ipse qui prius mortuus fuerit de iamdictis filiis suis duobus habuerit filium de legitimo coniugio teneat frater eius qui vivus fuerit de predictis filiis in vita sua ipsam medietatem quam pertinebit ad eius nepotem. Et ad obitum ipsius revertatur ad ipsum suum nepotem. E[t] si ambo predicti filii sui moriuntur sine filio vel filiis de legitimo coniugio, revertatur iamdictus suus honor ad filiam suam Sanctiam. Et si iamdicta Sanctia filia sua moritur sine legitimis filiis, predictus suus honor revertatur ad filium Guiguonis de Albion quem habuit de filia sua Agnes. Et laxavit predictam filiam suam Sanctiam cum predictos decem milia mancusos ad Gerallum Alamanni, ut ipse donet ad eam cum ipsos mancusos qualem meliorem maritum potuerit dare.*

1615 Ibid.: *Et definiat ad eum solide et libere ipsam medietatem quam ibi habebat. Et si remanet in illo ut non se voleat inde escundir per sacramentum aut per bataliam similiter sit. Et mandavit ad istos supradictos suos homines et ad alios ut in qualiscumque de predictis filiis suis duobus remanserit hoc tantum se teneant cum altero cum illorum honore donec sit hoc impletum sine ullo enganno. Item mandavit ad*

Jerusalem joining the 1st Crusade, well aware that he had no future in his homeland as well as a way to repent for his crime, is more than credible as it fits into the mentality and action of the time.[1616]

Exile, along with slavery, as a penalty for homicide disappears at the end of the 11th Century and the beginning of the 12th Century. The difference between Sindila losing everything and Bonfill's compensation payment is indeed representative of the change to a more vindicatory justice system based on compensations.

omnes suos homines qui tenebant castellos per illum ut non donent potestatem de ipsis castris ad suos filios usque transactum unum annum post mortem suam si tunc mortuus esset.

1616 The sources are rather sparse, see: Jaspert, N. (2015), 'Eleventh-Century Pilgrimage from Catalonia to Jerusalem: New Sources on the Foundations of the First Crusade.', *Crusades*, 14, p. 43. The clearest are the *Gesta comitum Barcinonensium*. CINGOLANI, ÁLVAREZ, *Gestes,* p. 130-131, BARAU-DIHIGO, MASSÓ, *Gesta*, p. 37: *Exigentibus itaque peccatis suis, mutus effectus et opprobrium omnium factus sub poenitentia Hierosolymis obiit peregrinus.* The whole story invites a revision.

IV.3.3. Slavery

The thief shall make restitution, but if unable to do so, shall be sold for the theft.[1617]

Sometimes the court's decision meant the loss of freedom of one or more individuals. The sources are few and this may well be due to the fact that, on the one hand, such a judgment is based on serious accusations and, on the other hand, that it was certainly not a light-hearted decision to make. Throughout the whole Visigothic law code the society is depicted as one of segregation, with a clear legal distinction between the free, slaves and freed women or men.[1618] The obsession with this distinction within the *Liber* while keeping that segregation intact becomes clear through the sheer number of chapters which refer to slaves and their legal differences in status within society.[1619] The category of slave exists in the documentation as well as in the Lex as *servi*, *ancillae* or *mancipia* but it is hard to determine the quantity of slaves that existed and what tasks of labour they were obliged to perform.

A slave was considered to be someone without full legal rights and consequently they could not open lawsuits and they never act on their own initiative in the documentation, neither as plaintiffs nor as defendants.[1620] In a certain way a slave was legally dead and "it is therefore understandable that the sentence of slavery was almost equivalent to the death penalty. For those people, as for the ancients, the slave

1617 Exod. 22:3.

1618 Salrach i Marés, Josep Maria (2003), 'Tradicions jurídiques en l'administració de justícia a l'edat mitjana: El cas de l'"Aliscara-Harmiscara" i la humiliació penitencial.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (València), p. 80-82.

1619 Bensch, S. P. (1994), 'From Prizes of War to Domestic Merchandise: The Changing Face of Slavery in Catalonia and Aragon, 1000-1300', *Viator*, 25, p. 65: In spite of the conservatism of notarial and legal language associated with the persistence of Visigothic law, which refers to slaves in 229 of its 498 articles, traditional terms such as *servi*, *ancillae*, and *mancipia* rarely carried over to enslaved Muslim captives. Pons i Guri, Josep M. (1991), 'El Dret als segles VIII-XI', in , *Symposium internacional sobre els orígens de Catalunya*. *Segles VIII-XI : [celebrat a Barcelona del 11 al 15 de desembre de 1989]* (Memorias de la Real Academia de Buenas Letras de Barcelona, [Barcelona]: Comissió del millenari de Catalunya; Generalitat de Catalunya), p. 147: En la tradició jurídica visigòtica l'esclavatge hi té un important paper, com ens fa veure el copiós nombre de lleis inserides al Liber Iudiciorum que regulen els actes i situació dels serfs, uns dels quals ho són fiscals i altres de pertinença privada. Sobre esclaus el *Liber* recull noresmenys que 111 lleis, de les quals 13 són de procedència no coneguda, 46 figuren entre les qualificades *d'antiqua,* 25 són de Kindasvind, 17 de Recesvind, 5 d'Egica, 3 d'Ervigi i 2 de Wamba. Els primers preceptes carolingis donats per a Catalunya, tant coneguts, recullen expressament la distinció entre homes lliures o *sui iuris* i els serfs.

1620 LV II.5.6: *Ne valeant definitiones vel pacta servorum sine iussu dominorum. Et honestas hoc havet et iusticia hoc adfirmat, ut que servi non iubentibus dominis seu per scripturam pacis ciscuntur sive per testem definiunt, nullo firma robore poenitus habeantur.*

was a living dead".[1621] According to the *Liber* slaves could be legally mistreated by their masters up to the limits of mutilation[1622] or killing.[1623] Legally they were considered property and the vocabulary used for them in the charters is not at all different from the one used for property.

The list of possible crimes that could result in condemnation to slavery is long and ranges from what we today would consider private to public.[1624] In a number of cases, slavery was the alternative punishment to a fine or compensation that was too high for the offender's financial capabilities[1625] and in that sense the Visigothic law code even recognises the legality of the free to sell themselves as slaves.[1626]

The sources which refer to pleas that are connected with the matter of slavery as a consequence of a trial are limited, with five from the 10th, three from the 11th and one dating in the beginning of the 12th century.[1627] Theoretically murder in the *Lex Visigotorum* is not atoned for by payment but instead should categorically be punished with the death penalty, but the lighter sentence of slavery prevailed in the preserved cases.[1628]

1621 Salrach i Marés, Josep Maria (2003), 'Tradicions jurídiques en l'administració de justícia a l'edat mitjana: El cas de l'"Aliscara-Harmiscara" i la humiliació penitencial.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (València), p. 81: Es comprèn, doncs, que la condemna a la pena d'esclavitud fos quasi equivalent a la pena de mort. Per aquella gent, com per als antics, l'esclau era un mort vivent.

1622 LV VI.5.13: *Ne liceat quecumque servum suum vel ancillam quacumque corporis parte truncare.*

1623 LV VI.5.12: *Ne domini sine culpa suos servos occidant et si ingenuus ingenuum occidat.*

1624 The laws range from high treason (LV II.1.8.) to non-compliance of military service (LV V.7.19.), false testimony (LV II.4.6.), instigation of false testimony (LV II.4.9.), destruction and falsification of documents (LV VII.5.2; VII.5.3; VII.5.4; VII.5.5.), coin counterfeiting (LV VII.6.2.) or tormenting an innocent to achieve an unjust accusation (LV VI.1.2.), as well as marriage and unions between the free, the freed and slaves (LV III.2.2; III.2.3; III.2.4), bigamy through remarriage of women (LV III.2.6.), kidnapping of women (LV III.3.; III.3.2; III.3.3; III.3.4; III.3.5; VII.3.3.), adultery (LV III.4.2; III.4.13; III.4.14.) or collaboration in abortions (LV VI.3.1.). Other cases that could lead to enslavement are abandonment of infants (LV IV.4.1), the sale of a free person as a slave (LV V.4.1), aggression or disobedience of a freedman against his patron or the descendants of the patron (LV V.7.10; V.7.17; V.7.20.), the consultation of fortune tellers (LV VI.2.1; VI.2.2.) and arson (LV VIII.2.1.).

1625 In case of debt (LV V.6.5.) or in not being able to pay the fines when found guilty in assisting homicide through instigation (LV VI.5.12.), unjust denunciations (LV VII.1.1; VII.1.5.), robbery (LV VII.2.13; VII.2.14; VII.3.2.), violent entry in a property to steal (LV VI.4.2.). Also helping a slave to flee and then not being able to pay for the slave would result in one becoming a slave (LV IX.1.2.). Also, men of inferior status that could not pay the fine for their breach of military service (LV IX.2.9.) would become slaves.

1626 Zeumer LV VI.5.21: *De homicidiis. Superiori lege antiqua censuit institutio, ut, quicumque volens homicidium perpetraverit, cum omnibus rebus suis in parentim vel propinquorum heredum defuncti iure maneat serviturus.*

1627 Years are given in brackets. SALRACH, MONTAGUT, *Justícia*, doc. 69 (933), 75 (953), 96 (987), 106 (988), 115 (990), 348 (1062), 366 (1065), 417 (1078). BARAUT, «Els documents», IX, doc. 1318 (1119).

1628 For the intentional homicide death penalty, see: LV VI.5.11. Also applied for abortion (LV VI.3.1.). A law by Vamba recognises that homicides remain as slaves of relatives or heirs of their victims (LV VI. 5.21); for coherence that would be only applied for refugees who managed to reach a sacred place to

Three charters from the 10th Century show the different stages of court procedure in cases of murder and the consecutive verdict of slavery. The clearest example of slaves being sold as property and that the act of killing could lead to enslavement stems from Vic at the end of the 10th Century. In this charter a woman named Sabida sold her *servus* Samuel, whom the *saio* had handed over to her by the order of judges, to Brunicard,. This was preceded by a lawsuit filed against Samuel for having killed her innocent son. The trial had ended with Samuel's recognition of being guilty of the crime and therefore he had signed what probably was a recognition charter.[1629] The document presented here is clearly defined as a sales charter[1630] and Samuel is handed over *ad proprium* and in *potestate,* not unlike how an allod, castle or even cattle would be.[1631] The exact circumstances are not mentioned but all legal criteria are met. Samuel recognised his crime *firmavi exinde sua recognicione pro ac causa* and that he killed the "innocent" son, so a contemporary would be assured that one was dealing with a true murderer, not someone who acted in self-defence,[1632] for example, but with intention.[1633] The corresponding charter of the court's resolution that Samuel signed may have looked something like the next example.

This document is defined as a recognition and transaction charter (*carta recognicione simulque tradicione*)[1634] and is the result of a murder committed by a man

escape the death penalty for homicide (LV VI.5.16; VI.5.17).

1629 SALRACH, MONTAGUT, *Justícia*, doc. 75: *Ego Sabida femina, vinditrix sum tibi Brunikardo, emtore. Per hanc ista scriptura vindicionis me vindo tibi servo meo nomine Samuel, qui mihi fui traditi in placito per manum saionis, ordinante iudices, pro ac causa unde ego eum petivi quo illi occissi filio meo innocente nomine et firmavi exinde sua recognicione pro ac causa.*

1630 Ibid: *Facta ista vindicio V idus dicember, anno XVIII regnante Ludovico rege, filium Karloni regi. S+num Sabida, qui ista vindicione feci et firmare rogavi. S+num Ansulfo. S+num Bellarone. S+num Adrovario. Brugivaldus SSS.*

1631 Ibid: *Quem vero predicto servo quem tibi vindo de meo iure in tuo hoc trado ad proprium, ut quiquit de eum facere volueris abeas potestate.*

1632 According to the Visigothic law killing in self-defence would have been legal and is described through the concept that striking first before being struck is legal. The involvement of weapons facilitates this notion as drawing a sword is considered as an intentional attack. Comp. LV VI.4.6: *Ne sit reus, qui percutere volentem ante percusserit.*

1633 The *Lex Visigothorum* makes a clear distinction between homicide and murder, the latter being punished more severely, comp: LV VI.5.1; VI.5.2; VI.5.3; VI.5.4; VI.5.5; VI.5.6; VI.5.7; VI.5.11. Other barbarian law codes also made this distinction, drawing a line between public homicide and secret murder. Also, various analogies were used to illustrate what an accidental homicide may look like. In the Gothic law accidental killing is defined as non-intentional (LV VI.5.1.) being it through not seeing the person killed (LV VI.5.2.) or a brawl (LV VI.5.4; VI.5.5) and thus the context of the crime was something judges had in mind.

1634 SALRACH, MONTAGUT, *Justícia*, doc. 96: *Facta recognicione simulque tradicione XII kalendas marcii, anno primo regnante Lodoico rege, filio Lotario rege. S+num Petro, qui ista carta recognicione simulque tradicione feci et firmare rogavi. S+num Oliba. S+num Adalbertus. S+num Wileme. Ariovadus subdiaconus, qui ista recognicione simulque tradicione scripsit et sub SS die et anno quod supra.*

called Pere. At the request of three people he came to a trial presided over by bishop Frujà of Vic. There he stated that he cannot deny that incited by the devil, he went at night to his mother's house, where he *iniuste et absque lege* and, even though she was not guilty, murdered his wife. As he had no "gold nor silver nor any other property" to redeem himself and the law establishes that he must serve a sentence for murder, he gave himself up to the *saio* to be handed over to the plaintiffs as a slave.[1635] The Visigothic law cited leaves no doubt that the case was understood as a unjustifiable murder that must have involved evil.[1636] To modern eyes the case looks to be one of domestic violence in which the wife of Pere had sought a safe space at the home of her mother-in-law.

The third example is slightly different as murder was committed by an individual who initially appears as a slave but is freed from that condition. Nectarà, together with *pluris bonis hominibus,* asked Adalgís to redeem[1637] her slave named Feliu for 30 solidus.[1638] The slave Feliu had come into the possession of Adalgís after being found guilty of killing her son Arlovad. The short sentence shows that she received Feliu legally, as it was the resolution of a court that had been presided over by the count, judges and *boni homines*, as well as the fact that Feliu had recognised the crime and signed his own transference, a charter that must have looked similar to the anterior example.[1639] The document is then divided into two legal acts by the expression *et ego.* First Adalgís clarifies that as a *servus* cannot redeem himself with his own *peculium*[1640] she instead received, with the presence of the *boni homines*, 30 solidus from Nectarà

1635 Ibid: *In iudicio domno Fruiane episcopo, iudice, et Dacone sacer, Teuderedus saione, in presencia Ennegone archipresbiter, Soniefredus sacer, Madexo sacer, Ermemirus sacer et laicorum Soniefredus, Adroario, Brandevino, Wilelme et aliorum multorum bonorum ominum qui ibidem aderant a pe[ti]cione Rafredo, Areavado presbiter et Recosindus, recognosco me Petro in ibi ore iudicio eo quod negare non possum qualiter diabolo incitante et meo peccato impediente sic adibui consilium iniquum et sic veni in villa Vistosa, in domum matris mee, ora nocturna, iniuste et absque lege et sine culpa occisi uxore mea. Et ea que dico veracio me recognosco. Propterea sic me trado me medipsum quia non abeo aurum nec argentum nuc ulla substancia unde me possum redimere et est in lege escriptum: «qui sine causa interfecerit ominem pro omicidio puniatur». Propterea sic me trado in manu saioni, de manu saioni in manus petentis, ordinante iudice.*

1636 LV VI.5.11.: *Si voluntarie occidatur. Omnis homo, so voluntate, non casu occiderit hominem, pro homicidio puniatur.*

1637 Redemption as the action of regaining possession of something in exchange for payment or clearing a debt.

1638 SALRACH, MONTAGUT, *Justícia*, doc. 69: *Manifestum est enim quia rogasti me cum pluris bonis hominibus, ut recepissem de te solidos [XXX^{a}] pro redemptione de servo meo, nomine Felix.*

1639 Ibid: *Qui mihi advenit pro sua tradictione, quod ille se trad[idit] in iu[di]cio constituto quoram comiti et iudices vel bonis hominibus, pro filio meo qui fui condam Arlovadi, quo ille eum interfeci et se recognovi et sui tradictioni firmavi.*

1640 The use of the technical term *peculium*, meaning the savings of a slave, is a strong indicator that the *Liber* was consulted.

so that the offspring of Feliu can live without infamy.[1641] After that, Nectarà clarifies that she redeemed Feliu from her own goods and she did so for the remedy of her own soul, as well as so that the slave and his descendants were from now on free of infamy in all places.[1642]

The volume of the documentation dealing with the matter of slavery in court cases is scant, to say the least, but still displays several common traits that allow a certain level of reconstruction of the particular court procedure in the 10th Century.

1641 SALRACH, MONTAGUT, *Justícia*, doc. 69: *Et ego Adalgis adquievi tua voluntate ut absque ulla libertate liberus fiat, pro eo quod servus non potest se redimere de suo pecculio, et recepi de te solidos XXX^a^, praesentis bonis hominibus in redemptione prjo illo, ut omnem servitium et libertinium quod mihi [debebat] impendere cunctum, exinde habeat mercedem, sicut mihi promisisti ut si procreaverit proles absque hullum infamium persistant omnique tempore.*

1642 SALRACH, MONTAGUT, *Justícia*, doc. 69: *Et ego Nectar presbiter, sic eum redimo de mea rem propria, propter Deum et remedium anime mee, et sic illi perdono ipsos solidos XXX^a^, ab integrum, ita ut nec ego nec nullusque homo ausus sit requirere ipsos solidos XXX^a^, neque in vita mea, neque post obitum meum, nec in nulloque tempore, sed sanus et letus pro[ced]at absque hullum infamium in omni locum quem eligere voluerit ille et omnis eius si fuerat posteritas liber.* Compare: LV V.4.18.

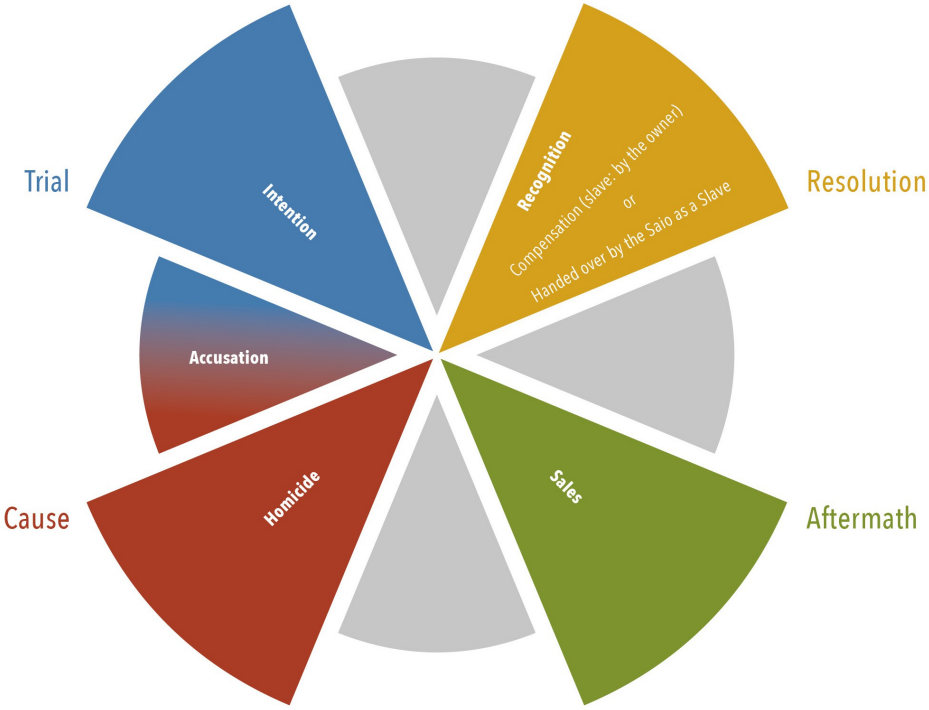


Fig. 18: Court Cases Related to Homicide and Slavery

After the accusation of homicide the accused is called upon or brought to court.[1643] During trial it is determined if the accused was the perpetrator and if so if the homicide was intentional, accidental or in any way justifiable. After being found guilty of murder the accused had to recognise his crime and pay compensation, or in the case of a slave his owner or someone else could pay the compensation instead. Now officially guilty of murder, the perpetrator was handed over to his new owner by the *saio* as a slave. Afterwards the enslaved could be sold like any other object of value.

Two more examples from the end of the 10th Century show that clemency and mercy was a common theme in these cases. In the first one, the sentence was reduced from slavery to a compensation even though an ordeal proved the accused guilty.[1644] In the other case, one party was condemned to exile but the couple preferred to hand themselves in as slaves. Again, this was displayed as an act of mercy and thus it can be deduced that exile was considered worse than enslavement.[1645]

This case of the prevented exile from 990 is the last from the 10th Century, and as slavery as a verdict in the sources is concentrated around this time span (933-990) it caused academic opinion to pinpoint that time as a last peak of a dwindling practice.[1646] But a case 75 years later shows that slavery as a verdict continued to exist and that in all likelihood we just lack the records of specific crimes that were castigated in that manner.

In the year 1065 justice proceedings were held at the porch or church tower (*pinnaculum*) of Sant Sadurní de la Marca[1647] in a trial presided by Bonfill Guillem and his wife Sicarda.[1648] A certain Llobet Llobató[1649] recognises himself as guilty of having

1643 Anybody had the right to accuse somebody of homicide, comp. LV.5.14: *Ut homicidam cunctis liceat accusare.*

1644 SALRACH, MONTAGUT, *Justícia*, doc.106, dating in the year 988.

1645 SALRACH, MONTAGUT, *Justícia*, doc. 115, dating in the year 990.

1646 For more references, see: Bensch, S. P. (1994), 'From Prizes of War to Domestic Merchandise: The Changing Face of Slavery in Catalonia and Aragon, 1000-1300', *Viator*, 25, p. 65: The lexical shift coincides with the withering of the last vestiges of Christian slaves. In Catalonia we hear no more about judicial enslavement and the moral opprobrium connected with it after 987, when bishop Frejus of Vic at a solemn court condemned a man to servitude for the particularly unsavory act of murdering his wife; by the early eleventh century references to Christian slaves in the eastern Pyrenean regions had disappeared.

1647 Next to the Castellvell de la Marca at today's town Castellví de la Marca. SALRACH, MONTAGUT, *Justícia*, doc. 366: [...] *ad pinnaculum aecclesiae Sancti Saturnini martiris* […].

1648 For Bonfill Guillem and Sicarda being involved in conflicts, see: Garí de Aguilera, Blanca (1984), 'Las querimoniae feudales en la documentación catalana del siglo XII (1131-1178)', *Medievalia*, 5, p. 14-15. For this case in particular, see: Garí de Aguilera, Blanca (2003), 'La resolución de conflictos en la Cataluña del siglo XI. Apuntes para una relectura de los inventarios de "agravios" feudales', *Acta historica et archaeologica mediaevalia*, 25, p. 67-69.

1649 He signs as the son of Lobató. SALRACH, MONTAGUT, *Justícia*, doc. 366: *S+ Lobeti, prolis Lobatoni, qui*

instigated and consented that his daughter, who was already married to a certain Bonfill Fedanci, would adulterate with another man.[1650] The judges decree that in accordance with the Gothic law,[1651] the culprit and his property must be handed over to the husband.[1652] Although, in this case, for no apparent reason Llobet ends up being handed over to Bonfill Guillem and his wife.[1653] The law is specifically cited and the eminent contradiction is clearly visible to the reader of the charter. What looks like an inconsistency could be explained through the possibility that the property first came *in potestatem* of the lord only to be handed over to the husband later on.

Two documents from Barcelona show that a transition from the strict use of the *Lex Visigotorum* towards a compensatory approach avoiding the infamous sentence of slavery was en route.

On April 10th 1078, two days after Easter, the counts of Barcelona Ramon Berenguer II and Berenguer Ramon II gave a property consisting of a house situated next to the see of Barcelona to their cousin Adelaide.[1654] They had received this property because a certain Joan Gamiz and his wife had counterfeited money and in accordance with the law had their property confiscated. The corresponding law is cited directly in the donation to Adelaide with the clarification that for "humble people" the crime of adulterating money would normally result in the penalty of

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hoc ut fieret atque scriberetur rogavit et manu propria puncti firmavit ac testibus subscriptis illud firmari expostulavit.

1650 SALRACH, MONTAGUT, *Justícia*, doc. 366: *Anno sexto regni Philippi regis, IIII idus iulii, advenit atque adfuit coram domno Bonofilio Guilielmi et domna Sicarde, eius coniuge, quidam homo Lobetus nomine, cognomento Lobatoni, asserens atque recognoscens se sollicitatorem adulterii filiae suae Mariae nomine, uxoris cuiusdam viri Bonifilii nomine, cognomento Fedancii, quam idem Lobetus iam dudum in coniugio sociaverat predicto Bonofilio, quem postmodum odio sive cupiditate prefatus Lobetus a se abiecit atque adulterum nomine Guilabertum super eandem filiam suam induxit in domo sua, se consenciente ac sollicitante.*

1651 LV III.3.11.

1652 SALRACH, MONTAGUT, *Justícia*, doc. 366: *Propterea ergo, sub presencia virorum subscriptorum, prenominatus Lobetus traditus est, cum omnibus rebus suis, in potestatem domni Bonifilii domnaeque Sicardis, coniugis eius, ut quicquid exinde facere vel iudicare voluerint meorum proprio consistat arbitrio.*

1653 Ibid: *Quapropter insistentibus viris inferius scriptis aliisque quam plurimis ad pinnaculum aecclesiae Sancti Saturnini martiris, cuius ecclesia aedes sita est ad radicem montis Chastri Vetuli, in ipsa Marcha, iudicatum est debere prefatum Lobetum addici atque in potestatem prescripti Bonifilii, predictae adulterae mariti, tradi, cum rebus suis omnibus serviturus, secundum sentenciam illius goticae legis qua precipitur ut «sollicitatores adulterii uxorum alienarum, mox ut manifestas iudiciis detecti exstiterint, in eius potestate tradantur cuius uxorem sollicitasse reperiuntur, ut illi quoque de his quod voluerit sit iudicandi libertas quem coniugalis ordo huius ultorem criminis legaliter esse demonstrat».*

1654 SALRACH, MONTAGUT, *Justícia*, doc. 417: *Que habemus intra muros Barchinone urbis non longe ab ipsa Canonica.*

enslavement.[1655] Additionally, the donation is reinforced through another citation of the *Liber* regarding the permanency of donations given under royal authority.[1656] The document ends without the signatures of the witnesses or the subscription of the notary as it is preserved in a cartulary.[1657]

About a month later, on the 12th of May 1078, Adelaide sold to Ramon Dalmau, a levite from the chapter of Barcelona, a small garden located within the walls of the city of Barcelona, near the cloister of the canons, for the price of 14 Barcelonan gold mancus. She received that garden per *donationem barchinonensium principum.* The following direct citation of the Visigothic law code is surprising as normal sales charters did not need a reference to the Gothic law to be legally valid, even when the property was donated by the count of Barcelona.[1658] But the *eschatochol* of the charter also has some additions wherein we find Joan Gamiz, and probably his family, assuring that the sale is legal.[1659]

The easiest explanation is that Adelaide received this garden through a charter, like the one given out by the brethren counts, or it could even be the garden belonging to the same house.[1660] Whatever the case, as far as I am aware the court's resolution is

1655 Ibid: *Advenerunt autem nobis prefata omnia propter imposturam sive falsitatem quam Iohannes Gamiz et uxor eius fecerunt in nostra moneta, quia precipit de furtis et fallaciis Liber Censorum septimus De falsariis matallorum, titulo sexto, capitulo secundo: «De his qui solidos aut monetam adulteraverint» ut humiliores persone «statum libertatis sue ammittant cui rex iusserit servitio deputandum».* LV VII.6.2.

1656 Ibid: *Atque postmodum hoc maneat perhenniter firmum, quia iubet De transactionibus, liber quintus, titulo secundo De donationibus, capitulo secundo, ut «donaciones principalis potestatis, que in quibuscumque personis conferuntur sive collate sunt, in earum iure perhenniter consistant, in quorum nomine eas potestas contulerit regia»*. LV V.2.2.

1657 As a 13th century copy in the Libri antiquitatum.

1658 BAUCELLS, Diplomatari, doc. 1329: *Advenerunt autem mihi hec omnia per donationem barchinonensium principum, quam mihi exinde per scripturam manibus illorum firmatam fecerunt, secundum quod continetur in Codice Censorum, quinto De transactionibus, titulo II De donationibus principum, capitulo II, ubi legitur: "Donationes regie potestatis, que in quibuscumque personis conferuntur sive collate sunt, in eorum iure consistant in quorum nomine eas potestas contulerit, regia ea videlicet ratione: ut ita huiusmodi regalis munificentie collatio atributa in nomine eius qui hoc promeruit, transfusa permaneat, ut quicquid de hoc facere vel iudicare voluerit, potestatem in omnibus habeat."* Comp. LV. V. 2.2.

1659 Ibid: *S+num Eriballus Remundi, s+num Bernardi Arnalli, s+num Iohannes Arnalli, s+num Guilelmi Odegarii, s+num Iohannis Gamiz, s+num Rodlendis femine, isti affirmant et verum esse astruunt atque auctoritate sua confirmant vendicionem hanc, et definiunt atque pacificant et evacuant ad utilitatem atque profectum supra scripti emptoris Remundi illud omne quod emerunt ex potestate Guilaberti Fruiani et filiorum eius, et ex potestate filiorum atque filiarum Audegarii Godmari et matris eorum. Propter quod, datis vocibus universis atque cartis quas exinde habebant, acceperunt a iure prenominati Remundi mancusos XII auri barchinonensis, ut cuncta hec firma esse statuerent atque corroborata.*

1660 The first donation is too much of a generic formula to determine if the garden really belonged to the house or if it was another property close to the see that was also confiscated. SALRACH, MONTAGUT, *Justícia*, doc. 417: *Sit etiam manifestum qualiter damus tibi domos nostras proprias, cum solis et supraposititis, cum omnibus ex omni parte gutis et stillicidiis, hostiis et ianuis, foveis atque cloacis, et universis ad easdem domos quolibet modo pertinentibus.*

lost to us and therefore the description of the confiscated property in that document is so too. Nevertheless, through these two charters some other conclusions can be drawn. As the second document, being a simple sales charter, has no need to cite the Visigothic law to be a valid legal document the easiest explanation is that its text drew upon the charter that was drawn up after the court's resolution. The same happened with the sales charter that indirectly refers to the donation. Joan Gamiz signed the second document, therefore he was not condemned to slavery, as would usually be the case for a humble man. The emphasis put upon the fact that a man like Joan Gamiz would usually have been sentenced to slavery probably means that the court used the same argument of mercy, and thus only confiscated his property instead, which would be more in line with the notion of compensation than enslavement. Therefore, chronologically the whole case can be visualised the following way:

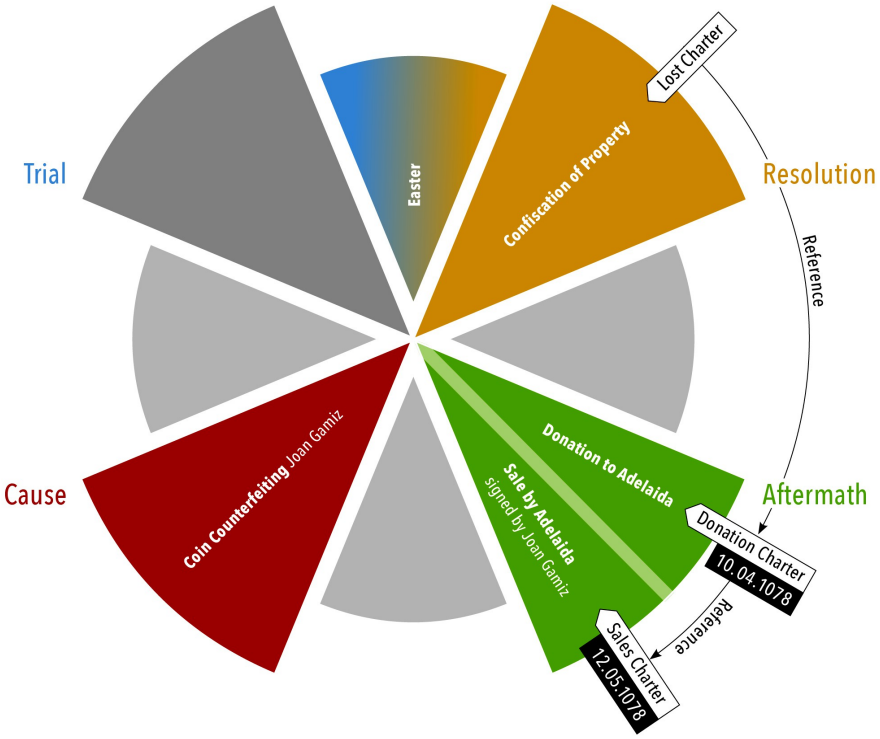

Fig. 19: Counterfeiting and its Aftermath

In cases of counterfeit monetary, instead of the confiscation of property a deal could be struck. Thirteen years earlier Guillem Sendred and his wife, Adaled, sold to the count Ramon Berenguer I of Barcelona and Almodis five sixths of a piece of land situated in the castle of Montfalcó el Gros, in the parish of Sant Pere, close to Manresa. They received sixty mancus and the forgiveness of the crime of counterfeiting Barcelona currency that they had committed. The counts forgave them the crime in the presence of many people, as the charter states.[1661] The document is signed by a judge named Adalbert who was probably the one resolving the case. Neither the waiver of complaint nor the court resolution are preserved, but the presence of a judge and the contradiction of the fact that the charter is described as a *largitio* by the scribe Pere seems to indicate some kind of agreement was reached, and so this document may have fully served the purpose so no other document was created in the process.[1662]

The last examples serve to show that the switch from slavery to compensation was well on its way in the second half of the 11th Century. Nevertheless, despicable crimes such as cutting off someone's foot or insinuating your own flesh and blood to adultery were still punished with slavery, especially if the crimes were of such great wrong (*tam grande malum*) that they couldn't be paid for easily.[1663] It is hard to imagine the judges overlooking the fact that there is a fitting law for this specific case. At the same time these cases may also have been preserved because they illustrate a very specific application of the law and thus should be considered worthwhile to keep. Despite that, the scarcity of the documentation – a total of nine documents and a break of 75 years between two verdicts that led to someone being enslaved – makes it hard to pinpoint the change in the application of the law.

1661 Ibid: *Sicut includitur predicta pecia terre infra has predictas IIIIor afrontationes, sic vindimus vobis predictam terram, cum omnibus arboribus qui ibidem sunt, excepta sexta parte que est de Gerallo Ermengaudo, meo nepote, propter precium LX et III mancusos monete Barchinone, quas nos accepimus, et propter vestram monetam Barchinone de auro, quam peccato nostro prepediente falsavimus vobis et vos ad nos deffinitis videntibus multis hominibus.*

1662 Ibid: *Sig+num Adalbertus Guitardi. Sig+num Raimundus Mironis de Copons. Sig+num Ollegarii. Girbert Mir. Adalbertus iudex (Senyal). Petrus diachonus, huius scedule largitionis rogitus scripsit (Senyal) et sub die annoque prefixo.*

1663 In 1062 a certain Sunifred named Rull handed himself with all his property over to Sant Cugat to amend for cutting off the foot of one of the abbots man called Ramon. SALRACH, MONTAGUT, *Justícia*, doc. 348: *Ego Senfre, que vocant Rul, donator sum et emendator pro ipsa forsfetura quam feci Domino Deo et Sancto Cucuphato et domno Andrea abbati, seniori meo, de ipso homine Remundo de Sancto Cucuphato, cui feci tollere pedem ad Guilielmum Bernardi de Oddena. Manifestum est enim quia tam grande malum feci quod non potui emendare ad Sanctum Cucufatem vel ad supradictum Andream abbatem seniorem meum. Propterea ego ipse venio in potestate predicte Andrea abbate cum omni meo abere quod ego abeo in omnibus rebus, id sunt in domibus, terris vel vineis, mobile et immobile, quantum dici et nominare potest in omnibus rebus.*

It is safe to say, however, that this change happened, at least as far as I am aware. The legislation of the *Liber* was only applied once in the legal context discussed here during the 12th Century in a case regarding homicide. Berenguer Arnau d'Arcavell, together with his wife Sança, and the husbands of his daughters, Berenguer Isarn, Arnau Isarn and Miró Isarn, along with all their children, all their allods and all their personal property, became subjects of Santa Maria de la Seu d'Urgell and its bishop Ot due to the murder of Berenguer Arnau's brother Guerau and his son.[1664] But times had changed and new ways of resolutions taken place, as they received their allods back from the bishop on the condition that they would always be faithful to the see and that the bishop and his successors would have certain services and benefits, as well as that they never sell or give anything away without the consent of the bishop.[1665]

Keeping in mind the general change towards compensation and compromise instead of direct punitive legal application and that the social graduation presented in the *Usatges* differ significantly from the dichotomy of free and unfree, this transition seems to reflect the general change in the way the society perceived status.

1664 BARAUT, «Els documents», IX, doc. 1318: *Omnibus notum sit hominibus qualiter ego Berengarius Arnalli de Archavel una cum muliere mea, nomine Sancia, et cum Berengario Isarni et Arnallo Isarni necnon et Miro Isarni, qui sunt mariti mearum filiarum, propter homicidium fratris mei Geralli et eius filii nos omnes sive cum mulieribus sive infantibus nostris venimus in potestatem Dei et Sancte Marie et domni Odoni episcopi cum omni nostro proprio alodio vel mobile, illud quod habemus vel habere debemus in omnibus locis, ad faciendam suam voluntatem.*

1665 Ibid.: *Hoc autem facto nos predicti noviter accepimus nostra alodia per manum prephati episcopi ut semper simus ei fideles sine malo ingenio, et ipse et eius successores habeat vel habeant albergam unam per unumquemque annum de pane et vino et carne et civaria cum XX^ti militibus in nobis et in nostris successoribus, et extra hoc mandamentum et districtum et servicium quomodo senior debet abere in suis propriis hominibus. Similiter vero per unumquemque annum donemus pernam I canonice Beate Marie de argenceis IIII^or. Si quis namque nostrorum vel nos prescribti hoc facere vel atendere noluerit sicut superius scribtum est, predicto episcopo et eius successoribus necnon et canonice Sancte Marie, quod habemus in omnibus locis et nostro proprio vel in antea adquisituri sumus veniat in potestatem Dei et Sancte Marie et iam dicti episcopi et successorum eius ad faciendum quod voluerit vel voluerint. De prefato autem alodio nos nec nostri successores non habeamus licenciam vendendi, donandi neque mutandi nostram voluntatem nisi cum consilio prefati episcopi et suorum successorum.*

IV.3.4. Compromise

A pact is a document of agreement between parties in a state of peace (pax, gen. pacis), approved by law and custom, and it is called pact (pactum) as if it were 'made from peace' (ex pace factum), from 'come to an agreement' (pacere), which also generates the form pepigit, "he has agreed."[1666]

In his work about the Diocese of Vic, Freedman highlighted "the infrequency of compromises"[1667] in the 11th century, and with all the analysed documentation in mind this can be particularly confirmed for the first half of said century. A compromise in court was clearly distinguished as such in the 10th century[1668] and this continued to be the case in the first half of the 11th century.[1669] However compromises of all sorts became quite frequent in the second half[1670] and, to stay with Freedman, "would make *de rigueur*" in the succeeding century to the extent that it is easier to look at cases where the judicial decision did not include some kind of a compromise rather than the other way around.

One of those rare examples with no clear compromise dates in the year 1111, on a Monday that fell right after the festivities of the Annunciation to the Blessed Virgin Mary. Ramon Berenguer de Palou, together with his brother Dalmau, after seeing and recognising that they could not achieve the rights over a mill situated at the village of Palou, evacuated, pacified and defined all their possible rights to the monastery of Santa Maria de l'Estany. The brothers also gave the institution and its clergymen a plot of land located near the irrigation system that continued up to the mill. This pacification of a conflict, which because of the vocabulary used was most probably a legal decision, is one of the rare cases without any kind of compensation from the first half of the 12th century.[1671]

1666 BARNEY, *Etymologies*, V.24.18.

1667 Freedman, P. (1983), *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia*, p. 118-119: More remarkable than the persistence of professional judges in the eleventh century was the infrequency of compromises. Of the total of sixteen cases, only two were settled by mutual concessions of the sort that the succeeding century would make *de rigueur*.

1668 SALRACH, MONTAGUT, *Justícia,* doc. 122.

1669 Ibid. doc. 162, 191, 192, 207, 248, 288.

1670 Ibid. 317 (1055), 326, 335, 341, 353, 358, 364, 378, 389, 394, 395, 399, 405, 410, 432, 442, 465, 467, 468, 470, 474, 488, 493, 495, 504, 510, 515, 530, 532, 533, 535, 547, 550

1671 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 409: *Ego Raimundus Berengarii de Palaciolo et frater meus Dalmacius evacuatores et pacificatores sive difinitores sumus domino Deo et aecclesie Sancte Marie de Stagno priorique videlicet eiusdem loci Bernardo nomine et successoribus eius cunctisque ibi nunc commorantibus sive his qui deincebs venturi sunt, ipsum molendinum quem iniuste requirebamus predicto priori. Et postquam vidimus et cognovimus nos non posse consequi aliquod directum in*

To highlight a clear difference one must look at another example, which dates on the 30th of March 1129 and shows nearly all the features of a 11th century trial. After many court sessions (*multa placita*) between Ramon Mir of Argelaguet and his brothers on one hand, and the abbot of Sant Cugat del Vallès, Roland Oliver, on the other, regarding some allods and a mill located at Montseny de Palau,[1672] the brothers together with some other men defined and evacuated their rights to the monastery.[1673] The definition charter leaves no doubt that the judges heard the two parties and inspected the written evidence, then came to the conclusion that the rights regarding the allods, did by no means belong to the brothers (*nullo modo esse iuris eiusdem Raimundi et fratrem eius*).[1674] As procedure was established the last session is described as an investigation of evidence, which should be understood to have happened in full accordance with the Visigothic Law code (*ex utraque partibus liquide racionibus et vocibus et cartis*). The difference to the earlier example is that even though they clearly were legally defeated in court, Ramon Mir and his brothers accepted (*Accepimus*) two *moabetinos* from the monastery in return for their definition.[1675] The difference seems small, but monetary compensations of this kind became so common that sometimes it even makes it hard to distinguish these charters from early sales charters if no more detail is given.[1676]

While monetary compromises were the most common, judicial settlements could include all kind of agreements between the two parties, ranging from paying a certain

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iamdicto molendino, evacuamus et pacificamus atque definimus predictum molendinum per fidem rectam, sine enganno, sicut dictum est superius et dici potest melius prephato Bernardo priori illiusque loci Sancte Marie videlicet congregacioni, cum aquarum discursibus sive cum rego et capite rego atque cum arboribus que ibi sunt et subtus rego.

1672 Rius, *Cartulario*, doc. 895: *Presentibus atque futuris pateat qualiter devenerunt ad multa placita Raimundus Mironis de Argelaget et fratres eius cum Rodlando abbate et monachis eius de quibusdam alaudiis et molendino, que sunt in Monte Signo de Palacio.*

1673 Ibid.: *Igitur. Ego Raimundus Mironis et fratres mei Amatus et Bernardus et Guillelmus et ceteris definimus et evacuamus, sine ullo retentu et malo ingenio, supradicta alaudia, simul cum molendinis, Domino Deo et Sancto Cucufati ac Rodlando, abbati eiusdem cenobii, et monachis eius in perpetuum, quod unquam nos non requiramus neque aliquis vel aliqua per nos vel per nostrum auxilium supradicta alaudia.*

1674 Ibid.: *Discussis siquidem ex utraque partibus liquide racionibus et vocibus et cartis, existentibus iudicibus Guillelmo Raimundi de Orencana et Guillelmo Iohanni de Cardedol et Umberto de Monte Signo et Raimundo Renardi de ipsa Roca et Petro, qui vocatur Poncius de Balnariis, iuste iudicatum est propria esse alaudia Sancti Cucufatis et nullo modo esse iuris eiusdem Raimundi et fratrem eius.*

1675 Ibid.: *Accepimus autem ab eodem abbate et a monachis eius pro hac definitione II moabetinos. Si quis vero hanc nostram definitionem disrumpere voluerit, non valeat, sed componat hec omnia in duplo, et inantea firma consistat hanc difinitionem.*

1676 To just give one example. Salrach, Montagut, *Justícia,* doc. 110: *Et sic accepimus nos in unum de vos emptores solidos L. Affrontat hec omnia: de parte circi in terra qui fuit de predicto Fruila, de oriente in via, de meridie in via, de occiduo in ipso monte.*

kind of tax or agreeing on services to holding property for a lifetime, agreeing to hand in one's child to an ecclesiastical institution or becoming someone else's man, meaning to accept someone as one's lord.

This slow and steady movement towards resolving legal matter through a compromise even when going to court consequently meant several adjustments to methods of conflict settlement, as well as changes to the narration in charters regarding judicial sentences. When judicial resolutions have a tendency to turn into appeasing agreements, rather than one-sided decisions that leave one party with nothing, that automatically means that details of the legal quarrels were recorded if they were important for the agreement, instead of only to strengthen the winner's legal argument.

What that means for charters is a clear tendency to have less first person speech in which the two sides expose their legal arguments, less detail on procedure, less citations of Visigothic law and a rather quick summary of events that led to the sentence, meaning the document looks more like an agreement.[1677] Common expressions to describe legal quarrels – *contentio, altercatione, plurima placita* et al. – now regularly introduce the charters, stating that there had been a dispute and explaining the nature of it, and this is quickly followed up with clarification that the dispute is now resolved and what this meant for the two parties involved, meaning what terms they had agreed on or what the judicial outcome was. Several court sessions could have taken place, and in some cases are recorded but are less detailed. To put it simply: charters display the final result rather than the process.

This makes an analysis of legal quarrels harder as on many occasions it is only the vocabulary that hints towards a possible judicial encounter that may be hiding behind the final resolution, which creates a vicious cycle as the documentation looks more like extrajudicial agreements than judicial decisions.

For example, in 1126 Pere de Puigverd, together with his sons Berenguer and Guillem, granted and defined all the complaints and claims (*querimonias et clamores*)

1677 Aquilino Iglesia clearly saw this development in the charter material already but drew another conclusion. Iglesia i Ferreirós, Aquilino (1977), 'La creación del derecho en Cataluña', *Anuario de Historia del Derecho Español*, 1977, p. 267: Los conflictos de intereses dejan de resolverse ante la jurisdicción oficial, para encontrar su solución en acuerdos privados: como indican los documentos, tras muchos altercados las partes, con el consejo de buenos hombres, llegan *ad finem et concordiam.* No se trata sin embargo, de someter estos conflictos a un árbitro, elegido por las partes – procedimento regulado en *Liber* y que suponía la aplicación de la ley-, sino simplemente de ponerse de acuerdo las parte, con intervención de hombres nobles y buenos, sin necesidad de somterse a los principios legales.

that they had towards the canons and their provost Pere of Santa Maria de Solsona in relation to the castle of Malgrat. They define, return and give everything they had at the castle of Malgrat and all the honour they had at Piles.[1678] For this definition they receive from the hands of the provost Peter three hundred solidi, and promise within their capabilities to be good defenders of this church. Peter and the canons let them partake of their prayers and their spiritual benefits.[1679]

That this development was not restricted to the powerful but affected all the strata of society can be seen in two examples which show that even smalltime legal business was worth trying to resolve to the benefit of both sides. Berenguer Guillem withheld the chicken coop of a house Bernat Duran had given to the canons of the Seu de Girona. Seeing that he could not obtain the rights[1680] Berenguer, together with his wife Estefania and their son Pere, defined all the rights of the allods they wanted to obtain to the canon of the see of Girona and a certain cleric Ponç Urgell, and promised to give an annual hen to the canonry.[1681] Given the circumstances it seems plausible

1678 BACH, *Diplomatari*, doc. 204: *Ad noticiam tam presencium quam futurorum perveniat quod ego Petrus de Podio Viridi et filius meus Berengarius de Pugverd et Guilelmus, frater eius, nos in simul, bono animo et spontanea voluntate laudamus, concedimus, relinquimus atque diffinimus per nos et per omnem nostram posteritatem Domino Deo et ecclesie Sancte Marie de Celsona et Petro, eiusdem loci preposito, et omnibus canonicis ibidem Deo servientibus, tam presentibus quam futuris, omnes querimonias et clamores quas faciebamus de kastro de Malgrad et de suis terminis, tam de alaudiis quam de vineis et dominicaturis, quas ibi aliqua racione requirebamus. Simili modo relinquimus, concedimus et diffinimus iamdicte ecclesie et eius canonicis omnem honorem quem Sancta Maria iam dicta habet, tenet et possidet in kastro de Piles vel in suis terminis aliqua racione, scilicet dominicaturas et cavallerias, quas ibi adquisivit Sancta Maria vel in antea aliqua racione adquirere potuerit. Prefatum vero honorem, scilicet kastrum de Malgrad, cum suis terminis, et omnem honorem de Piles habeat semper Sancta Maria de Celsona et sui canonici ad suum proprium alaudium, francum et legitimum, sine ulla retinencia et obstaculo, sicut melius potest dici vel intelligi ad utilitatem predicte ecclesie et suis canonicis.*

1679 Ibid.: *Et propter hanc diffinicionem accipimus de elemosinis iam dicte ecclesie CCC solidos probate monete Barchinone de manu Petri prepositi et aliorum canonicorum; et reddimus predicte ecclesie et suis canonicis omnes voces et cartas que pertinent vel pertinere debent ad kastrum de Malgrad vel in antea invenire potuerimus. Et ego Petrus cum filiis meis convenimus per bonam fidem Deo et ecclesie Sancte Marie iam dicte et eius canonicis quod manutenebimus honorem predicte ecclesie et omnes res suas, ubicumque sint, et boni defensores erimus secundum nostrum posse. Et ego Petrus, Celsone prepositus, cum consilio canonicorum damus vobis societatem et participacionem oracionum nostrarum et in cunctis beneficiis nostris.*

1680 MARQUÈS, *Cartoral de Carlemany*, doc. 242: *[C]unctis pateat hominibus quoniam ego Berengarius Guilielmi requirebam porcionem in illis alodiis que Bernardus Durandi donavit domino Deo et canonice Sancte Marie et ibi degentibus clericis cum filio suo Raimundo, videlicet in ipsis domibus quas habeo in ipsa Burgada circa ipsas fratris mei Arnalli, unde iniuste retinebam par gallinarum et in exitibus atque regressibus quas prefata domus Bernardi Durandi semper habuit versus occidentem, quam aliquo modo consequi non potuit.*

1681 Ibid.: *Idcirco ego prefatus Berengarius, cum uxore mea Stephania et filio suo Petro, dono Domino Deo et canonice predicte sedis et tibi Poncio Urgelli, prenominate sedis clerico, totum illud quod in predictis alodiis aliquo modo querebam vel consequi existimabam, ut ab hodierna die et deinceps neque ego neque aliquis mee posteritatis vel consanguinitatis mea voce aliquid requirere ibi valeat, sed annuatim de predictis domibus de Burgada donem parilium I optimum gallinarum, nos et omnis nostra posteritas prelibate canonice et ibi degentibus. Si quis contra hanc difinitionem ad irrumpendum venerit, non*

that some kind of negotiation took place but the legal vocabulary – a definition of rights, that the chicken coop was withhold unjustly and so on – indicates some kind of legal conflict, which could well have been resolved in a local judicial assembly.

A renunciation of rights of the spouses Ramon Guifré and Adaled and their son Bernat, in front of the altar of Santa Maria de Manresa in the year 1100, two days before epiphany, actually gives a glimpse into what this kind of negotiation may have looked like. The three of them renounced the *baiulia* they had claimed over a farmhouse in Olivera in favour of Berenguer Tedball, prior of Sant Pere dels Arquells. They did not go to court about the issue beforehand,[1682] but they discussed many laws (*Loquentibus autem multis iuris*) and as a result the prior offered to give them certain rights (*censum*) they could select from, for example regularly receiving a capon or a leg of salted meat. However, the couple decided to dispense with this offering right away and instead gave what little they had won directly back to the prior for the remedy of their souls, which may be the only reason why these negotiations found their way into a charter in the first place.[1683]

The local scale of such trials can be seen in a case dating in the year 1131, in a legal dispute regarding the tithes of a farmhouse, named Coll, between the castleholders of the castle Rocacorba, Rotbald and his sons Berenguer and Guillem, and the monastery of Sant Cebrià de Pujarnol.[1684] The trial took place at the farmhouse itself and after hearing both parties, because of the *legitimos testes* presented by the monastery the archdeacon of Besalú, Gausfred, pronounces a sentence in favour of

valeat vendicare quod requisierit, sed componat predicta omnia in duplo prefate canonice.

1682 Salrach, Montagut, *Justícia,* doc. 542: *Notum sit omnibus hominibus quia ego Raimundus Guifredi requirebam baiuliam in manso de Olivera et propter hanc baiuliam enparavi eum ut perveniret ad placitum unde factum est per consilium mulieris mee cum veniret Berengarius Tedballi ad me prior Sancti Petri ante altare Sancte Marie situm in Minorisa nolui ad placitum ducere sicuti perficiendi haberem posse.*

1683 Salrach, Montagut, *Justícia,* doc. 542: *Loquentibus autem multis iuris ut prior Sancti Petri de Archellis cum suis consodalibus darent mihi censum scilicet aut pernam unam aut parilia una caponum, ego autem nolui accipere, set propter remedium animarum nostrarum ego Raimundus iam dictus et coniux mea Azaledis una cum Bernardo filio nostro nominatim definimus atque evacuamus et donamus prefato Sancto Petro tibique Berengario et omnibus successoribus tuis omnem vocem et directum quam et quod requirebamus et habebamus in predicto alodio cum omnibus rebus infra se retinentibus.*

1684 Constans, *Diplomatari,* II, doc. 134: *[...] diffinitionis atque evacuationis que est facta inter aecclesiam Sancti Cipriani de Podio Arnulfo et aecclesiam Sancti Martini de Biert et milites de [...] Berengarium [...] decimis ipsius mansi de Colls quem inhabitat Adalbertus Vives ex quibus magna erat contentio inter predictas aecclesias et milites prefatos qui per vocem parochie aecclesie de Biert [...] ideoque convenere in locum vocatum videlicet collum Gaucefredus bisuldunensis archelevita et Berengarius Rotballi de Roca Curva et filius eius Berengarius et Adalbertus Vives [...] ab [...] parte [...] audite raciones.*

Sant Cebrià de Pujarnol.[1685] The *milites* recognised and promised, as owners, to satisfy the tithes of the said farmhouse and accepted a onetime monetary compensation in return.[1686]

Such dynamics regarding tithes[1687] or delimitation of territorial limits between magnates,[1688] or agreements about taxes[1689] or work services[1690] now all contained legal language that was previously reserved for legal solutions specifically found in court. Compromises did not always the involvement of good men or mediators – or at least it is not always recorded – but the intervention of individuals of local importance

1685 Ibid.: *Quibus utrimque auditis consecuta est predictas decimas aecclesia Sancti Cipriani prefati per legitimos testes et antiquos Adalbertum scilicet Vives et filium eius Raimundum [...] nobis [...] has decimas ab aecclesia prelibata Sancti Cipriani secure et quiete et absque vinculo ullius viventis et blandimento teneri, haberi, possideri, testificati sunt per tenedonem [...] habuerat et tenuerat suprataxata aecclesia Sancti Cipriani de Podio Arnulfo et super hoc datum fuit iudicium a Gaucefredo prefato archelevita et Berengario Rotballi de Rocha Curva [...] longam tenedonem a testibus supradictis coram nobis testificatam et corroboratam habere has decimas predicti mansi totas ab integro sepedicta aecclesia Sancti Cipriani* […].

1686 Ibid.: *Pro hac itaque diffinitione accipimus a prefata aecclesia et Berengario eiusdem aecclesiae capellano [...] VIIII denariorum gerundensis monet ex quibus vadunt VI. solidi pro morabitino.*

1687 Arnau Pere *in porticu ecclesie* of Sant Cristòfol de Beget recognized that he unjust claimed the (*iniuste querelasse*) half of the tithes of a place called Avellaneda and accepted 20 solidi for his recognition. Monsalvatje, *Noticias históricas*, XI, doc. 423: *Sit notum cunctis mortalibus quam ego Arnallus Petri recognovit iniuste querelasse decimi medietatem de Avellanedo […] erat et est rectum Sancti Petri Campirotundi.* […] *Propterea ego prenominatus Arnallus Petri accepi a prephato abbate XX solidos monete Roselle.*

1688 Due to major disputes and at the request of bishop Ot of Urgell, count Pere Ramon I del Pallars Jussà, together with his brother Arnau, confirmed the possessions and allods to the old and new churches of Santa Maria de Tremp. Baraut, «Els documents», IX, doc. 1252: *Notum sit omnibus hominibus presentibus atque futuris, qualiter domnus Odo Urgellensis episcopus et comes Petrus Raimundi atque Arnallus frater eius ad magnam venerunt contencionem super ecclesiam Sancte Marie de Tremp et eius terminos et alodia que infra sunt, quos constituit ei comes Raimundus, patris comitis predicti Petri atque Arnalli fratris sui, et Valenca comitissa illorum mater, cum domno Bernardo episcopo antecessore suo, et alia quam plura que iniuste auferebant vel contradicebant predicte ecclesie, unde ita pacificati sunt.* It is remarkable that the confirmation is carried out exactly thirty years after the donation the parents of the count, Ramon and his wife Valença made during the pontificate of Bernat Guillem, also in the month of November with only two days difference /Baraut, «Els documents», VII, doc. 933, 8th of November 1079).

1689 Baraut, «Els documents», VIII, doc. 1260: *Hec est conveniencia exvacuacionis de contentu quod erat inter Berengarium Bernardi archidiaconem et homines de Arts de receptis et de beuratges, quas ipsi requirebant ei ad Sanctum Iohanem et ad ipsa divisa.* [...] *Et propter hoc prenominatus Berengarius cum suo clerico qui iam dictam parrochiam tenet vel tenebit donant per unumquemque annum modium unum de blad ad Sanctum Martinum propter luminaria, ad sextarium unde faciunt ipsas levadas.*

1690 Agreement between the prior, Ramon de Santa Maria de Lavaix, and six men from the Sas. Puig, *El cartoral*, doc. 39: *Hec sunt conveniencias que fecit Raimundus prior cum ipsos homines de Sasso qui tenebant ipsum alodem per compara, id sunt, Martin Guillerm, Arnall Ademar et Guillerm Ramio et Gualin Asner et At Sanz et Abo presbiter. Isti sunt qui se recognoscent que tenent ipsum alode in Erta a torto et dirigent ad Deum, propter remedium animas suas et parentibus suis ut Deus sit cum illis et dimitat eos peccata sua, et isti sunt VI homines qui tenent ipsum alodem in Erta et donant ad Sancta Maria unusquisque unum servicium de uno sester de ordii et duas fogazas et una perna et suam decimam directam; et sunt alii duo Martin Asner, qui tenet una terra super ipso stagno, et Bernad At alia terra ad Orzals, et de istas duas donant ipsam quartam partem et decimam, et de ipso alio que tenet ipsam decimam et uno admiramento quale isti alii donant. Et hoc firmamus nos et filii nostri cum vos et cum successoribus vestris ut Dominus nos faciat firmis stare in regno suo simul in unum, amen.*

increases significantly. It is thanks to the intervention of Sancho de Llobera, Guillem Bernat de la Aguda, Ramon Humbert de Capolat and many others that a conflict between the provost of Solsona and Ramon Guitart and Ramon de Pinell was settled *ad placitum.* Ramon Pinell 'sells, gifts and evacuates' several allods that had been given to the church of Solsona by relatives and for this received ten ounces of gold.[1691]

The variety of compromises that use the legal language of the 11th century to find lasting solutions is huge, but here we will focus on three.

First commendation, second to hold certain rights being it property or some kind of tax for lifetime and to hand it back after death and an option available for monasteries to accept a child as a member of the religious community.

1691 Ed. BACH, *Diplomatari*, doc. 159: *Cum inter Raimundum Guitardi, ecclesie Celsonensis prepositus, aliosque eiusdem loci canonicos, et me Petrum Raimundi de Pinello orta esset contentio, complurimis ibi probis hominibus occurrentibus, videlicet Sancio de Lobera et Guilelmo Bernardi de Aguda et Raimundo Umberti de Capolad multisque aliis quos enumerare longum est, ad placitum istis supradictis utrobique laudantibus placide devenimus. Quia istorum laudatio minime vitanda erat, consilio voluntatique eorum resistere nolens, in omnibus que ab eis michi vissa sunt implere adquievi. Predicta nempe alteratio unde aut a quibus rebus habeat originem, sat nobis idoneum ac competens videtur ut omnibus subsequencibus nostris patefiat. Predia quoque et vineas et ceteraquorum nomina subsecutura sunt quidam ecclesie suprascripte Sancte Marie Celsone ob animarum medelam licite seu illicite dimiserunt que in opidorum meorum terminis continentur, scilicet Pinelli et Mirave. Quorum ego donationis contrarius adstiti. Enumerare autem hec alaudia volumus primum quam in terminis Mirave congnoscimus inesse: Optimam enim condaminam quam pater meus Raimundus Guitardi et mater mea Ermeniards dederant ecclesie iamdicte, vendo, dono et evacuo Deo et Sancte Marie sine ulla reservatione. […] His omnibus prescriptis laudantibus ac asserentibus accepi ab ecclesie rebus uncias X^{m} in auro valente.*

IV.3.4.1. Commendation & Homage

New solutions to dispute are especially visible in commendation and homage; this chapter can give a few examples that show the complexity and at the same time flexibility of these judicial agreements.[1692]

One of the earliest examples found in the documentation dates in the year 1058. After many disputes that caused great contention between the abbot of Sant Cugat del Vallés and Udalguer Guifré, regarding the fief his uncle Mir as a clergyman held for the monastery, they finally came before the court of Ramón Berenguer I to solve the issue.[1693] Udalguer Guifré waived his complaints and *comendavit se illi manibus*, meaning the abbots, and evacuated his rights, except for an allod situated in Rubí which he could hold *in servitio* for the monastery in exchange while he was alive.[1694] The oath of loyalty to the monastery and the abbot is added at the end of the document.[1695] While this doesn't seem like much, as it clearly was not a one-sided victory for Udalguer as he gave up most of the disputed property, nevertheless he did not leave court empty-handed. In comparison the relatively few examples dating earlier regarding fiefs were regulated and clearly decided for one side, which meant the complete recognition and evacuation of the losing party.[1696] In these cases the process of bringing witnesses to court, or the absence of them, inclined the judges to sentence in favour of one side, and this process was thus documented and considered

1692 Comp. in this regard: Althoff, G. (2011), 'Establishing Bonds: Fiefs, Homage, and other Means to Create Trust', in S. Bagge, M. H. Gelting, and T. Lindkvist (eds.), *Feudalism. New Landscapes of Debate* (The medieval countryside, 5, Turnhout), 101–14.

1693 Salrach, Montagut, *Justícia,* doc. 332: *Nota sit omnibus et manifesta diffinitio, que facta est inter dommum Andream, abbatem, et Udalgarium Guifredi. Manifestum est enim quia ex multis accidentibus causis fuerunt inter eos querimonie et malestaciones, sed quamvis diu protelata sit inter eos grandis contencio, accidit tandem, ut illorum placitum veniret ante donnum Raimundum comitem.*

1694 Ibid.: *In eius namque presentia et aliorum nobilium virorum subterius nominandorum definivit idem Udalgarius prefato abbati omnes querelas quas vel iuste vel iniuste de eo habebat et in eodem loco comendavit se illi manibus atque exvacuavit se in eius potestate, de ipsas mansiones de Certitulo, cum ipsa ruira et cum omni illo alodio, quod ibi est, vel de omni mobile, quod ibi fuit vel est, sive de omnibus alodiis, vel de omni fevo que Miro clericus habebat vel tenebat per manum prefati abbatis eo die quo factus est monachus, excepto illud quod idem Miro per alodium tenebat in Rivo Rubio, quod donat domnus aba predictus prefato Udalgario, ut teneat per fevum, dum vixerit, in servitio Sancti Cucuphatis et predicti abbatis vel successorum eius*

1695 Salrach, Montagut, *Justícia,* doc. 332: *Iuro ego, Udalgarius, filius qui fui de Berta domna, femina, quia de ista hora in antea fidelis ero ad Sanctum Cucufatem et ad te Andream abbatem, seniorem meum, de tua honore et de tuo corpore, et de membris tuis, sicut homo debet esse fidelis ad suum bonum seniorem, cui manibus se comendat per fidem, sine engan, per Deum et ipsos sanctos.* The standardized oath, see: Rius, *Cartulario*, doc. 599, 636

1696 Salrach, Montagut, *Justícia,* doc. 116, 148, 264, 286, 277, 278, 279.

necessary. In this case it is hard to believe that the abbot Andreu did not come well-prepared and showed the corresponding documents, or at least brought his witnesses along as was the case in other occasions, but it was not deemed significant enough for the end result the two sides had agreed upon.

This kind of solution became a commonplace occurrence earlier in the 12th century, and the few earlier cases suggest that this development also took place due to an higher implication of the *probi homines*. For instance, in a confrontation over the possession of the castle of Baén, Roger Arnau had already been excommunicated by the bishop of Urgell due to complaints of the abbot Pere Roger of Santa Maria de Gerri and his monks, but finally faced justice. The backstory is that the former count Artau I had taken the castle away from the monastery and Roger Arnau and Guillem Ramon had bought it, against the abbot's will. Now before the current count Artau II of Pallars Sobirà, the bishop of Urgell, Tedball Guitard, Guillem Guitard and many other nobles, the tribunal urged Pere Roger to prove his rights over the castle. As he was not able to do so, he renounced, as the count, bishop and the present *probi homines*, wanted him to cede the castle to its former holder as a fief, which is what he ended up doing.[1697]

The role that complaints played in these negotiations can be seen in several examples. Exactly one day after the feast of the Assumption of Mary in 1085, count Ramon V of Pallars Jussà granted the three brothers Rafard Guitard, Guillem and Tedball the honour that had previously been held by their sibling Ficapal. He did so under the condition that the oldest of the three, Rafard, would become his man and would do military service if required. Moreover, the brothers agree that when Ficapal returned from what seems to be a pilgrimage they would all appear in court together and accept the court's sentence in relation to the complaints or grievances that the count maintained against them, and in the case that their brother did not return they would amend the part of the complaints which corresponded to their brother themselves.[1698]

1697 SALRACH, MONTAGUT, *Justícia,* doc. 462: *Postea supra nominatus comes et episcopus et ceteri probi homines qui ibi erant, voluerunt et laudaverunt quod abbas de Gerre et monachi eiusdem loci dedissent michi iam dictum castrum per fevum, et successoribus meis et ego acciperem illum per manus illorum et tenerem ego et successores meos per illum et per successores suos et fuissem homo propriis manibus, ego et successores mei, de iam dicto abbate et de alii successoribus suis*, [...].

1698 SALRACH, MONTAGUT, *Justícia,* doc. 457: *Hec est convenientia que est facta inter domnum comitem Reimundum Paliarensem et Rafardum Guitardi et Guilelmum et Tedballum, fratres illius. Prescripti namque fratres conveniunt ad prenominatum comitem Remundum si venerit frater illorum Ficapal, ut simul faciant ei directum de ipsis querimoniis quas predictus comes habet de illis; si autem predictus frater illorum non venerit, ut isti tres fratres faciant ei directum de prescriptis querimoniis quantum pars illorum erit de querimonia prescripti fratris illorum. Et si advenerit, ut ipse per se faciat directum*

In order to put an end to the complaints that abbot Ponç de Santa Maria de Gerri had regarding the church of Sant Llorenç de Petrabruna, a certain Pipí signed an agreement with the abbot. Pipí and his son Tedball therefore became men of Gerri and Pipí agreed with the abbot to cede the possession of the church, together with the tithes and the chaplaincy, in exchange that he and his descendants enjoy it in usufructuary, and as a consequence the abbot waived all the complaints he had maintained against them.[1699]

How synoptic those charters could become, and that these rights could be sold again, shows in a sales and donation charter dating in the year 1102, signed by Guillem Bernat, his wife and his children, giving all his rights over the castle of Alenya to the canons of Sant Vicenç de Cardona.[1700] Guillem Bernat had filed a complaint to discuss his right over the castle in front of a court, and as he had no *iustam vocem* he had to waive his complaint.[1701] Sant Vicenç de Cardona gave the castle back to him as a fief to then be given to one of his children for their lifetime.[1702] But Guillem Bernat later came back to donate and sell the castle for 10 ounces, one assumes of gold.[1703]

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predicto comiti de sua parte querimonie. Si autem ille non dum venerit aut mortuus fuerit aut in illis quocumque modo peregrinis permanserit terris, ut isti prescripti fratres faciant directum prenominato comiti quod prelibatus frater illorum debuerat illi facere ex integro.

1699 PUIG, *El monestir de Gerri*, doc. 95: *In nomine Domini nostri Iesu Christi. Hec est carta recognicionis de Beato Laurencio [de] subtus Petra Bruna, quam fecit Pipinus propter querelam quam fecit domnus Poncius abbas Gerrenssis, et hec est recognicio qua ipse Pipinus fecit quia [fuerit de] homo abbatis Gerrensis supra nominati,* [...] *propterea finivit ipse abbas supra nominatus querelam quam habebat de loco supra nominato* […].

1700 Ibid.: *Dono ego Guilielmus Bernardi domino Deo et ecclesie Sancti Vincentii Cardonensis omnia que habeo in castrum Alein per fevum Sancti Vincentii vel habere debeo quolibet modo, potestatem, scilicet, castri et dominicaturas et placitos et rixidones et districtum et mandamentum et quidquid ibi quolibet modo mihi competit. Ita ut, nec ego nec ullus homo vel femina per me qualibet voce ibi inquirere vel inquietare aliquid ulterius possit, quod si fecerit, non hoc valeat vindicare, sed in duplo prelibato martire et eius clericis supra scripta omnia componat cum sua melioratione. Et est manifestum. Similiter et mansum qui fuit Guinardi, presbiteri, cum omnibus sibi pertinentibus, sicut resonat in carta quam Maiassindis et Oliverius fecerunt patri meo Bernardo, dono et definio in perpetuum Sancto Vincencio prescripto, ad faciendum quidquid clerici eius voluerint, sine quolibet inquietante. Facta ista carta donationis vel venditionis anno XLII regni Philippi regis, XV kalendas aprilis.*

1701 Ibid.: *Siquidem querimonia de predicto castro iamdictus Guilielmus faciebat, quod a Sancto Vincentio Cardonensis et eis clericis iniuste tolleretur. Sed cum ventilatum hoc coram iudicibus fuisset et nullam iustam vocem proferre in medio ex hac re prescriptus Guilielmus potuisset quod fustra querelatur scripto definivit et evacuavit.*

1702 Ibid.: *Postea vero idem castrum per fevum prelibati Sancti Vincentii et abbatis clericorumque eius accepit potestatem scilicet castri, cum tercia parte dominicature eiusdem castri et terciam partem placitorum et rixidonum in vila sua et cum manso quod fuit Guinardi, presbiteri, quod sibi et unius filiorum suorum datum est, post quorum obitum ad Sanctum Vincentium redigeretur.*

1703 Ibid.: *Ad semetipsum vero reversus prenominatus Guilielmus ad Sanctum Vincentium Cardonensem prefatum venit et ei hec omnia supradicta donavit et vendidit, in quorum precio X uncias a prelibato martire et abbate eius Raimundo ceterisque fratribus suscepit et taliter per se ipsum mandando definivit.*

The abbot Hugo and the canons of Sant Vicenç de Cardona, having seen the complaints by Tedball Guifré (*vidimus querimoniam ex parte Tedballi Guifredi*) returned to him a vineyard and an allod, which had belonged to both his grandfather and his father. A certain Girbert, together with his children, had usurped the property but handed it to Sant Vicenç after their death. Now the abbot and the canons could put an end to the dissension and injustice (*hanc dissentionem et iniusticiam)* by returning the property to Tedball,[1704] who in return paid them homage for the castle of Conill.[1705]

Berenguer, bishop and abbot of Sant Cugat del Vallès in the year 1099 defined an allod of the parish of Sant Esteve de Castellet to the spouses Ramon Guifré and Ermessenda. The allod had belonged to Ramon's father and the two sides arrived at court to discuss the issue. The *multis aliis honestis viris* were clearly involved in the final resolution (*secundum indicium omnium supradictorum*) which, rather surprisingly considering the rest of the documentation, did not decide in favour of Berenguer.[1706] The bishop in his role as abbot defined, evacuated and pacified the property rights to the couple and received a donkey in return. This exchange can be best explained through the fact that he added some fiefs into the deal that had been held by Ramon's father for the monastery, and thus guaranteed the couple that they would not be bothered about either issue in the future.[1707]

1704 SALRACH, MONTAGUT, *Justícia,* doc. 502: *Ego Ugo abbas cum ceteris aliis canonicis cenobii Sancti Vincentii, vidimus querimoniam ex parte Tedballi Guifredi de vinea et de alaude que est in Comajuncosa, qui fuerat de avio et patre suo, videlicet, Iohanne et Guifredo, que tenebat Girbertus et filiis eius, quando privati fuerunt mortem iniuste et sine fide et mala intencione. Et ego abba, videns hanc dissentionem et iniusticiam ad eis factam, simul cum clericis Sancti Vincentii, postquam Girbertus et filii eius fuerunt mortui et venerunt hec omnia in manus nostras et Sancti Vincentii. Reddo ego abba, simul cum iamdictis clericis, ad Gedballus alodium prescriptum et vineam. Et affrontat [...].*

1705 SALRACH, MONTAGUT, *Justícia,* doc. 502: *Iuro ego Chedbaldus, qui sum filius Emre femine, ad te Fulcho, archidiacono, et ad omnes canonicos Sancti Vincentii, qui modo sunt vel in antea erunt ut de ista ora in antea fidelis ero de castro Conil ad Sanctum Vincentium Cardone et ad suos clericos. Et dabo vobis potestatem de illo castro nominato supra et ad clericos Sancti Vincentii quantas vices mihi requisieritis vel requisierint. Et ero fidelis et adiutor Sancto Vincentio de suis bonis que hodie habet vel in antea Deo adiubante habuerit in cunctis locis contra omnes homines et feminas, per diem sine engan, per Deum et per sancta IIII [Evangelia][...].*

1706 SALRACH, MONTAGUT, *Justícia,* doc. 540: *Manifestum est enim quia ego inquietavi omne alodium tuum quod habebas infra parrochiam Sancti Stephani de Castelet, quod fuit de patre tuo, et volebam adtraere ad opus Sancti Cucuphati: non potui per directum. Postea vero fui ego Berengarius, prescriptus episcopus, ad dedicacione Sancti Stephani et ibi mandavi tibi ut exquisisces tuas voces quas habebas de predicta alodia, deinde adduxisti mihi illas ad ipsa Granada, et monstrasti mihi eas in conspectu omnium, et coram Petro Bertrandi de Castelet et* […] *et multis aliis honestis viris, et secundum tuas ipsas voces, et secundum indicium omnium supradictorum non potui obtinere predicta alodia.*

1707 Ibid.: *Nunc vero diffinio tibi et uxori tue et filiis tuis et filiabus iam dicta alodia et pacifico et evacuo, ita ut nec ego, neque successores mei, vel ullus homo utriusque sexus, simus vel sint liciti iam amplius iam dicta alodia vobis inquietare usque in perpetuum. Insuper vero dono tibi et iam dicte uxori tue et filiis tuis et filiabus pariliatam unam de terra per fevum sive omne fevum quod tu et pater tuus tenuistis de Sancto Cucuphato cenobio, cum illis omnibus mansionibus que infra omnia alodia sunt conctructe. Et propter hanc difinicionem et pacificacionem quam vobis acit et ipsos fevos quos vobis dono, donatis*

In 1104 on the day of the Ascension of Christ, Miró Ramon de Basturs had received a piece of land situated at Basturs from the abbot of Santa Maria de Gerri. His *antecessores* had unjustly taken away the property from the monastery, and now recognising the wrong Miró evacuated the property rights and received them back again under the condition that after his death a quarter of the property, together with *decimam de fructu terre ipsius,* will be returned. He also became a man of Gerri and whoever held the land after Miró should, according to the agreement, be a man of the monastery.[1708]

The provost of Santa Maria de Solsona, Ramon Guitard, and a certain Arnau Pere reached an agreement on certain rights located at Agramunt, Guarinat and Madrona that Guillem Arnau de Malpàs had possessed previously. Santa Maria de Solsona would have one half and Arnau Pere received the other as a fief during his lifetime, and if he died without descendants or a wife his half would be returned to the monastery without any diminution. The short introduction listing some of the *multorum hominum quos numerare longum est* reads like the headers of earlier court records introducing the tribunal.[1709]

As was shown in an earlier chapter some of the proposed or actually executed ordeals, be it trial by combat[1710] or others[1711], were also connected with feudal relationships, as disputes on the prerogative of a fief. In these occasions the ordeals may have helped to

mihi unum optimum asinum.

1708 Puig, *El monestir de Gerri*, doc. 86: *Poncius abba Sanctae Mariae cenobii, cum cuncta congregatione eiusdem loci, dono tibi Miro Raimundi de Basturc et posteritati tuae, unam terram in territorio de Basturc, in loco qui dicitur ad Fornons, quam antecessores tui iniuste diu tulerunt predicte Sanctae Marie et tu, cognoscens quia ipsi male fecerunt, fecisti evacuationem de ipsa terra in manu mea, in presentia monachorum qui ibi aderant, et super altare predicte Sancte Marie;* [...] *sic dono tibi ipsam terram, tali conventione ut tu et ille cui illam terram post mortem tuam dimiseris, reddatis Sanctae Mariae Gerrenssis cenobii quartam partem et decimam de fructu terre ipsius; et ipsa terra numquam dividatur neque vendatur sed ille qui eam tenuerit, reddat Sanctae Mariae fideliter hoc quod dictum est; et ut hoc firmiter et sine enganno teneatur, fuisti tu meus homo, et ipse qui post te ipsam terram tenuerit, semper sit homo per predictam conventionem, abbati loci supra nominati.*

1709 Bach, *Diplomatari*, doc. 112: *In presentia Raimundi Rodlandi et Petri Arnalli fili et Arnalli Petri et Iozperti Gomberti et Berengarii Raimundi de Rapagads et Iozperti, baiuli Sancte Marie, et Arnalli Guilelmi de Taravall et Mironis Guitardi, baiuli Arnalli Petri, et aliorum multorum hominum quos numerare longum est, Raimundus Guitardi, prepositus Sancte Marie Celsone, et alii canonici eiusdem loci venerunt ad concordiam cum Arnallo Petri de ipsis directis quos reliquit Guilelmus Arnalli de Malpass ad Sanctam Mariam in Agremont et in Guarinat et in Madrona. Talis vero concordia inter eos facta est ut habeat medietatem Arnallus Petri de ipsis directis Sancte Marie quos reliquit ei Guilelmus Arnalli de Malpass, et aliam medietatem habeat Sancta Maria in omnibus locis in Agremont et in Guarinad et in Madrona. Et istam medietatem teneat Arnallus Petri per fevum Sancte Marie in vita sua. Et post obitum suum non possit relinquere uxori, filio vel filie, sed habeat Sancta Maria totum ac liberum sine ulla diminutione. Et similiter Sanctus Petrus de Madrona habeat suum directum post obitum eius cum suis ipsis mansionibus.*

1710 Salrach, Montagut, *Justícia,* doc. 392, 398, 543.

1711 Salrach, Montagut, *Justícia,* doc. 264, 396.

set up negotiations, or in the cases when they were executed, when a clear decision had to be accepted. These kinds of solutions were clearly meant as a means to stabilise relationships in the long term.

IV.3.4.2. For Lifetime

In front of the court of count Hug II of Empúries a man called Elisiari complained (*querelavit se*) that the abbot Deodat of Santa Maria de Roses would have unjustly taken away the mill in Rustià and the fief he held at the valley of Rodes that he had received from his dead father, also named Elisari.[1712] The petitio is followed by the response of the abbot (*dedit responsum*) clarifying that he had reached an agreement with the late Elisari in the presence of many including the former count Ponç in which Elisari would hold one-third of the rights regarding the mill and two-thirds of the fief until the day of his death, at which time everything would came back into the *postestam* of the monastery.[1713] Elsiari denied this to be true and the two judges in charge Ramon Guillem and Ramon Bonfill asked the abbot if he could prove what he declared to be true and through *certis indiciis* it became manifest to be true.[1714] The good men (*bonis hominibus*) intervened and together with the two judges gave council to the abbot and a solution was found. Elisiari as the claiment (*querelator*) defined and evacuated the mill and the feud entirely to the monastery and the abbot, however, in return he received the two thirds of the fief back to hold it for the monastery until his death, at which time these parts would have to return without any impediment *in potestate Domino Deo*.[1715]

1712 SALRACH, MONTAGUT, *Justícia,* doc. 429: *Presentibus sit notum et futuris non fiat incognitum qualiter venit homo nomine Elisiarius coram domino Ugoni comiti in villam Castilionis coram plurimis magnatibus atque iudicibus subterius scripti, et querelavit se de Deusdedit, abbati Sancte Marie Rodis cenobii, de fevo quod tenebat condam Elisiarius dictus pater eius, id est ipsum molinum de Rustizano et de decimum de terris et vineis quod est alodium Sancti Policarpi in valle Rodis quod ille dicebat sibi aufferri iniuste.*

1713 Ibid.: *Ad predictam namque querelam prefatus abbas talem dedit responsum: quod quondam prelibatus Elisiarius dictus pater eius fecerunt pactum cum ipso et cum condam Poncio comite, presentibus plurimis, de iam dicto molino et fevo, tali modo quod prefatus condam Elisiarius tenuisset omnibus diebus vite sue terciam partem de iam dicto molino et duas partes de iam dicto fevo, et post obitum suum tam prelibato molino quam alio fevo prescrito integriter devenisset in potestatem Domino Deo et prelibato cenobio.*

1714 Ibid.: *Hoc abnegante prelibato Elisiario, dictus filius alii Elisiarii, et minime diceret verum esse, iudicante ac conlaudante iudicibus, videlicet Raimundus Guillelmi atque Raimundus Bonifilii, prestus fuit prelibatus abbas comprobare hoc quod proponebat verum esse; et in tantum fuit deducta hec racio ut a cunctis ibidem consistentibus certis indiciis manifestum fuit verum esse.*

1715 Ibid.: *Set interea intervenientibus bonis hominibus, videlicet, Dalmacius Bernardi et Raimundus Gauzberti et Reinardus Olibani et Dalmacius, frater eius, et alii plurimi cum prelibatis iudicibus, dederunt consilium prelibato abbate ut dedisset suas partes ad prelibatum Elisiarium querelantem de ipso fevo quod condam Elisiarius alius dictus pater eius tenebat ad diem obitus sui et aliam terciam partem cum iam dicto molino integriter remaneret in iure ad donacionem prelibato cenobio. Et hoc namque adquietum fuit ab utrisque partibus, et ideo prelibatus querelator Elesiarius definivit atque evacuavit iam dicto molino simul cum iam dicto fevo integriter in potestate Domino Deo et prelibato*

Similar solutions could be found in regards of bailed property. In January 1096 the *clericus* of Àssua named Ennec let an evacuation charter been drawn up regarding some properties he had held as a bailment from a man called Ramon Guillem who had died without paying back his debt. Ennec did so because he "saw and heard" the complaint of the monks of Gerri because Ramon Guillem had foreseen to donate these properties to the monastery after his death.[1716] Ennec guided by "divine inspiration" evacuated the properties to the abbot and received them back *per fevu per manum eorum.* In exchange he would give the institution half of the income generated each year until his death. Afterwards if his son would show to be faithful he could continue holding the properties under the same condition, to avoid future quarrels the document also clarifies that the property should never be divided.[1717]

Issues of unpaid debts constantly caused trouble but some decades earlier this case clearly would have been solved differently. The document is especially interesting as it shows that complaints also invited a first solution before many court session had to take place.

Definitions of unjustly held fiefs resulting in an agreement were the loosing side received two parts of the fief back for lifetime became quite standard,[1718] but the same mechanism was applied for all kind of rights. Be it tenancy for lifetime, including a

cenobio et prelibato abbate; et prescriptas duas partes de iamdicto fevo accepit per manum iam dicti abbatis sub eius servicio et eius successoribus omnibus diebus vite sue possidendi, sub tali conventu ut post obitum suum deveniant iamdictas duas partes sine ulla minoracione in potestate Domino Deo et prelibato cenobio et monachis ibi degentibus. Predictis autem duabus partibus divisi in tribus fiant due ad iam dictum Elesiarii filium, et tercia pars cum predicta alia tercia parte remaneant ad prefatum cenobium supradicto conventu.

1716 Salrach, Montagut, *Justícia,* doc. 520: *Ego Ennecus clericus de Assoa, fatio cartam evacuationis Sanctae Mariae Gerrensis cenobii, de una terra quem habui in pignore de Raimundo Guilelmo et erat incorregussuda in manu mea; et vidi et audivi quia querelabant eam monachi Sancte Marie Gerrensis cenobii supra dicte, quia ipse Raimundus Guilelmus supra dictus fecit cartam supradicto cenobio, de ipsa terra quae est in loco ubi dicunt Agodui, et ipsas mansiones ipsa medietate, que sunt prope ipsas mansiones de Baron At, tali tenore ut post mortem suam remanere predictae Sanctae Mariae ad ipso lumen ipsa terra ab integro et ipsam medietatem de ipsas mansiones que sunt in Torre.*

1717 Ibid.: *Et ego supra dictus Ennecus, qui vidi et audivi hoc quod superius est dictum, de ipsa querelatione compunctus spiratione divina evacuo me de ipsa terra supra nominata in manu domni abbatis Poncii et monachorum eius, et accipio eam per fevu per manum eorum, tali convenientia ut teneam ego in vita mea et dem medietatem fideliter ad ipso lumen, et post mortem meam libera et solita sit predicte Sancte Mariae ad fatiendam volumptatem suam, de bono et non de malo, tali videlicet tenore ut si ipsi monachi voluerint tenere ad dominium habeant potestate, et si ad alium hominem debent donare ad laborandum et filius meus voluerit esse fidelis, teneat eam ad fidelitatem Sanctae Mariae quandiu erit fidelis, et det fideliter medietatem ab integro; si autem non erit fidelis, dimitat absque ulla contradictione ad faciendam volumtatem suam, ad ipsa sacristia, et ista terra numquam dividatur aut sortiatur.*

1718 Ed. Monsalvatje, *Noticias históricas*, XI, doc. 438: *Et duas que remanet teneamus nos de vita nostra. Post mortem autem nostram ipsas duas partes remaneat Sancto Petro et habitatoribus eiusdem loci, sine aliqua inquietudine vel reservatione vel acclamatione filiorum, vel filiarum sine quorumcumque hominum vel personarum.*

possible transfer under the same conditions to the offspring was advised in cases when one part had to admit to hold property unjustly.[1719] Similar solutions could include the swapping of property,[1720] as well as disputed offices like a chaplaincy that could be held for lifetime,[1721] or could result in an agreed regular payment in form of any type of tax.[1722]

In comparison to the first case mentioned in this chapter these agreements at the end of the 11th century usualy only gave the most essential details about the conflict but left out what could be considered the process of investigating the evidence or all the other steps earlier charters diligently demonstrate.

1719 BAIGES, FELIU i SALRACH, *Els pergamins*, doc. 432: *Notum sit omnibus hominibus presentibus et futuris quoniam ego Arnaldus Bernardi et coniux mea Adalaidis cum filio nostro Bernardo hac filiabus nostris evacuamus, diffinimus, iachimus domino Deo et Sancto Iohanni cenobio Abbatissarum alodium eiusdem Sancti Iohannis cum consilio Raimundi Poncii de Melagno atque Wilelmi Poncii et Dalmachi Poncii fratrum quod actenus nos prelibati iniuste abuimus et tenuimus in villa Carkasses, scilicet unum mansum cum omnibus suis pertinenciis.*

1720 RIUS, *Cartulario*, doc. 784: *In nomine Domini. Nos Remundus Maier et uxor mea nomine Adalet, donatores sumus atque komutatores Domino Deo et Sancto Cucufati eius martiri Octavianensis cenobii.* […] *Quantum infra istas tres parroechias habemus vel abere debemus quibuscunque modis vel vocibus, totum donamus Domino Deo et eius martiri Sancto Cucuphati atque comutamus propter alodium eiusdem ecclesie quod interpellabant nobis abbas et monachi eiusdem cenobii in Canalies, ubi construxerat gener noster Udalgarius cum filia nostra Maiasendis turrim, in tali ratione, ut teneamus in vita nostra solummodo mansum supradictum de Vilar et demus de illo Sancto Cucufati per singulos annos parilios I de capons.*

1721 MARTÍ, *Oleguer, servent de les esglésies*..., doc. 59.

1722 Evacuation charter for an allod at the town of Noves by the spouses Ramon Arnau and Guilla and the brothers of the first, Pere, Bernat and Guillem to the see ofUrgell. They acknowledge that their father had unjustly retained it. The spouses will hold it for Bishop and the clergy, neither sell nor pawn it, but for the rest of their lives would give a census consisting of oil at the beginning of Lent. BARAUT, «Els documents», IX, doc. 1385: *In Dei nomine. Ego Raimundus Arnalli cum matre mea nomine Guilla et cum fratre meo Petro sive Bernardo necnon et Guilelmo facimus cartam exvacucacionis Dei et Beate Marie Sedis eiusque canonice de alodio Sancte Marie quod pater noster iniuste tenuit et nos similiter tenebamus in villa que vocatur Noves. Unde nos supradicti recognoscentes malum esse et sacrilegium res ecclesie iniuste tenere exvacuamus nos de iam dicto alodio in manu domni Petri et clericorum Sancte Marie eiusdem Sedis ad integrum, sub tali vero condicione ut dum ego Raimundus vixero teneam et possideam iam dictum alodium per manum prefati episcopi et clericorum Sancte Marie, ut non vendam neque alienem neque inpignorem sed integrum in mea vita teneam. Post obitum autem mei nullus ex meis propinquis in iam dicto alodio ullam rem requirat sed canonica Beate Marie ad integrum prescribtum alodium habeat, et in mea vita per unumquemque annum iusticiam unam olei iamdicte canonice in capite ieiunio tribuam.* For a similar case, see: MARTÍ, *Oleguer, servent de les esglésies...*, doc. 46*: Omnibus hominibus sit manifestum qualiter acta fuit contentio inter barchinonenses kanonicos et Berengarium Guillelmi qui vocatur Vita. Contendebant namque de alodio Arnalli Guillelmi fratris iamdicti Vite quod asserebant suprascripti kanonici ab eodem Arnallo barchinonensi kanonice esse concessum quod Vita minime affirmabat. In ipso namque alodio habebat Vita terciam partem et frater eius Arnallus duas per paterna ereditatem. Tandem post longam contencionem recognovit iamdictus Vita ipsam partem fratris sui esse directum prescripte kanonice et a iamdicto Arnallo Guillelmi ei esse concessam atque intervenientibus onestis viris Ollegario tarrachonensi archiepiscopo et aliis quam plurimis clericis et laicis pacifice inter eos terminatum est tali modo ut iamdictus Vita habeat supra scriptum alodium quod fuit fratris sui in vita sua per prelibatam kanonicam tribuatque ei annuatim quarterium unum olei in festivitate Sancti Andree pro recognicione et censum iamdicti alodii.*

One of the best examples in that regard is a charter dating in the year 1112 one day before Saint John's Eve. The document directly starts off clarifying that a certain Miró Gombau was the devastator of the allod (*erat devastator de alodio*) belonging to the see of Urgell in the town of Oliana, which had been donated by a relative of his, named Borell, to the institution after his death. The cannons of the see had a trial (*habuerunt placitum*) with the wrongdoer in which Miró had acknowledged the evil and injustice committed and therefore resigned the allod to the Cathedral. Bishop Ot granted it back to him so that he would retain it during his lifetime, on the condition that he would not sell, pledge or alienate it in any way nor would choose any other lord and that he would pay the established census annually while keeping it in good conditions.[1723]

The same short summary is given for Vidià who recognised his wrongdoings and the offences he had committed against Santa Maria de Solsona and in an act of penance (*facto penitens*) gave the castle of Malgrat to the church and the canonry. While he lives he would still hold two parts of the castle including the service of the knights while the third part would belong to the church of Santa Maria de Solsona. After his death, his children or relatives would not be able to claim anything and any improvements to the property or any belongings in it after his death would go to Solsona.[1724]

1723 BARAUT, «Els documents», IX, doc. 1272: *Notum sit omnibus hominibus presentibus et futuris qualiter Miro Gonballi erat devastator de alodio sancte Marie Sedis in villa Uliana. Predicto alodio fuit de Borrello Ilia et ipse post suum obitum reliquid eum totum ab integrum solidum et quietum beate Marie eiusque canonice. De quo canonici Sancte Marie habuerunt placitum cum predicto Mirone et iudicialiter devenit in potestatem Dei et Sancte Marie. Modo predictus Miro, recognoscit se male egisse et ad iniuste prefatum alodium fraudavisse, dimittit illum Domino Deo et Sancte Marie eiusque canonice et reddit omnes voces quas habebat in potestate Dei de Sancte Marie et domini Oddonis episcopi atque archidiaconorum nec non et canonicorum beate Marie per fidem sine malo ingenio. Nunc autem ego Oddo gracia Dei episcopus cum canonicis beate Marie noviter concedimus ut prescriptus Miro teneat illum in vita sua. Sub tali vero conditione ut bene aptet et laboret eum et non possit aliquid de ipso alodio vendere, donare, impignorare neque ulli homini ullo modo alienare neque ullum baiulum vel seniorem eligere, et faciat censum Sancte Marie et eius canonice* [...].

1724 BACH, *Diplomatari*, doc. 40: *Cum ego Vidianus cognovissem Domino Deo et Sancte Marie Dei Genitrici et ecclesie Celsone iniuriam fecisse, quod iam omnibus erat notum hominibus, existimavi me a via veritatis errasse. Cuius iniurie cum legitima carta, facto penitens, dono Domino Deo et ecclesie Sancte Marie Celsone et eius canonice castrum quod nuncupatur Malgrad, quod est in confinio Bergitani, quod michi sicut a parentibus meis accepi advenit.* […] *Hoc autem donum facio ob remissionem peccatorum meorum et patris matrisque mee, fratrum meorum sive Petri Arnalli, nepotis mei, aliorumque parentum. Et ex meo proprio libenter trado ecclesie Sancte Marie et canonicis, ut inde quicquid voluerint faciant; et ut nullus episcopus in supra dicto castro potestatem aliquam habeat. Et tali videllicet ratione facio hoc donum ut in vita mea tantum duas partes habeam totius dominicature et servitium militum, et ecclesia Sancte Marie Celsone et eius canonici habeant terciam partem. Post obitum autem meum nec filius nec aliquis parentum meorum in illo castro vel in eius terminis potestatem habeant. Et si fecero meliorationes vel aliquis meorum in isto castello vel in eius terminis, hoc totum sit Sancte Marie Celsone et eius canonicis omnique tempore.*

To conclude with one of the best examples that displays either the patience or the diligence or may be even both that some ecclesiastical institutions showed. In 1124 the very active provost of Santa Maria de Solsona Ramon Guitard together with his clergymen came to the castle of Ivorra where he, in front of many men, claimed the inheritance of all the allods a certain Ermangarda had given to the church of Santa Maria of Ivorra. Ramon Gombau, together with his wife, had taken these allods away from the church during their lifetime.[1725]

However, they left everything to Santa Maria in their will and it was given to Bernat Ramon together with his wife as a fief for lifetime so that afterwards it would fully belong to the church.[1726] After the death of Bernat Ramon his wife Adalaida, came with all her friends asking if she could hold the property during her lifetime.[1727] An agreement is reached whereby she would hold three quarters of the allod as a fief for as long as she lives and that she would neither give away nor sell her share. After her death, everything finally would return to Santa Maria de Solsona.[1728] Part of the agreement was that Adailda would have no right to sell, give away of choose another lord and from the hand of the provost Adalaida received a mule worth a hundred *solidi*.[1729]

1725 BACH, *Diplomatari*, doc. 187: *Sic venit Raimundus, prepositus Sancte Marie Celsone, cum aliis canonicis in castrum Ivorre clamantes hereditatem sive omnia alaudia quod dimisit Ermeniardis Sancte Marie de Ivorra. Id sunt terras ac vineas, casas, casalibus, ortis, ortalibus et cum omnia quecumque habuit vel habere debuit infra eius terminis castri Ivorre. Et ista omnia suprascripta abstulit Raimundus Gomballi cum uxore sua Sancte Marie in diebus vite illorum.*

1726 Ibid.: *Post obitum vero illorum dimiserunt omnia alaudia Beate Maria in testamento illorum. Et in antea venit Bernardus Raimundi cum uxore sua ante conspectum canonicorum et dimiserunt illis hec alaudia per fevum in diebus vite sue. Post mortem eorum fiat solidum ac liberum Sancte Marie pro animabus illorum.*

1727 Ibid.: *Post obitum Bernardi Raimundi venit mulier sua Adalaidis cum omnibus suis amicis et inquisivit quomodo tenuisset in diebus suis per fevum. Et donavit ac comendavit ei per fevum Raimundus prepositus et alii canonici ut in diebus vite sue teneat tres partes ex ipso alaudio in quocumque loco fuerit.*

1728 Ibid.: *Quartam vero partem ex omnibus alaudiis in quocumque loco inventi fuerint retineamus in dominico Sancte Marie; et post obitum eius filii nec filie nec ullam personam illorum amplius non possunt inquirere, set revertantur tres partes in dominico canonicorum omni tempore, sine ulla inquietudine.*

1729 Ibid.: *Et ipsas tres partes quas commendamus tibi non habeas licenciam vendere nec donare nec ullum patronum alium eligere nisi Deo et Beate Marie canonicorumque eius. Et accepimus ex manibus Raimundi Guitardi, prepositus Sancte Marie, aliorumque canonicorum unam mulam obtimam quam adpreciaverunt solidos C^{m}.*

IV.3.4.3. Oblates

Child oblation was a common practice in the medieval west and was also practised in Catalonia.[1730] As in some cases the practice formed part of conflict resolutions and works in a very similar way to compensations and compromise and therefore will be addressed here.

The clearest example of how donations formed part of deals that were meant to ensure stable relations for the future is a definition and evacuation charter that dates in the year 1060.[1731] Berenguer Bernat de Pedra, Ramon Amat and his uncle Guillem Amat had a dispute with Berenguer, abbot of Sant Cugat del Vallès, and the bishop of Barcelona over the rights of the *dominicatura* of Sant Feliu de Castellar, today's Sant Feliu del Racó, that had belonged to the late Udalguer and his brother Geribert Bonuç. They now promised to return these rights *sine ullo contrarietatis obstaculo.* In exchange, the bishop, abbot and the monks give Ramon Amat sixteen ounces of Valencian gold, and furthermore two farmhouses with all their appurtenances, including a mill, which he would keep for life and could then leave to a son who would have to become a clergyman or monk of the monastery. The properties could not be separated to be given as a fief, sold or exchanged, but would return into the possession of the monastery fully, including any *meliorationibus suis.*[1732]

These kind of deals did not always work out as planned and could cause future friction. This can be seen in the case of Bonhom, who had made a deal with the monastery of Sant Cugat in which his son Dagobert, along with his inheritance, had to enter the religious community as a monk. The son ignored his father and after his

1730 Jong, M. de (1996), *In Samuel's image*: *Child oblation in the early medieval West* (Brill's studies in intellectual history, v. 12, Leiden, New York: E.J. Brill). Neiske, F. (2001), 'Les enfants dans lesmonastères du Moyen Âge', *Mémoires de la Société pour l'Histoire du Droit et des institutions des anciens pays bourguignons, comtois et romands*, 58: 229–244.

1731 SALRACH, MONTAGUT, *Justícia,* doc. 335

1732 Ibid. *Nos igitur predicti Berengarius, episcopus ac abbas Sancti Cucuphatis [et mona]chi eiusdem loci, dedimus vobis iam dictis difinitoribus uncias XVI auri Valencie, in res valentes, pro hac difinitione quam nobis fecistis. Et insuper nunc tibi Raimundo Amati pre[liba]to donamus mansum Sancti Laurencii de ipsa Muntada, qui est in Castelar, cum pertinenciis suis, sicut tenebat Raimundus Cherucius, cum molendinis qui ibi sunt, et cum insulis que in circuitu sunt, et alium mansum Sancti Cucuphatis, cum terminis suis, que vocant ad ipsas Arenas cum taschis Sancti Aciscli. Hec omnia tibi tantum Raimundo Amati damus, ea conveniencia, ut tu teneas in vita tua et post obitum tuum remaneant uni ex filiis tuis qui sit clericus aut monachus Sancti Cucuphatis, et post illum revertantur omnia cum meliorationibus suis in iure et dominio Sancti Cucuphatis et Sancti Laurencii, et non liceat tibi neque filio tuo aliquid de eisdem mansis alicui homini dare per fevum, aut vendere vel comutare.*

parents' death the abbot Guitard of Sant Cugat brought the issue to the court of the countess Ermessenda of Barcelona. There, together with his wife Adelaida, Dagobert was confronted with his past as the pact his father had made with the monastery had also involved a commutation of property, with a restitution clause in case his son broke the agreement. Moreover, during the court proceedings Dagobert presented a false scripture with which he tried to withhold the property, which as we have seen in other examples must have made things worse.[1733] However Dagobert admitted the falsity of the scripture he had presented in court and evacuated all his allods to Sant Cugat. His acknowledgement convinced the abbot to act merciful afterwards (*misericordia postmodum motus*)[1734] and not leave Dagobert impoverished (*necessitate famis et inopia detentus*), and so he instead gives him back two farmhouses in the county of Girona, which the couple then handed back to Sant Cugat.[1735] In exchange the couple received from the abbot *inspiratione divina comp[unctus et misericordia motus]* property close to Sant Cugat, which they should give to one selected child to hold for the monastery after their death.[1736]

1733 SALRACH, MONTAGUT, *Justícia,* doc. 255: *Presentibus notum sit ac futuros qu[aliter] domnus Witardus, abbas Sancti Cucuphatis cenobii Octavianensis vel qua convenientium dedit alo[dium] [...] [Dag]oberto, Gerundensis incole, et uxori eius nomine Adalaizis, et quomodo demum idem ipsi, prompto ac devoto animo, predictum alodium in potestatem redigerim[us] pr[out a nobis] ac ab [...] enim predictus Dagobertus premissus a patre suo condam nomine Bonohomine predicto cenobio Sancti Cucuphatis per monachum cum sua simul hereditate, et sub hac occasione fecit comutacione[m predictus Bonushomo] de domno Ottone, episcopo et abbate predicti cenobii, antecessoris predicti Witardis, de suo alodio, ea tamen ratione, ut si de iam dicta promissione se substraxisset predicta comutacio alodii nostri restitueremus abbate predicti cenobii. Accidit autem ita subtraens videlicet se de iam dicta promissione, et ideo predictus Witardus abbas in presentia multorum nobilium virorum interpellavit Ermessindam comitissam ut hac [comutacio qu]estuare et iusticiam exinde faceret. Predicta autem comitissa hoc diligenter perquisivit et invenit apud predictum Dagobertum scripturam falsitatis confectam.*

1734 Ibid.: *Predictus autem Dagobertus recognovit [se de] scripturam falsitatis et esvacuavit se de ipso alodio, et de omnes suos alios alodios in potestatem predicti abbatis Witardi ad iure et dominio Sancti Cucuphatis predicti simul et eius coniux predicta [...] predictus autem Witardus abba misericordia postmodum motus, dedit predicto Dagoberto et eius coniugi predicte in comitatu Gerundensis, in terminio Corneliani, mansum unum quod fuit Cixelani [condam ... illi] pertinentium, et cum omnes suas affrontationes;*

1735 Ibid.: *His igitur ita [...] Dagobertus, necessitate famis et inopia detentus, hoc eodem alodium predictum totum ab integre cum omnia illorum pertinentia, solidum et liberum recuperavit ad proprium predicto cenobio [Sancti Cucuphatis] [...] [ego predictus] Degobertus et uxor mea predicta Adalaiz, corde perfecto et animo voluntario, nullius cogentis imperio nec suadentis ingenio, donamus predictos mansos et [omnia alodia que in] comitatu Gerundensis habemus vel habere debemus per ullasque voces in omnibus omnino locis predicto cenobio, ut habitantes in eo et omnes successores illorum liberu[m et solidum] [...] [possideant] et in perpetuum possidere mereantur absque ulla inquietudine; et omnibus ita sit manifestum.*

1736 Ibid.: *Hec omnia peracta predictus Vuitardus, abbas, inspiratione divina comp[unctus et misericordia motus] dedit ad predictum Dagobertum et eius coniugi predicte Adalaiz, in comitatu Barchinonensis, in territorio almi martiris Cucuphati, kasas, kasalibus et terra, cum orto et omnia [genera arborum] que ibidem sunt cum modiata I de vinea, eo conventu, ut ips[i te]nerent et possiderent, dum viverent, et post obitum illorum remaneat ad unum ex filiis vel filiabus eorum, qualem elegerit [ut dum viveret p]ossi*

This complicated exchange of property can be better understood when bearing in mind the consequences of presenting false scripture in court, which would explain why Dagobert gave up all his property, being completely at the disposal of the abbot which allowed for a public show of clemency and mercy. The abbot clearly agrees that Dagobert becoming a monk was not in everyone's best interest, but secures future contact through another oblate. Looking at this case from a certain angle, this would allow Dagobert to fulfil his father's wish through his own offspring, but no-one today can know how he felt about this trans-generational agreement.

Pere Arnau was *paterna oblacione traditus* to serve the omnipotent God in his office as a priest at Santa Maria d'Urgell for every day of his life. Persuaded by the devil, however, he had left Christ's militia for the secular one. Recognising that a militant of God never involves himself in secular affairs,[1737] and now repentant, he wanted to make amends for his transgression and gave himself to God, to bishop Ot and the church of Urgell,[1738] along with all his possessions, with the exception of an allod at Adrall which would still go to the canons but not until after his wife's death.[1739]

Guillem, the son of Giscafred of Castellví and Adelaida, also seemed to have had difficulties adapting to life as a canon as he was expelled from the community of the see of Barcelona because of misconduct.[1740] Showing penitence for his guilt Guillem got

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deat in servitio predicti almi martiris Cucuphati; et ita omnibus sit manifestum.

1737 2 Tim. 2:4: *Nemo militans Deo implicat se negotiis saecularibus: ut ei placeat, cui se probavit.*

1738 Baraut, «Els documents», IX, doc. 1325: *Noverit etas presens atque futura, quod ego Petrus Arnalli paterna oblacione traditus fui Deo et Sancte Marie Sedis Urgelli, ut ibi in clericali officio assidue servirem omnipotenti Deo et gloriose Dei Genitrici omnibus diebus vite mee, sed quoniam fallente diabolo perversa corundam persuasione, derelicta Christi milicia ad secularem iterum redii miliciam, cognovi quia retro respiciens non eram aptus regno Dei, eo quod egressus de Sodomis pereunti mundo iterum adhererem, quia nemo militans Deo implicat se negociis secularibus. Nunc igitur quia penitet me contra Dei voluntatem male egisse, tremendi memor iudicii ob emendacionem tante transgressionis reddo, laudo et concedo meipsum et omnes alodios meos omnesque propietates meas Deo et Sancte Marie Sedis et Otoni episcopo et omnibus clericis eiusdem ecclesie presentibus et futuris, eo pactu ut ab odierno die sub clericatus officio serviem Deo in prefata ecclesia sicut predictus iusserit episcopus tota mentis intencione.*

1739 This included the tower of Puigrodó, with all the men, censuses and belongings as well as allods at Crucillada, Meranges, Gerul and Sardina Pelada, with a farmhouse located close to the church of Sant Sadurní. Ibid.: *In primis laudo et dono meam turrem de Pugrodon cum meo alodio et meis hominibus, casas, casales, terras, vineas, ortos, ortales, cultum et eremum, cum exitibus et regressibus, et cum ipso senioratico et cum censu quod soliti sunt facere ibidem commorantes, totum ab integrum dimitto Deo et Sancte Marie eiusque cannonice. Et habet affrontaciones hec omnia a parte orientis in terminos de Valle Fraosa, de meridie in terminos de Aguda, de occiduo in terminos de Bioscha, a parte vero aquilonis in serra Sancti Petri et revertitur in valle Fraosa. Alodium meum quod habeo in Crucillada meam partem similiter relinquo eidem canonice simul cum ipsos quos abeo in Meranges et in Gerul, simul cum ipsas baiulias et cum I manso qui est subtus ecclesiam Sancti Saturnini et cum alodio quem abeo in Sardina Pelada. Alodium quod abeo in Adral de parentorum et cum ipsas casas et omnibus pertinenciis dimitto eidem canonice post obitum uxoris mee.*

1740 Salrach, Montagut, *Justícia,* doc. 329: *Accidit autem postmodum, exigentibus culpabilibus predicti*

a second chance under the condition that if he breached the rules again he would be expelled for good.[1741] Some family peer pressure was added as an extra incentive, as if he did commit another transgression his parents would have to evacuate any rights of the allods which they had given to the see for his admission.[1742]

Other documents that are rather unspecific about the exact circumstances have to be read through that lens as well; like a certain Ramon Arnau who acknowledged the violent acts he had committed and evacuated all his rights over a family property to the monks and the abbot of Santa Maria de Serrateix, but in particular to his brother Mir, also a monk at said abbey, to whom it actually belonged.[1743]

Gauspert, priest of the canonry of Santa Maria de Solsona, admits to having committed numerous infractions. As remission for his crimes and to save his soul he gave to the Basilica of Santa Maria de Solsona some allods he had in Sedó,[1744] in the county of Urgell, as well as his son Ramon Gauspert in subjection, and if his son continued as a clergyman then he would include some other possessions as well.[1745]

Guilielmi meritis, ut a collegio et a communi societate fratrum exorssieret, quem quidem erat eius pravitas cunctis honerosa, quam nemo cetororum tolerare valebat.

1741 Ibid: *Interea predicto Guilielmo penitudinem pro culpis quas commisit gerente et genitore eius atque genitrice precibus prefatum presulem et cunctum canonicorum cetum exorantibus, receperunt eundem Guilielmum secundo in societate communi fratrum sicut prius, asserentibus patre eius et matre atque poscentibus cum eodem pariter Guilielmo ut, si prelocutus filius illorum talem culpam vel facinus ibidem commiserit, unde iudicetur recte foras eici debere, ipse Guilielmus extraneus a collegio canonicorum fiat et in gradum pristinum numquam redeat, et ereditatem paternam, quam predicta Canonica consecuta est illius causa, nullatenus postmodum recipiat.*

1742 Ibid.: *Pater vero eius et mater [...] si ita contigerit, sicut dictum est, hanc hereditatem evacuant in iure prefate Canonice atque consignant sive definant, ita ut frato tempore nullo modo eam requirant nec ipsi nec homo nec femina vel homines vel feminae propter eos.*

1743 Bolós, *Diplomatari de Serrateix*, doc. 128: *Hec est evacuacio quem ego Raimundus Arnallus et coniux mea, Gerberga, et filio nostro, Gerallus, facimus ad Sancta Maria de Serratex et ad Willelmus, abba, et ad ceterum monachorum de ipsum alaude quem pater meus Arnallus et mater mea Ermengaudis reliquerunt ad Sancta Maria et ad Miro monachus frater meus.*

1744 Bach, *Diplomatari*, doc. 63: *Hanc cartam facio ob meorum criminum remissionem, ut presente vita postposit[a] [m]erear possidere quietamque sedem et ut inferni voraginem, sanctis circunstantibus, valeam renuisse. In qua donum memorare volo quod, Deo favente, ecclesie dono pretaxtate Sancte Marie Celsone, id sunt predia, vinee, quoque et mansion[...] aut merito habere debeo. Que omnia enumerare gestio, quod evidentius quocumque sint singillatim valeant expeti.*

1745 Ibid.: *Et cum his [...] [do]no filium meum nomine Raimundum Iozperti, ut perhenniter subciciatur iussioni illius ecclesie et illius ibi omnibus dominantibus, qui rectores fuerint omnium ecclesie rerum, aut sub cuius regimine, ut levius dicam, Ecclesia subponetur. Et [...]ne dono, scilicet, alaudia et has possessiones, ut filius meus Raimundus teneat eas dum superstes huic fuerit mundane vite. Et post egressionem a corpore, anime prorsus libero arbitrio sit solidum atque quietum Sancte Marie Cel[sone] [...] ecclesiam regentium. Et in Duo Castella adiungo mea alaudia que ibi habeo ad hoc donum, id sunt vinee et terre et etiam mansiones. Et hoc dono ut ad presens teneat Sancta Maria atque po[ssid]eat aliorum beneficio alaud[...]. Et si hoc forte contigerit ut filius meus relinqueret clericatum, statim omnia que sibi superius dimisi auferantur et fiant sub illius ecclesie ditione. Ego vero Raimundus Iozperti, ut pater meus superius iniuncxerit in hoc texto scrip[tur]e similiter do[no] [Sancte] Marie eiusque canonicam, ut pro anima patris mei preces coram Domino ibi effundantur ab illius loci assistentibus.*

In some occasions a little bit more detail can be squeezed out of the sterile legal documents. Sometimes, for example, dates seemed to have been of importance. In 1133 the couple Ermengol Arnau and Ponça, together with their sons Ramon and Arnau, came to present themselves in front of the chapter of Santa Maria de la Seu d'Urgell on the name day of the head of the family, the holy day of Sant Ermengol (November 3rd), surely to attend the festivities there, and the charter thus emphasised their good spirits.[1746] The charter is dated two days later and shows that they not only came for mass but also to resolve the dispute they had with the see. They gave their son Berenguer, who appears to be their youngest, to the service of God, as a canon and endowed him with a farmhouse in Das that they already held as a fief in the name of the canonry, as well as adding in another one in Mosoll that a certain Sicard held for them. On this occasion they acknowledged that they had appropriated the *dominium* and the services from the church of Sant Llorenç, and returned all this to bishop Pere Berenguer of Urgell and his successors. In return, their son Berenguer would retain the chaplaincy during his lifetime and after his death everything would return to and remain in the hands of the church of Urgell.[1747]

The document, in my opinion, shows several things. Firstly, the good will of the couple in coming voluntarily to the see to handle the conflict and the complex negotiations that would have occurred on the Saturday, after the day of Saint Ermengol, that led to the creation of the charter on the Sunday, after mass.

The earliest example of such an agreement that I am aware of dates in the year 1032 and shows Oliba, bishop of Vic, use this rather unconventional deal for his time to come to terms with the lineage of powerful local magnate called Gurb.[1748]

1746 BARAUT, «Els documents», IX, doc. 1432: *Notum sit omnibus hominibus presentibus atque futuris, quod ego Ermengaudus et mulier mea nomine Poncia et Reimundus et Arnallus filios nostros venimus in capitulum Sancte Marie Sedis ad festivitatem Sancti Ermengaudi et ante presentiam domini Petri episcopi et omnium clericorum qui ibi aderant, et donamus filium nostrum Berengarium ad Sanctam Mariam Sedis Urgelli ut sit canonicus Sancte Marie et ad servicium Dei et ipsius ecclesie.*

1747 Ibid.: *Et ideo ego Ermengaudus Arnalli et coniux mea Poncia et filios meos suprascriptos reddimus et evacuamus illum dominium et illum servicium quod habebamus iniuste in ecclesia Sancti Laurenti neque in clericorum illius loci, sic reddimus in manu domni Petri episcopi et successoribus suis. Tali modo ut Berengarius filius noster teneat et habeat hanc capellaniam ad servicium Dei et Sancte Marie Sedis Urgelli, post mortem vero eius ecclesiam Sancti Laurenti, cum medietatem decimi ipsius parrochie Sancti Laurenti de ipsos espletos, libere et quiete et integre remaneat ad Sanctam Mariam Sedis et in manu domni Petri episcopi et successoribus suis totam suprascriptam honorem et stabilimentum illius ecclesie et servicium clericorum.*

1748 For a broader history of the family, see: BENET, *La família Gurb-Queralt*. For the rise and the early lordship, comp. Jarrett, J. (2010), *Rulers and Ruled in Frontier Catalonia, 880-1010: Pathways of Power* (Woodbridge [u.a.]: Royal Historical Society), p. 105-127.

A detailed look at the conflict would involve entering into a wider analysis that should not be done here, and so summary must do. Bishop Frujà gave several churches to the canon Bonfill, brother of Sendred de Gurb, as a donation that the bishops Arnulf and Borrell ratified in favour of Berenguer, Sendred's son. After the death of Bonfill a conflict arose when Berenguer was consecrated bishop of Elna and, together with his father, wanted to keep the churches. This lead to an excommunication, but was finally resolved through an agreement in which Oliba accepted Bernat Sendred, Sendred's son, as a cleric and canon of the see and gives him the churches as a *beneficium*.[1749] While this was for the time a rather exceptional solution to a complex conflict, as we have seen it became more common after the death of the pioneer Oliba from the second half of the 11th century onwards, and consequently caused new types of conflict itself.

1749 The conflict is outlined in the same document. SALRACH, MONTAGUT, *Justícia,* doc. 239. For a cohesive summary, see: JUNYENT, MUNDÓ, *Diplomatari*, p. 171-175.

V. Results & Conclusions

A long and complex debate on the political, economic and social evolution of the Catalan counties between the tenth and twelfth centuries, based on the very rich documentation that has been preserved, has presided over at least the last six decades of European medievalism, placing Catalonia at the centre of a more general historical issue. At the same time, recent theoretical research and practical analysis of judicial systems and forms of conflict resolution in the Middle Ages, European in general and Catalan in particular, have also greatly advanced the results, offering new tools of interpretation. This thesis is indebted to both frameworks of study and has its foundations in them. Starting precisely from them, this work aims to propose some results that will allow further progress to be made. The thesis, which does not ignore the central problem of a transformation as a consequence of the process of feudalisation in Catalonia, does not so much seek to delve directly into this general problem as to analyse the evolution of justice in this period in order to offer possible new keys to help reconsider and refine the reflection on the specific rhythms, forms, causes and consequences of these changes.

The organisation, administration and execution of justice in medieval Catalonia is exceptional, one is inclined to say extraordinary. The documentation bears ample witness to this and allows a glimpse into the continuities and changes throughout the entire period covered by our study. In all these fields, those continuities and changes are visible throughout the documentation and they are clearly not only a sign of continuity or change of document types, or the way scribes dealt or narrated these developments.

Evidence allows for two possible interpretations, both of which have implications on how a historian sees the evolution of medieval Catalan society as a whole in the time period studied. The first and maybe more traditional viewpoint would be the breakdown or decomposition of an old established, well-grounded and interconnected legal system, which made space for something new, different and more arbitrary during the 11th century. But another reading would be that the legal system evolved and adapted itself to the new circumstances, which would emphasise its flexibility and thus its strength rather than its weaknesses.

Opting for the second interpretation does not, however, mean negating the process of transformation to which Catalan society was subjected, and which affected the administration of justice and transformed the means of conflict resolution. The main results of our analysis tend towards such a process of adaptation which at the same time allows us to determine the paces of change with greater accuracy.

For this purpose, we have used what we have called the "Wheel of Justice" as our main tool of analysis to highlight certain changes within procedure as well as to constantly ask basic questions the sources do not always respond to. This allowed us to show why certain parts of judicial procedure were consciously documented while others were left out. The connection between the cases at hand and how they were narrated within the charters was shown throughout the documentation.

Based on the Wheel of Justice, we have analysed the following aspects, identifying continuities and changes:

Regarding the organisation of justice two factors were thoroughly analysed with the whole documentation mind: space and time. Concerning the first, this work highlights the importance of the space in front of churches, or more precisely in front of the church door, as traditional places of assemblies as well as what this could imply for a society deeply rooted in Christian belief. The spaces in front of churches were the perfect background environment for judicial assemblies not only from a logistical standpoint, but also as they allowed the oath taking to be performed inside and thus generated dynamics that must have been filled with meaning, gestures and rituals for contemporaries. Other places of justice, being it countal courts, cathedrals or cloisters, were extremely stable as traditional locations during the time period studied.

For the administration of justice, the liturgical calendar served as a tool to organise deadlines as well as court dates. These two were linked as all kind of deadlines usually fell on significant holy days and non-compliance automatically meant a spike in legal activity right before or after these important dates. Trials on feast days could happen but were exceptional as most court sessions fell on weekdays, which suggests that the judges and the community were well aware of the corresponding Visigothic law, or that it at least became the custom. Exceptions to the rule were highlighted as such throughout the work and show that long-lasting conflicts in particular had a tendency to culminate in a solution on feast days or Sundays, which can be seen as an indicator that these days, and with them the saints,

played a special role in establishing legal peace. As holy days per se were days of communal gathering and religious activity, these days also allowed judges to get their previously carefully redacted court records signed. They also functioned as moments in which to articulate perceived injustices that were then consequently resolved afterwards.

The beforehand preparations and organisational skills required to bring forward proof of allegations or to defend against accusations were managed not only orally but also in written form. While this can mostly be seen indirectly through narrative in charters, some of these documents did however survive within the documentation, and thus both highlight the importance of the written word as a means of communication before court trials, and emphasise the capacity of writing and reading in Catalan society.

The composition of the tribunals and the listed attendees, as well as their involvement in finding a court resolution, changed significantly during the time period analysed.

Judges directed trials and the number that were present reduces during the time period studied leaving only the educated professionals visible in the role. An abundant and very sophisticated use of Visigothic Law by the judges is widely known and has been analysed by specialists within the field. The use of citations within sales, donations and other documents that are valid pieces of documentation and have no direct need to cite the legal code has to be thoroughly revised as professional judges stayed with their cases and could have ratified later documents that were the result of trials.

The professionality of the judges was highlighted through the headmasters of schools, who only sometimes acted as judges but mostly stayed in their field of competence as leaders of learning. Their appearance is an indicator that can help to establish places of justice not mentioned in the charters, as they were responsible for the choir which was also utilised as a place for assemblies and trials.

The analysis of the *boni homines* showed that variations of their title are the result of the Visigothic Law code and that their role as evaluators of all kind of goods and properties evolved. Up to the middle of the 11th century they rarely acted as arbitrators. They were respected locals or neighbours who indirectly guaranteed that the sentence had an effect while it was clearly the judges who directly the trial and

passed the sentence. An increase of interventions and small-scale advice shows them eventually becoming a strong force at the beginning of the 12th century as they transformed from being evaluators to finally being adjudicators.

The low-ranking court official the *saio* was extensively traced throughout the consulted documentation and his slow disappearance from the headers and signatures thus became clear. His role and function within the legal apparatus, however, was essential as a handyman for all the physical roles as well as ensuring smooth transitions, and it raised some questions as his office continued to exist. The fact that the last appearances of *saiones* were in rather small-scale local trials, in which their signature was still considered valuable, could be read as an explanation of the change. Starting as an honourable and necessary witness and constantly found in the regulations of the Visigothic law and working for the counts and the judges, they end up being only mentioned once in the *Usatges* and disappear from documentation. As the law compilation is more concerned with the powerful, with the rest of the evidence this suggests that the slow but consistent disappearance from the court records should be better explained through the rise of new administrative law officials like the *veguer*, and that his signature was not seen as valuable any more because he was seen more as what he would eventually become – an executioner.

The judges are seen to direct the trials and followed the court order according to Law; the charters display them investigating the proof presented by the parties involved diligently, contrasting the written word with oral testimony. This process often involved several sessions in which one finds judges and the involved parties travelling, even long distances, from one session to the next. This not only shows the organisational skills of the time but also raises a lot of questions regarding logistics, which in some cases were highlighted.

The Wheel of Justice thus helps to carefully examine the various aspects of the judicial process and it proved to be especially effective in analysing more complex legal cases involving important magnates, which could result in large court records that read like a memoir of the case. In these the visualisation of the judicial process allowed for a better understanding of procedure, as it highlights documents that are preserved and documents that are amiss as well as the references to former events, and thus helps to establish a chronological order of events that is otherwise hard to

understand. The most complex example in that regard is found in the chapter “The Early Mir Geribert” where a new chronological order of events has been proposed.

Nothing represents change clearer than the new tool for finding truth in the toolkit of the judges. The appearance of ordeals within the Catalan documentation was mostly interpreted as the first sign of a crumbling system. God's judgement, however, is rarely attested to in in comparison to other places in Europe and was only used as a last resort.

In Catalonia it was clearly the judges in charge of overseeing the use of the ordeal, and therefore the rituals regarding ordeals were added into the *Liber iudicum popularis* of the judge Bonsom which also contrasts with other places in Europe where these instruction were added into the liturgical books of the bishop, the pontificals. The rare cases in which the ordeal was used shows it as an extraordinary tool forming part of the investigation of truth. Detailed narratives in regards to ordeals follow certain rules as the end result was considered absolute and allowed for a more complex reading of the cases, giving insight into the medieval mind. Its rare application must be seen as a sign of a society strongly based on the written word and oral testimony, while the quick adaptation and understanding of where to situate the ordeal within the frame of the existing law can also be interpreted as a manifestation of a lively legal tradition and a strong interconnectivity between the judges.

Trial by combat entered Catalan legal tradition as a new practice and was, after an initial resistance, quickly adopted by the judges, using a very particular vocabulary. The cases which allow some insight show a certain affinity for questions regarding honour and treason. First defined as customary in the second half of the 11th century, it was already being administered according to the customs of the court by the first third of the 12th. The court order proposed by the *Usatges* has the closest resemblance to the cases already found in the 11th century and it addressed new types of offenses related to honour, which were central to feudal relationships and are hard to grasp within the documentation. Judicial duels also allowed the administration of ordeals accordance to social status, and the tradition of a bilateral ordeal would eventually result in one of the earliest treaties regulating judicial combat that is distinctly different to the regulations found at other places in Europe.

While the resolution of conflict was shown going case by case, certain types of resolution were chosen to highlight change. One of those was security charters, which

were drafted to guarantee an individual would not be summoned to court again. Due to the circumstances of preservation only few of these documents survived. However, they were the forerunners of waivers of complaints. These did exist as standalone documents but were mostly found included as part of agreements and became an essential part of legal procedure. Complaints were articulated and then known within then community and were considered open until eventually resolved. The Visigothic Law does not contemplate this kind of legal arrangement, but the *Usatges* established that if a peace or an agreement was reached which included oath, homage and fealty then open complaints had to be considered automatically terminated, and those documents show a certain early transition to these customs.

Another aspect that was treated separately was the way the desire for pilgrimage was used to solve conflicts between ecclesiastical institutions and individuals, as the latter felt the need to set their affairs in order before leaving, as well as craving a blessing before going on a dangerous journey. The option to repent by going to a pilgrimage in cases of homicide meant a clear distancing from Visigothic law, which in that regard was adopted for the new means of salvation. New approaches were also found in regards to the judicial verdict of slavery. The analysis of the different cases shows certain difficulties of the chronology established so far by other authors in regards to the application of Visigothic Law.

All these isolated but steady changes in society can be best understood as a transformation from a society based on retributive justice towards a society that emphasised solutions closer to a model of restorative justice.

It is not too far-fetched to postulate a constant find in legal anthropology: peace and justice do not always coincide, as strictly retributive justice is not necessarily sufficient to guarantee peace. In other words, recognising and identifying injustice and its causes only to then impose the corresponding punishment does not necessarily ensure or lead to peace within society. On the basis of this, two ideal types of court decision can, therefore, be distinguished as models of a simplified representation of reality: retributive and restorative justice. Modern states tend towards the first: the culprit is punished. Traditional societies tend to focus on the latter: peace is restored.

A retributive sentence could therefore be understood as a clear application of the written law. A law has been broken, the offender committed a crime and is punished accordingly. A mechanical legal application suggests neutrality but in many cases

implies that one party is the clear malefactor, or suggests that the individual going to court did so without having any truth on their side. The judge's decision can, consequently, be perceived by the losing party as an act of violence, which could cause opposition to the judicial authority, finally leading to either a non-acceptance of the judgment or even worse, retaliation.

Peace-seeking judges, in that sense, strive for a restorative concept of justice that makes new beginnings possible. The easiest way to ensure longevity is compensation for the damage and a reconciliation of the parties rather than an impersonal imposition of punishment. This implies a certain involvement of the parties in the court hearing. In other words, the higher the participation in the design of the sentence through both parties or individuals close to them, the higher the pressure upon the two sides to definitively accept the final decision, and consequently the higher the probability that this will happen. The recourse to restorative justice has another advantage apart from – ideally – satisfying both parties. It allows troublemakers to actively show penance and, on that basis, to a certain extent free will – thus saving them from a humiliating decree from above. Offenders have to take responsibility for their action and admit the harm they have caused, and the presence of the community and their approval of the judgment discourages the malefactor from causing further harm in the future. This way of resolving a legal conflict also allows active participation of the aggrieved party, giving them a certain sense of achievement.

Both ideal types are bound to other factors. Namely power structures and the type of infringement. Some breaches of the law cause harm to one individual or community in a very clear way. The best example, in this case, would probably be theft – perpetrator and victim are, in most cases, clearly defined and obvious. The determination of the facts thus clearly comes to the fore. Was theft committed or not? Admittedly, the severity of the penalty may be alleviated after the guilt has been established, but a retributive application of the law is virtually implied. Ordeals in these cases allowed a clear solution and thus forced people to consider the risks and seek compromise. The situation is not so simple in the case of a legal dispute in which both parties are convinced that they have legal claims.

Another factor that comes into play is the imbalance of power. Some individuals just don't have the means to not accept the decision of a court. The logical way to improve their position is through putting together a list of infringements and/or

increase the number of supporters in their party. Another option is appealing to a higher authority that represents them in court. For example, in the chapter regarding cases of one side abandoning trial the ecclesiastical institutions outclassed their judicial opponents in court through their organisational skills, which made them strong allies for the less powerful. This notion of protection and being someone else's subject while maintaining good relationships with the patron became more central in the beginning of the 12th century.

In this model extrajudicial agreements could in a certain way be seen as the most extreme way of restorative justice. Both parties find a way to agree without official "justice" being involved. The problem is the underlying assumption of a clear distinction between public and private. If judges also act as a kind of arbitrator in judicial procedures, with both parties entrusting them to negotiate a solution, modern concepts start to blur.

Ideas and principals of restorative justice always formed part of Catalan society, be it through *boni homines* or public assemblies, but they were emphasised more and more to finally form an integral part of society, and also affected the narrative within the charter evidence that makes judicial decisions harder to distinguish from out-of-court settlements.

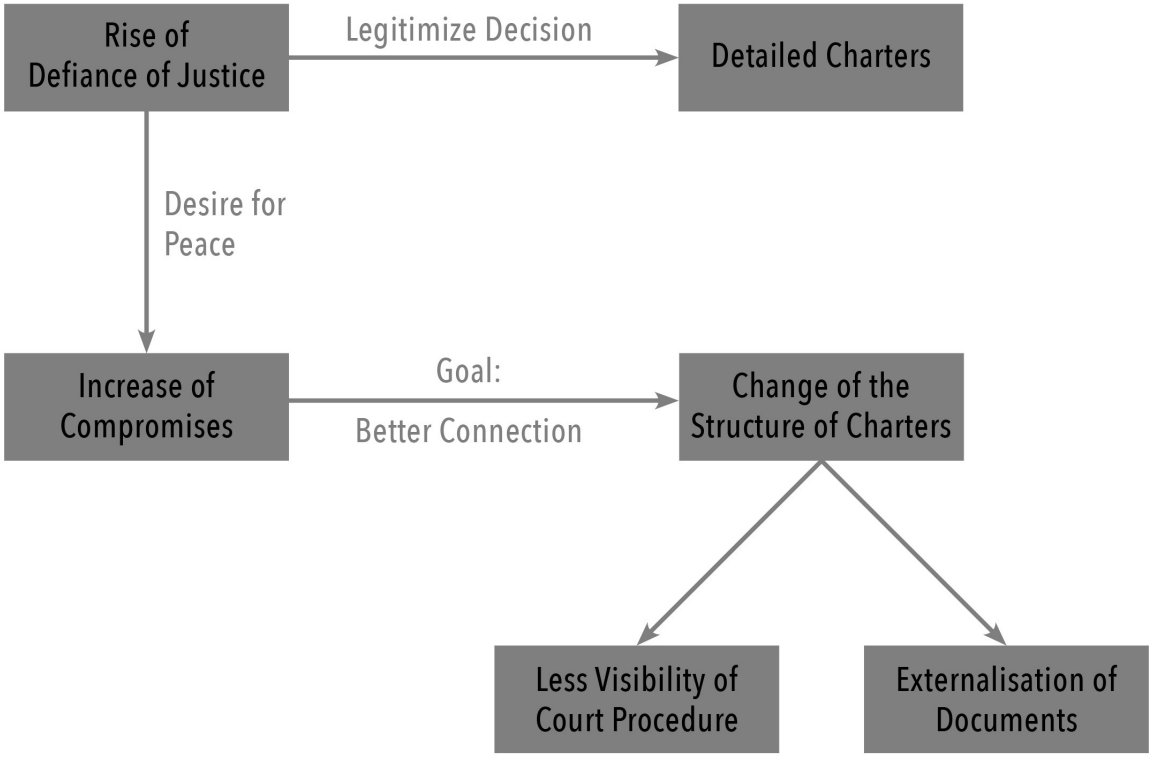

Fig. 4: Change in Charter Structure

Many of the detailed charters narrating court cases stem from examples in which one side clearly defied justice. With a visible rise of these cases in the 11th century, the judges diligently recorded these and through the citations and references to Visigothic Law not only made those cases intersubjectively understandable for other legal professionals, but also gave their own decisions legitimacy. This caused very detailed charters to be preserved in which both sides' arguments were recorded. This, together with the filter of preservation of charters regarding properties or rights, explains the emphasis on certain books and chapters in the direct citations and references of the Visigothic Law more coherently than the ignorance or the intentional selection through the judges. That does not mean, however, that judges did not bend the interpretation of the law, but the fact that better documented cases coincided with one party defying justice should be taken into the equation.

At the same time, the increase of the defiance of justice through new powerful players like castle-holders and their possible violent responses led to a desire to find solutions that would effectuate peace for the litigants. This longing for pacification is

articulated in the narrative of charters with a focus of concord, and could be considered as one of the causes that led to an increase of compromise. The goal of these compromises was to better future connections between the sides and provide a clear definition of hierarchy.

In the end most legal matters were solved through compromise even when going to court, which had an effect on the redaction of charters. While the legal cause of conflict was still given in later charters, it was done so only if these details were important for the agreement reached. Instead of narrating the different court sessions and justifying the final sentence the agreements moved towards focusing on narration and thus less details were recorded that give insight into the procedure and the legal argumentation. While early-detailed grievances and complaints were added to the court records, or at least clearly articulated in the later documentation, they mostly appear undated as externalised documents. The focus on the agreement rather than on the process could at least partly explain this development.

Catalan society was headed towards one in which justice, and consequently what was considered fair, was based more on compensation, composition, and conciliation than on decisions benefiting only one party. Judges formed part of this change through their decisions in every turn of the wheel of justice. As a society lives and experiences law every slightly-altered judicial decision changes the course of what was understood as being just. Precursors to most later solutions that became the rule can be found in early documentation as an exception to the rule. A radical change is not visible in the documentation but instead a constant evolution of the old and the implantation and active use of new methods by the judges which altered their role within a society in transformation.

In conclusion, is it more adequate to speak of continuity or of change? Throughout the work analysing the judicial practices of Catalan society between the 10th and the 12th century, it has been demonstrated that the activity of the courts and the application of laws in regards of the resolution of conflicts went hand in hand with a progressive adaptation of the pre-existing legal tradition to the reality of the social change that was taking place. The strong legal tradition in Catalonia existing in the middle of the 10th century was not overwhelmed by these changes during the 11th century but adapted measures to ensure its relevance and to guarantee that judicial decisions could be considered just by contemporaries.

VI. Bibliography

VI.1. Cited Literature

Ackermann, M. R. (1993), 'Mittelalterliche Kirchen als Gerichtsorte', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 110: 530–545.

Ainaud de Lasarte, J., Gudiol, J. J., and Verrié, F. P. (1947), *La Ciudad de Barcelona*: *Catálogo monumental de España*, 2 vols.

Albrecht, S. (2004), 'Der Kreuzgang als Gerichtsstätte', in P. K. Klein (ed.), *Mittelalterliche Kreuzgänge* (Regensburg), 27–9.

Althoff, G. (1997) (ed.), *Spielregeln der Politik im Mittelalter*: *Kommunikation in Frieden und Fehde* (Darmstadt).

Althoff, G. (1999), 'Schranken der Gewalt: Wie gewalttätig war das "finstere Mittelalter"?', in H. Brunner (ed.), *Der Krieg im Mittelalter und in der Frühen Neuzeit. Gründe, Begründungen, Bilder, Bräuche, Recht.* (Imagines medii aevi, 3, Wiesbaden), 1–23.

Althoff, G. (2011), 'Establishing Bonds: Fiefs, Homage, and other Means to Create Trust', in S. Bagge, M. H. Gelting, and T. Lindkvist (eds.), *Feudalism. New Landscapes of Debate* (The medieval countryside, 5, Turnhout), 101–14.

Altisent i Jové, Joan B. (1926), 'Pontifical de Roda (s. XI)', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 1926: 523–551.

Alturo i Perucho, J. (1998), 'El sistema educativo en la Cataluña altomedieval', *Memoria Ecclesiae*, 12: 31–61.

Alturo i Perucho, J. (2004), 'La historiografia catalana del període primitiu', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 19–38.

Alturo i Perucho, J. (2005), 'A propòsit de la publicació dels diplomes de la Catalaunya Carolíngia', *Estudis romànics*, 27: 289–297.

Alturo i Perucho, Jesús et al. (2003) (ed.), *Liber iudicum popularis*: *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior).

Alvarado Planas, J. (1997), *El problema del germanismo en el derecho español*: *siglos V-XI* (Madrid: Marcial Pons).

Álvarez Cora, E. (1996), 'Qualis erit lex: la naturaleza jurídica de la ley visigótica.', *Anuario de Historia del Derecho Español*, 1996: 11–118.

Álvarez Martínez, C. (1847), *Ensayo histórico filosófico y legal sobre el duelo.* (Madrid) <https://babel.hathitrust.org/cgi/pt?id=ucm.5324071733&view=1up&seq=7>, accessed 20 Oct 2020.

Amenós Martínez, L. (2010), 'Les portes ferrades romàniques al sud del Pirineu català', *Quaderns del Museu Episcopal de Vic*, 3: 57–92.

Amundsen, D. W. (1971), 'Visigothic medical legislation', *Bulletin of the History of Medicine*, 45/6: 553–569.

Aróstegui, J. (2002), 'La teoría de la historia en Francia y su influencia en la historiografía española', in G. Chastagnaret (ed.), *La historiografía francesa del siglo XX y su acogida en España*. *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid), 365–405.

Auer, A. M. (2012), 'Vorgeschlagen, vereinbart, verhindert. Gottesurteile als Mittel der Konfliktlösung', in R. Czaja, E. Mühle, and A. Radzimiński (eds.), *Konfliktbewältigung und Friedensstiftung im Mittelalter* (Toruń), 181–96.

Aurell i Cardona, Jaume (2003), 'Bisson, Thomas Nöel', in Simon i Tarrés, Antoni (ed.), *Diccionari d'Historiografia Catalana* (Barcelona), 225–6.

Aymar i Ragolta, Jaume (1999), *Les Assemblees de Pau i Treva*: *Una història en clau de pau* (Barcelona).

Bach i Riu, A. (2002), 'Pelegrins als grans santuaris medievals', *Butlletí de la Reial Acadèmica de Bones Lletres*, 2002: 547–562.

Bagge, S., Gelting, M. H., and Lindkvist, T. (2011) (eds.), *Feudalism. New Landscapes of Debate* (The medieval countryside, 5, Turnhout).

Balari i Jovany, Josep (1964), *Origenes históricos de Cataluña* (Sant Cugat del Vallès), first pub. 1899.

Balcells i González, Albert (2004), 'Introducció', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 13–8.

Baraut, C. (2003) (ed.), *Església i Bisbat d'Urgell: recull de treballs* (La Seu d'Urgell: Societat Cultural Urgel·litana).

Baraut, C. (1998-2001), 'Les fonts documentals i hagiogràfiques medievals de la vida i miracles de sant Ermengol, bisbe d'Urgell (1010-1035)', *Urgellia: Anuari d'estudis*

històrics dels antics comtats de Cerdanya, Urgell i Pallars, d'Andorra i la Vall d'Aran., 1998-2001: 137–165.

Baraut, C. (2003), 'Pelegrins de Terra Santa de l'antic comtat d'urgell', in C. Baraut (ed.), *Església i Bisbat d'Urgell: recull de treballs* (La Seu d'Urgell: Societat Cultural Urgel·litana), 509–13.

Barbero, A., and Vigil, M. (1978), *La formación del feudalismo en la Península Ibérica* (Barcelona: Crítica).

Barceló i Perelló, Miquel (1994), '¿Qué arqueología para Al-Andalus?', in Malpica y Cuello, Antonio and Quesada y Quesada, Tomás (eds.), *Los orígenes del feudalismo en el mundo mediterráneo* (Biblioteca chronica nova de estudios históricos, 30, Granada: Universidad de Granada), 69–100.

Barnwell, P. S., and Mostert, M. (2003) (eds.), *Political assemblies in the earlier Middle Ages* (Studies in the early Middle Ages, 7, Turnhout, Belgium: Brepols).

Barriga i Planas, Josep Romà (1975), *El sacramentari, ritual i pontifical de Roda*: *Cod. 16 de l'arxiu de la catedral de Lleida c. 1000 (Liber pontificalis Rotae)* (Barcelona).

Barthélemy, D. (1992), 'La mutation féodale a-t-elle eu lieu ? (note critique)', *Annales. Économies, Sociétés, Civilisations.*, 47/3: 767–777.

Barthélemy, D. (1995), 'Encore le débat sur l'an mil!', *Revue historique de droit français et étranger*, 73: 349–360.

Barthélemy, D. (1996), 'The "Feudal Revolution"', *Past & Present*, 1996: 196–205.

Barthélemy, D. (1997), 'La paix de Dieu dans son contexte (989-1041).', *Cahiers de civilisation médiévale*, 1997: 3–35.

Barthélemy, D. (1997), *La mutation de l'an mil a-t-elle eu lieu? Servage et chevalerie dans la France des Xe et XIe siècles* (Paris).

Barthélemy, D. (1999), *L'an mil et la paix de Dieu*: *La France chrétienne et féodale 980-1060* (Paris: Fayard).

Bartlett, R. (1990), *Trial by Fire and Water*: *The Medieval Judicial Ordeal* (Oxford: Clarendon Press).

Bastardas i Parera, J. (1977), *Sobre la problemàtica dels usatges de Barcelona: discurs llegit el dia 10 de març de 1977 en l'acte de recepció pública* (Barcelona: Reial acadèmia de bones lletres de Barcelona).

Bastardas i Parera, J. (1991), *Usatges de Barcelona, el codi a mitjan segle XII*: *Establiment del text llatí i edició de la versió catalana del manuscrit del segle XIII del*

L'Arxiu de la corona d'Aragó de Barcelona. (Textos i documents, 6, Barcelona: Fundación Noguera).

Baudon de Mony, C. (1896), *Relations politiques des comtes de Foix avec la Catalogne jusqu'au commencement du XIVe siècle*, 2 vols. (Relations politiques des comtes de Foix avec la Catalogne jusqu'au commencement du XIVe siècle, Paris: Alphons Picard et fils).

Baudreu, D. (2019), 'Du pouvoir comtal au pouvoir royal: le château de Carcassonne', *Patrimoines du Sud*, 2019: 1–48.

Beltrán de Heredia Bercero, Julia (2013), 'Barcino, de colònia romana a sede regia visigoda, medina islàmica i ciutat comtal: una urbs en transformació.', *Quarhis*, 9: 16–118.

Benet i Clarà, Albert (1982), 'L'origen de la família Calders', *Miscel·lània d'Estudis Bagencs*, 2: 15–30.

Benet i Clarà, Albert (1993), *La família Gurb-Queralt (956-1276)*: *Senyors de Sallent, Oló, Avinyó, Gurb, Manlleu, Voltregà, Queralt i Santa Coloma de Queralt* (1ª ed., Sallent: Institut d'Arqueologia, Història i Ciències Naturls).

Benito i Monclús, Pere (1990), 'Violències feudals i diferenciació social pagesa', *Fulls de Museu Arxiu de Santa Maria de Mataró*, 37/4: 15–27.

Benito i Monclús, Pere (2000), 'Els "Clamores" de Sant Cugat contra el fill del gran senescal, i altres episodis de terrorisme nobiliari (1161-1162)', *Anuario de Estudios Medievales*, 30/2: 851–886.

Benito i Monclús, Pere (2001), 'El mas català com a estructura senyorial: canvis i continuïtats al llarg de l'Edat Mitjana', in M. T. Ferrer i Mallol (ed.), *El mas català durant l'edat mitjana i la moderna*. *(segles IX - XVIII); aspectes arqueològics, històrics, geogràfics, arquitectònics i antropològics ; actes del Col·loqui, celebrat a Barcelona, del 3 al 5 de novembre de 1999* (Anuario de estudios medievales Annex, 42, Barcelona), 77–108.

Benito i Monclús, Pere (2003), *Senyoria de la terra e tineça pagesa al comtat de Barcelona (segles XI-XII)* (Anuario de estudios medievales Annex, 51, Barcelona: Consell Superior d'Investigacions Cientifíques).

Benito i Monclús, Pere (2007), 'Els primers pelegrins catalans a Sant Jaume de Compostel·la (segles XI-XII). Identitat, perfil social i procedència geogràfica', in , *El camí de Sant Jaume i Catalunya*. *Actes del congrés internacional celebrat a Barcelona,*

Cervera i Lleida, els dies 16, 17 i 18 d'octubre de 2003 (Biblioteca "Abat Oliba". Sèrie il·lustrada, 21; 1a ed., Barcelona: Publicacions de l'Abadia de Montserrat), 111–23.

Benito i Monclús, Pere (2013), 'Marché foncier et besoin d'expertise dans la Catalogne des Xe-XIIe siècles. Le rôle des boni homines comme estimateurs de biens.', in C. Denjean and L. Feller (eds.), *Expertise et valeur des choses au Moyen Âge* (Collection de la Casa de Velázquez, volume 139, Madrid: Casa de Velázquez), 153–65.

Benito i Monclús, Pere, Kosto, A. J., and Taylor, N. L. (1996), 'Three typological approaches to Catalonian archival evidence, 10-12 centuries', *Anuario de Estudios Medievales (AEM)*, 26/1: 43–88.

Bensch, S. P. (1994), 'From Prizes of War to Domestic Merchandise: The Changing Face of Slavery in Catalonia and Aragon, 1000-1300', *Viator*, 25: 63–94.

Bertran i Roigé, P. (1992), 'Els senyors de Mataplana', *Revista de Girona*, 1992: 57–62.

Beyerle, F. (1950), 'I. Zur Frühgeschichte der westgotischen Gesetzgebung. Volksrechtliche Studien IV', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*, 67/1: 1–33.

Bisson, T. N. (1977), 'La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société by Pierre Bonnassie; La organización del trabajo en Barcelona a fines del siglo XV by Pierre Bonnassie', *Speculum*, 52/4: 921–925.

Bisson, T. N. (1994), 'The "Feudal Revolution"', *Past & Present*, 1994: 6–42.

Bisson, T. N. (1995), 'Medieval Lordship', *Speculum*, 70/4: 743–759.

Bisson, T. N. (1998), *Tormented voices*: *Power, crisis, and humanity in rural Catalonia, 1140-1200* (Cambridge, Mass: Harvard University Press).

Bisson, T. N. (2000), 'La terre et les hommes: A programme fulfilled?', *French History*, 14/3: 322–345.

Bisson, T. N. (2002), 'Catalunya carolíngia, 4: Els comtats d'Osona i Manresa; Els pergaminsde l'arxiu comtal de Barcelona de Ramon Borrell a Ramon Berenguer I', *Speculum*, 77: 960–961.

Blasi Solsona, J. (1999), *Els oblidats comtes de Cerdanya (798-1117)* (Col·lecció Nostra història, 1; 1. ed., Sant Vicenç de Castellet: El Farell Ed.).

Blasi Solsona, J. (1999), *Els oblidats comtes de Cerdanya, 798-1117* (El Farell Edicions).

Body-Gendrot, S., and Spierenburg, P. (2009) (eds.), *Violence in Europe*: *Historical and Contemporary Perspectives* (New York: Springer).

Bofarull i Mascaró, Pròsper de (1836), *Los condes de Barcelona vindicados, y cronología y genealogía de los reyes de España considerados como soberanos independientes de su marca*, 2 vols. (Barcelona: Imprenta de Juan Oliveres i Monmany).

Bofarull i Terrades, M. (2001), 'Adalbert, senyor d'Albinyana', *Miscel·lània penedesenca*, 26: 141–164.

Bois, G. (1989), *La mutation de l'an mil. Lournand, village mâconnais de l'Antiquité au féodalisme.* (Paris: Fayard).

Bolòs i Masclans, Jordi (2000), *Diccionari de la Catalunya medieval (ss. VI-XV)* (Barcelona: Edicions 62).

Bonales Cortés, J., *Límits jurídics i modificació de paisatges. La construcció històrica del territori andorrà*.

Bonales Cortés, J. (2015), *Construint fronteres*: *Història territorial de la vall d'Andorra: segles XVI al XXI* (Andorra: Consell General).

Bonnassie, P. (1968), 'Les conventions féodales dans la Catalogne du XIe siècle', in , *Les structures sociales de l'Aquitaine, du Languedoc et de l'Espagne au premier âge féodal.* (Paris), 187–219.

Bonnassie, P. (1975), *La organización del trabajo en Barcelona a fines de siglo XV* (Barcelona: Consejo Superior de Investigaciones Científicas).

Bonnassie, P. (1975-1976), *La Catalogne du milieu du Xe siècle à la fin du XIe siècle: croissance et mutations d'une société*, 2 vols. (Toulouse: Presses Universitaires du Mirail).

Bonnassie, P. (1979), *Catalunya mil anys enrera (segle X-XI).*, 2 vols. (Barcelona).

Bonnassie, P. (1980), 'Du Rhône à la Galice : genèse et modalités du régime féodal', in , *Structures féodales et féodalisme dans l'Occident méditerranéen (Xe-XIIIe siècles). Bilan et perspectives de recherches. Actes du Colloque de Rome (10-13 octobre 1978).* (Publications de l'École française de Rome, 40, Rome), 17–55.

Bonnassie, P. (1985), 'Survie et extinction du régime esclavagiste dans l'Occident du haut moyen âge (IVe-XIe s.)', *Cahiers de civilisation médiévale*, 112: 307–343.

Bonnassie, P. (1986), 'Sur la formation du féodalisme catalan et sa première expansion (jusqu'à 1150 environ)', in Portella i Comas, Jaume (ed.), *La formació i expansió del feudalisme Català:. Actes del col·loqui organitzat pel Col·legi Universitari de Girona* (Estudi general, 5-6, Girona: Universitari de Girona), 7–26.

Bonnassie, P. (1994), 'El proceso de feudalización en Cataluña y Francia del Sur', in Malpica y Cuello, Antonio and Quesada y Quesada, Tomás (eds.), *Los orígenes del feudalismo en el mundo mediterráneo* (Biblioteca chronica nova de estudios históricos, 30, Granada: Universidad de Granada), 101–18.

Bonnassie, P. (2003), 'El señorío banal y los cambios en la condición del campesinado libre', in L. K. Little and B. H. Rosenwein (eds.), *La Edad Media a debate* (Akal universitaria. Serie historia medieval, 221, Tres Cantos, Madrid: Ediciones Akal), 190–218.

Bonnassie, P., Cursente, B., and Débax, H. (2002) (eds.), *Fiefs et féodalité dans l'Europe méridionale (Italie, France du Midi, Péninsule ibérique) du Xe au XIIIe siècle.*: *Colloque international organisé par le Centre Européen d'art et civilisation médiévale de Conques et l'Université de Toulouse -Le Mirail ", Conques, 6-8 juillet 1998* (Toulouse).

Borgeaud, P. (1994), 'Le couple sacré/profane. Genèse et fortune d'un concept « opératoire » en histoire des religions', 211/4: 387–418.

Borrell i Sabater, M. (2007), *Portes, panys i forrellats d'esglésies i ermites* (Les terres gironines, Girona: Diputació de Girona).

Borrell Vidal, E., Gómez i Cardó, P., and Clásicos, S. E. d. E. (2016) (eds.), *Omnia mutantur*: *Canvi, transformació i pervivència en la cultura clàssica, en les seves llengües i en el seu llegat* (Barcelona: Edicions de la Universitat de Barcelona).

Boscá Codina, J. V. (1999), *Ideología, organización social y cultura escrita en la Cataluña de los siglos X al XII* (València: Universitat de València, Facultat de Geografia i Història).

Bosch, S. (1936), 'Les partides i els textos catalans didàctics sobre cavalleria', *Estudis universitaris catalans*, 22: 655–680.

Bougard, F. (1997), 'La justice dans le royaume d'Italie aux IXe-Xe siècles', in , *La giustizia nell'alto medioevo, secoli IX-XI* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44, Spoleto), 133–76.

Bougard, F. (2003), 'Rationalité et irrationalité des procédures autour de l'an mil: le duel judiciaire en Italie', in C. Gauvard (ed.), *La justice en l'an mil*. *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française), 93–122.

Bougard, F. (2008), 'Genèse et réception du Mâconnais de George Duby', *Bulletin du centre d'études médiévales d'Auxerre*, 1: 1–23.

Bourin, M. (2003), ‘Les "boni homines" de l'an mil’, in C. Gauvard (ed.), *La justice en l'an mil*. *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française), 53–66.

Bowman, J. A. (1997), ‘Do Neo-Romans Curse? Law, Land, and Ritual in the Midi (900-1100)’, *Viator*, 28: 1–32.

Bowman, J. A. (1999), ‘Councils, memory and mills: the early development of the Peace of God in Catalonia’, *Early Medieval Europe*, 8/1: 99–129.

Bowman, J. A. (2002), ‘The Bishop Builds a Bridge: Sanctity and Power in the Medieval Pyrenees’, *The Catholic Historical Review*, 88/1: 1–16.

Bowman, J. A. (2004), *Shifting Landmarks: Property, Proof, and Dispute in Catalonia around the Year 1000* (Cornell University Press).

Brancoli Busdraghi, P. (2014), ‘"Masnada" und "boni homines" als Mittel der Herrschaftsausübung der ländlichen Herrschaften in der Toscana (11.-13. Jahrhundert)’, in G. Dilcher and C. Violante (eds.), *Strukturen und Wandlungen der ländlichen Herrschaftsformen vom 10. zum 13. Jahrhundert*. *Deutschland und Italien im Vergleich* (Schriften des Italienisch-Deutschen Historischen Instituts in Trient, 14; 1st edn., Berlin: Duncker & Humblot).

Braun, M., and Herberichs, C. (2005) (eds.), *Gewalt im Mittelalter*: *Realitäten, Imaginationen* (München: Fink).

Breed, B. (2014), ‘Reception of the Psalms: The example of Psalm 91.’, in W. P. Brown (ed.), *The Oxford Handbook of the Psalms* (Oxford: Oxford University Press), 297–310.

Brenner, R. (1976), ‘Agrarian class structure and economic development in pre-industrial Europe’, *Past & Present*, 70: 30–75.

Brosman, P. W. (1964), ‘Romance "guerpire"’, *Romance Philology*, 18/1: 31–33.

Brown, W., Costambeys, M., Innes, M. et al. (2012), *Documentary culture and the laity in the early Middle Ages* (Cambridge: Cambridge University Press).

Brown, W., and Górecki, P. (2003) (eds.), *Conflict in medieval Europe*: *Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate).

Brown, W. C., and Górecki, P. (2003), ‘What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970-2000.’, in W. Brown and P. Górecki (eds.),

Conflict in medieval Europe. *Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 1–35.

Buc, P. (2001), *The dangers of ritual*: *Between early medieval texts and social scientific theory* (Princeton, N.J).

Buchholz, S., Mikat, P., and Werkmüller, D. (1993) (eds.), *Überlieferung, Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung* (Rechts- und Staatswissenschafliche Veröffentlichungen der Görres-Gesellschaft, 69, Paderborn).

Burns, T. S. (1984), *A history of the Ostrogoths* (Bloomington: Indiana University Press).

Buschmann, A., and Wadle, E. (2002) (eds.), *Landfrieden*: *Anspruch und Wirklichkeit* (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.F., Bd. 98, Paderborn: Schöningh).

Busqueta i Riu, J. J. (1997), *Els costums de Lleida*: *Documents de l'Arxiu Municipal de Lleida* (Col·lecció Guillem Botet, 1, Lleida: Paeria, Ajuntament de Lleida).

Camarós, E. (2010), 'Una "nueva Arqueología" per a un "nuevo Estado" , o la mort de l'Escola Catalana d'Arqueologia i el naixement de l'Arqueologia franquista (1939-1955)', *Estrat Crític*, 4: 35–45.

Canyameres i Ramoneda, E. (1991), 'Els orígens familiars de Senescal de Barcelona, Guillem Ramon (I)', *Paratge*, 2: 7–18.

Carbasse, J.-M. (2017), 'Le duel judiciaire dans les coutumes méridionales (1975)', in J.-M. Carbasse (ed.), *Droits et justices du Moyen Âge: recueil d'articles d'histoire du droit*, 13–28.

Carlé, M. d. C. (1964), '"Boni homines" y hombres buenos', *Cuadernos de historia de España*, 39/40: 133–168.

Carreras i Candi, F. (1903), 'Lo Montjuich de Barcelona:. memoria llegida en la Real Academia de Buenos Letras de Barcelona los diés 7 y 21 de juny de 1902', *Memorias de la Real Academia de Buenas Letras de Barcelona*, 8: 199–450.

Carreras i Candi, F. (1916), *La ciutat de Barcelona* (Geografia General de Catalunya, 6, Barcelona: Establiment Editorial de Albert Martin).

Carreras y Xuriach, B. (1856), *[El duelo]: Discurso* (Madrid: Imprenta de D. Eusebio Aguado) <//catalog.hathitrust.org/Record/009346458>.

Carrero Santamaría, E. (2010), 'La Seu d'Urgell, el último conjunto de iglesias. Liturgia, paisaje urbano y arquitectura.', *Anuario de Estudios Medievales*, 40/1: 251–291.

Casassas i Ymbert, Jordi (2004), 'La historiografia del positivisme', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 161–86.

Castro, D. (2020), 'The Bishop and the Word: Isidore of Seville and the Production of Meaning', in E. Dell' Elicine and C. Martin (eds.), *Framing Power in Visigothic Society*. *Discourses, Devices, and Artifacts* (Late Antique and Early Medieval Iberia, Amsterdam: Amsterdam University Press), 51–74.

Chandler, C. J. (2019), *Carolingian Catalonia*: *Politics, culture, and identity in an imperial province, 778-987* (Cambridge studies in medieval life and thought. 4th series, Cambridge: Cambridge University Press).

Charageatet, M., and Leveleux-Teixeira, C. (eds.), *Consulter, délibérer, décider.*: *Donner son avis au Moyen Age (France-Espagne, VIIe-XVIe siècle),* (Editions Méridiennes, PUM).

Chastagnaret, G. (2002) (ed.), *La historiografía francesa del siglo XX y su acogida en España*: *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid).

Cheyette, F. L. (1970), 'Suum cuique tribuere', *French Historical Studies*, 6: 287–299.

Cheyette, F. L. (1988), 'The "Sale" of Carcassonne to the Counts of Barcelona (1067-1070) and the Rise of the Trencavels', *Speculum*, 63/4: 826–864.

Cheyette, F. L. (2002), 'Georges Duby's Mâconnais after fifty years: reading it then and now', *Journal of Medieval History*, 2002: 291–317.

Cheyette, F. L. (2003), 'Some reflections on violence, reconciliation and the "feudal revolution"', in W. Brown and P. Górecki (eds.), *Conflict in medieval Europe*. *Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 243–64.

Churruca Arellano, J. de (1973), 'Presupuestos para el estudio de las fuentes jurídicas de Isidoro de Sevilla', *Anuario de Historia del Derecho Español*, 43: 429–444.

Cingolani, S. M. (2006), '"Seguir les vestígies dels antecessors". Llinatge, reialesa i historiografia a Catalunya des de Ramon Berenguer IV a Pere II (1131-1285)', *Anuario de Estudios Medievales (AEM)*, 36/1: 201–240.

Cingolani, S. M. (2008), 'Estratègies de legitimació del poder comtal: l'abat Oliba Ramon Berenguer I la Seu de Barcelona i les Gesta Comitum Barchinonensium', *Acta historica et archaeologica mediaevalia*, 2008: 135–175.

Clara, J. (1980), 'Dos articles de Vicens i Vives', *Revista de Girona*, 91: 133–135.

Claret i Miranda, Jaume (2004), *La repressió franquista a la universitat espanyola* (Barcelona).

Coleman, E. (2003), 'Representative Assemblies in Communal Italy', in P. S. Barnwell and M. Mostert (eds.), *Political assemblies in the earlier Middle Ages* (Studies in the early Middle Ages, 7, Turnhout, Belgium: Brepols), 193–210.

Coll i Alentorn, Miquel (1991), *Historiografia* (Obres, 1, Barcelona: Publicacions de l'Abadia de Montserrat).

Coll i Castanyer, Jaume (1988), 'Els vescomtes de Girona', *Annals de l'Institut d'Estudis Gironins*, 30: 39–98.

Collins, R. (1985), ''Sicut lex Gothorum continet': Law and Charters in Ninth- and Tenth-Century León and Catalonia', *The English Historical Review*, 100/396: 489–512.

Collins, R. (1986), 'Wisigothic law and regional custom in disputes in early medieval Spain', in W. Davies and P. Fouracre (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge), 85–104.

Congost i Colomer, Rosa, and Nadal i Oller, Jordi (2002), 'La influencia de la obra de Pierre Vilar sobra la historiografía y la conciencia española', in G. Chastagnaret (ed.), *La historiografía francesa del siglo XX y su acogida en España*. *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid), 223–39.

Coroleu i Inglada, José (1878), *El feudalismo y la servidumbre en la gleba de Cataluña* (Girona: Imprenta y librería de Vicente Dorca).

Costambeys, M. (2018), 'Archives and Social Change in Italy, c.900–1100. The Evidence of Dispute Notices', in R. Balzaretti, J. Barrow, and P. Skinner (eds.), *Italy and early medieval Europe*. *Papers for Chris Wickham*, C. Wickham (The past and present book series; First edition, Oxford: Oxford University Press), 261–73.

Couderc-Barraud, H. (2000), 'Le duel judiciaire en Gascogne d'après les cartulaires', *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public*, 31: 97–115.

Couderc-Barraud, H. (2008), *La violence, l'ordre et la paix*: *Résoudre les conflits en Gascogne du XIe au début du XIII siècle* (Toulouse: Presses Universitaires du Mirail).

Curta, F. (2006), *Southeastern Europe in the Middle Ages, 500-1250* (Cambridge medieval textbooks, Cambridge, New York: Cambridge University Press).

Cymorek, H. (1998), *Georg von Below und die deutsche Geschichtswissenschaft um 1900* (Viertelsjahrschrift für Sozial- und Wirtschaftsgeschichte: Beihefte, 142, Stuttgart: Franz Steiner Verlag).

Davies, W. (2007), *Acts of giving*: *Individual, community, and church in tenth-century Christian Spain* (Oxford, New York: Oxford University Press).

Davies, W. (2010), 'Judges and judging: truth and justice in northern Iberia on the eve of the millennium', *Journal of Medieval History*, 2010: 193–203.

Davies, W. (2016), *Windows on Justice in Northern Iberia, 800-1000* (Abingdon: Routledge).

Davies, W. (2018), 'Boni homines in Northern Iberia. A Particularity that Raises some General Questions', in R. Balzaretti, J. Barrow, and P. Skinner (eds.), *Italy and early medieval Europe*. *Papers for Chris Wickham*, C. Wickham (The past and present book series; First edition, Oxford: Oxford University Press), 60–72.

Davies, W., and Fouracre, P. (1986) (eds.), *The settlement of disputes in Early Medieval Europe* (Cambridge).

Débax, H., 'Le conseil féodal en Languedoc et en Catalogne, XIe-XIIe siècles', in M. Charageatet and C. Leveleux-Teixeira (eds.), *Consulter, délibérer, décider. Donner son avis au Moyen Age (France-Espagne, VIIe-XVIe siècle),* (Editions Méridiennes, PUM), 109–28.

Débax, H. (2003), *La féodalité languedocienne*: *XIe-XIIe siècles: serments, hommages et fiefs dans le Languedoc des Trencavel* (Tempus, Toulouse: Presses Universitaires du Mirail).

Deimling, B. (1998), 'XI. Ad Rufam Ianuam: Die rechtsgeschichtliche Bedeutung von „roten Türen" im Mittelalter', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, 115/1: 498–513.

Deimling, B. (2016), 'The Courtroom. From Church Portal to Townhall', in W. Hartmann and K. Pennington (eds.), *The History of Courts and Procedure in Medieval Canon Law*, W. Hartmann and K. Pennington (Catholic University of America Press), 30–50.

dels Sants Gros i Pujol, Miquel (1995), 'Els Fragments del sacramentari Vic, Museu Episcopal, Frag. 1/8', *Miscel·lània Litúrgica Catalana*, 6: 165–175.

dels Sants Gros i Pujol, Miquel (2004), 'El pontifical de Vic. (Vic, Arx. Cap., ms. 104(CV))', *Miscel·lània Litúrgica Catalana*, 12: 103–138.

dels Sants Gros i Pujol, Miquel (2007), 'El Pontifical romà de Vic. Vic, Arx. Cap. ms. 103 (XCIII)', *Miscel·lània Litúrgica Catalana*, 15: 187–272.

dels Sants Gros i Pujol, Miquel (2008), 'El Col·lectari-Ordinari de l'Abadia de Santa Maria de la Grassa. (París, BnF, ms. lat. 933)', *Miscel·lània Litúrgica Catalana*, 16: 203–453.

dels Sants Gros i Pujol, Miquel (2011), 'El Sacramentari de Santa Maria de Vilabertran (París, BnF, lat. 1102)', *Miscel·lània Litúrgica Catalana*, 19: 47–202.

Dendorfer, J., and Deutinger, R. (2010) (eds.), *Das Lehnswesen im Hochmittelalter*: *Forschungskonstrukte, Quellenbefunde, Deutungsrelevanz* (Mittelalter-Forschungen, Band 34, Ostfildern: J. Thorbecke).

Di Tucci, R. (1926), 'La prova giudiziaria del duello nel periodo dell'autonomia', *Studi Sassaressi*, 5.

Dilcher, G., and Violante, C. (2014) (eds.), *Strukturen und Wandlungen der ländlichen Herrschaftsformen vom 10. zum 13. Jahrhundert*: *Deutschland und Italien im Vergleich* (Schriften des Italienisch-Deutschen Historischen Instituts in Trient, 14; 1st edn., Berlin: Duncker & Humblot).

Dinzelbacher, P. (2006), *Das fremde Mittelalter*: *Gottesurteil und Tierprozess* (Essen: Magnus Verlag).

Doležalová, K., and Foletti, I. (2020) (eds.), *The notion of liminality and the medieval sacred space* (Convivium Supplementum, 3, Turnhout: Brepols).

Domingo, R., and Martínez-Torrón, J. (2018) (eds.), *Great Christian jurists in Spanish history* (Law and Christianity, Cambridge: Cambridge University Press).

Downey, D., Kinane, I., and Parker, E. (2016), 'Locating Liminality: Space, Place, and the In-Between', in D. Downey, I. Kinane, and E. Parker (eds.), *Landscapes of liminality* (London, New York: Rowman & Littlefield International), 1–26.

Drew, K. F. (1967), 'The Barbarian Kings as Lawgivers and Judges', in R. S. Hoyt (ed.), *Life and Thought in the Middle Ages* (Univ Of Minnesota Press), 7–29.

Duby, G. (1953), *La Société aux XIe et XIIe siècles dans la région mâconnaise.* (Paris: Armand Colin).

Edgerton, S. Y. (1980), 'Icons of Justice', *Past & Present*, 1980: 23–38.

Eldevik, J. (2005), 'New Studies in Medieval Law and Conflict Resolution', *Comitatus: A Journal of Medieval and Renaissance Studies*, 36: 157–172.

Elema, A. (2012), 'Trial by Battle in France and England', PhD (Toronto, Centre for Medieval Studies).

Esders, S. (2018), 'Der Verjährungstitel des Liber iudiciorum (L. Vis. X, 2) und die politischen Implikationen des Ersitzungsgedankens im Westgotenreich', in I. Czeguhn, C. Möller, Y. M. Quesada Morillas et al. (eds.), *Wasser - Wege - Wissen auf der iberischen Halbinsel*. *Eine Annäherung an das Studium der Wasserkultur von der römischen Antike bis zur islamischen Zeit* (Baden-Baden), 57–86.

Esmark, K. (2006), 'Feudalisme og antropologi. Nye perspektiver på magt, orden og konfliktregulering i højmiddelalderen', *Historisk Tidskrift*, 126/1: 3–22.

Evans, G. R. (2002), *Law and theology in the Middle Ages* (London: Routledge).

Fabre, A., and Villanova, J. L. (1997), 'Jaume Vicens Vives: vida i obra geográfica i geopolítica', *Treballs de la Societat Catalana de Geografia*, 45: 53–69.

Farías i Zurita, Víctor (1989), *La sacraria catalana: 950-1200.*: *Aspectos y modelos de un espacio social.*

Farías i Zurita, Víctor (1993), 'La sagrera catalana (c. 1025 - c. 1200): Características y desarrollo de un tipo de asentamiento eclesial', *Studia historica. Historia medieval.*, 11: 81–121.

Farías i Zurita, Víctor (1993-1994), 'Problemas cronológicos del movimiento de Paz y Tregua catalán del siglo XI.', *Acta historica et archaeologica mediaevalia*, 14-15: 9–37.

Farías i Zurita, Víctor (1994), 'Una querimonia desconeguda procedent de l'antic arxiu de Sant Cugat del Vallès (ca. 1160-1162)', *Gausac*, 5: 99–104.

Farías i Zurita, Víctor (2002-2003), 'Entre ofensiva monárquica i resistencia senyorial. Sobre els orígens de la «servitud» dels homes de mas a la Catalunya dels segles XII-XIV', *Recerques: Història, economia i cultura*, 45-46: 139–170.

Farías i Zurita, Víctor (2007), 'La proclamació de la pau i l'edificació dels cementiris. Sobre la difusió de les sagreres als bisbats de Barcelona i Girona (Segles XI-XIII)', in Farías i Zurita, Víctor, Martí i Castelló, Ramon, and A. Catafau (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines), 13–84.

Farías i Zurita, Víctor, Martí i Castelló, Ramon, and Catafau, A. (2007) (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació*

d'Història Rural de les Comarques Gironines, 2000 (Associació d'Història Rural de les Comarques Gironines).

Faulkner, T. (2016), *Law and Authority in the Early Middle Ages* (Cambridge: Cambridge University Press).

Feliu de Travy, Ignasi (1983), 'Miró, bisbe de Girona i comte de Besalú', *Revista de Girona*, 104: 207–212.

Feliu i Montfort, Gaspar (1969), 'La cronología según los reyes francos en el condado de Barcelona', *Anuario de Estudios Medievales*, 6: 441–464.

Feliu i Montfort, Gaspar (1996), 'La pagesia catalana abans de la feudalització', *Anuario de Estudios Medievales (AEM)*, 26/1: 19–40.

Feliu i Montfort, Gaspar (2000), 'Aspectes de la formació del feudalisme a Catalunya', *Recerques: Història, economia i cultura*, 41: 179–203.

Feliu i Montfort, Gaspar (2001), 'Els antecedents de la remença i els mals usos', *Quaderns de la selva*, 13: 209–228.

Feliu i Montfort, Gaspar (2009), 'El pes econòmic de la remença i dels mals usos', in, *La llarga nit feudal*. *Mil anys de pugna entre senyors i pagesos* (Història, València: Universitat de València), 169–80.

Feliu i Montfort, Gaspar (2009), *La llarga nit feudal*: *Mil anys de pugna entre senyors i pagesos* (Història, València: Universitat de València).

Feliu i Montfort, Gaspar (2011), 'Ramon d'Abadal. La tenacitat en el treball de base', *Butlleti de la Societat Catalana d'Estudis Històrics*, 22: 157–183.

Fernández de Marcos Morales, Ramón J. (2007), 'Notas acerca de si San Isidoro usó los textos Justinianeos', *RDUNED. Revista de derecho UNED*, 2: 379–394.

Fernández i Viladrich, J. (2008), 'Estructura juridicoformal de les donacions en els diplomes de la Catalunya carolíngia', *Revista de Dret Històric Català*, 8: 75–125.

Fernández i Viladrich, J. (2010), 'Les corts comtals a Catalunya al caient del millenni', *Revista de Dret Històric Català*, 10: 9–93.

Ferrer i Mallol, Maria Teresa (2001), 'La organización militar en Cataluña en la edad media', *Revista de historia militar*, Extra 1: 119–222.

Fiori, R. (2017), 'Ordalie e diritto romano', *Iura: rivista internazionale di diritto romano e antico*, 65: 1–128.

Fischer Drew, K. (1974), 'Legal Materials as a Source for Early Medieval Social History', *Rice Institute Pamphlet - Rice University Studies*, 60/4: 33–43.

Fita i Colomé, F. (1891), 'El obispo Guisliberto y los Usajes de Barcelona', *Boletín de la Real Academia de la Historia*, 18 <http://www.cervantesvirtual.com/nd/ark:/59851/bmcdn4g4>.

Fita i Colome, Fidel (1875), 'Lo Papa Benet XIII y los pagesos de remensa', *La Renaixença. Revista catalana de literatura, ciències i arts*, 5/2.

Fité i Llevot, F., and González i Montardit, E. (2010), *Arnau Mir de Tost*: *Un senyor de frontera al segle XI* (Col·lecció El Comtat d'Urgell, 9, Lleida: Edicions de la Universitat de Lleida).

Fixot, M., and Zadora-Rio, E. (1994) (eds.), *L'environnement des églises et la topographie religieuse des campagnes médiévales. Actes du IIIe congrès international d'archéologie médiévale (Aix-en-Provence, 28-30 septembre 1989)*.

Follain, A. (2008), *La violence et le judiciaire*: *Du Moyen Âge à nos jours ; discours, perception, pratiques ; actes du Colloque International réuni à Angers les 18, 19 et 20 mai 2006* (Histoire, Rennes: Presses Universitaires de Rennes).

Font i Rius, Josep Maria (1946), 'Orígenes de régimen municipal de Cataluña', *Anuario de Historia del Derecho Español*, 1946: 229–585.

Font i Rius, Josep Maria (1991), 'La Comunitat local o veïnal', in , *Symposium internacional sobre els orígens de Catalunya*. *Segles VIII-XI: [celebrat a Barcelona del 11 al 15 de desembre de 1989]* (Memorias de la Real Academia de Buenas Letras de Barcelona, [Barcelona]: Comissió del mil·lenari de Catalunya; Generalitat de Catalunya), 491–576.

Font i Rius, Josep Maria (2003), 'L'escola jurídica de Barcelona', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 69–100.

Fontana i Lázaro, Josep (2004), 'Pierre Vilar i la història de Catalunya', *L'avenç. Revista de història i cultura.*, 297: 13–21.

Fossier, R. (1982), *Enfance de l'Europe*: *Xe - XIIe siècles; aspects économiques et sociaux*, 2 vols. (Nouvelle Clio, 17, Paris: PUF).

Fossier, R. (1989), *Enfance de l'Europe*: *Xe-XIIe siècles : aspects économiques et sociaux* (Nouvelle Clio, 17; 2e éd, Paris: Presses Universitaires de France).

Freedman, P. (1983), *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia*.

Freedman, P. (1991), *The Origins of Peasent Servitude in medieval Catalonia.* (Cambridge).

Freedman, P. (2000), 'La resistencia campesina y la historiografía de Europa medieval', *Edad Media*, 3: 17–38.

Freedman, P. (2002), 'Senyors i pagesos al camp feudal', in Sabaté i Curull, Flocel and J. Farré (eds.), *Els grans espais baronials a l'Edat Mitjana, desenvolupament socioeconòmic*. *Reunió científica* (Curs d'Estiu Comtat d'Urgell, 1, Lleida: Pagès), 11–22.

Friedrich, U. (2005), 'Die ‚symbolische Ordnung" des Zweikampfs im Mittelalter', in M. Braun and C. Herberichs (eds.), *Gewalt im Mittelalter*. *Realitäten, Imaginationen* (München: Fink), 123–58.

Fullola i Pericot, Josep Maria (2004), 'L'Escola catalana d'arqueologia', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 229–48.

Furió i Diego, Antoni (2004), 'La historiografia catalana sota el franquisme', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 205–28.

García López, Y. (2003), 'Rituals per la celebració de les ordalies', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 251–5.

García López, Y. (1993), 'La tradición del Liber Iudiciorum. Una revisión', in Fundación Sánchez-Albornoz (ed.), *De la antigüedad al medievo, siglos IV-VIII: III Congreso de Estudios Medievales* (Santiago García), 383–415.

García López, Y. (1997), *Estudios críticos de la "Lex Wisigothorum"* (Memorias del Seminario de Historia Antigua, 5, Alcalá de Henares: Universidad de Alcalá).

García López, Y. (2003), *El Liber Iudicum en Cataluña en los s .X-XI,* International Conference on the Visigothic Lawcode, 2003.

García López, Y. (2003), 'L'edició de Zeumer i la tradició manuscrita del Liber', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 31–66.

Garí de Aguilera, Blanca (1984), 'Las querimoniae feudales en la documentación catalana del siglo XII (1131-1178)', *Medievalia*, 5: 7–49.

Garí de Aguilera, Blanca (1985) (ed.), *El linaje de los Castellvell en los siglos XI y XII* (Barcelona).

Garí de Aguilera, Blanca (1987), '"Haec sunt rancuras…". Análisis de una querimonia catalana del siglo XI', in , *Homenaje Juan Torres Fontes*, 2 vols. (Murcia), 605–12.

Garí de Aguilera, Blanca (1989), *El señorío de Ventalló*: *Historia de las familias, Requesens, Caramany y Perramón, que lo poseyeron* (Casa Perramón, Barcelona: Nauta).

Garí de Aguilera, Blanca (2003), 'La resolución de conflictos en la Cataluña del siglo XI. Apuntes para una relectura de los inventarios de "agravios" feudales', *Acta historica et archaeologica mediaevalia*, 25.

Garófalo, H. M. (2014), 'El diablo y los demonios en la Alta Edad Media a través de los escritos patrísticos: Agustín de Hipona, Gregorio Magno e Isidoro de Sevilla (siglos IV a VII)', *Anuario del Centro de Estudios Históricos "Prof. Carlos S. A. Segreti"*,, 2014: 129–154.

Gascón Chopo, C. (2012), 'Els darrers vescomtes de Cerdanya i el casal de Castellbò', *Quaderns d'Estudis Andorrans*, 2012: 53–77.

Gauvard, C. (2003) (ed.), *La justice en l'an mil*: *Actes du Colloque La Justice en l'An Mil, réuni le 12 mai 2000* (Collection Histoire de la justice, 15, Paris: La Documentation Française).

Geary, P. J. (1994), 'Living with Conflict in a Stateless France. A Typology of Conflict Management Mechanisms', in P. J. Geary (ed.), *Living with the Dead in the Middle Ages*, 125–62.

Gergen, T. (2002), 'The Peace of God and its legal practice in the Eleventh Century', *Cuadernos de Historia del Derecho*, 9: 11–27.

Gergen, T. (2004), 'La Paz de Dios y la protección de personas y de bienes', *Cuadernos de Historia del Derecho*, 11: 303–325.

Gijón, J. M. (1961), 'La prueba judicial en el derecho territorial de Navarra y Aragón durante la Baja Edad Media', *Anuario de Historia del Derecho Español*, 1961: 17–54.

Giroux, M. E., Coburn, P. I., Harley, E. M. et al. (2016), 'Hindsight Bias and Law', *Zeitschrift für Psychologie*, 224/3: 190–203.

Goetz, H.-W. (2002), 'Die Gottesfriedensbewegung im Licht neuerer Forschungen.', in A. Buschmann and E. Wadle (eds.), *Landfrieden*. *Anspruch und Wirklichkeit* (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, n.F., Bd. 98, Paderborn: Schöningh), 31–54.

Gonzalvo i Bou, Gener (1994), *Les Constitucions de Pau i Treva de Catalunya (segles XI-XIII)* (Textos jurídics catalans., 9, Barcelona).

Gonzalvo i Bou, Gener (1995), 'El comtat d'Urgell i la Pau i la Treva', in Bertran, Prim et al. (ed.), *El Comtat d'Urgell* (Lleida), 71–88.

Gonzalvo i Bou, Gener (2010), 'Les assemblees de Pau i Treva', *Revista de Dret Històric Català*, 10: 95–103.

Grau i Fernández, Ramon (2004), 'La historiografia del romanticisme (de Pròsper de Bofarull a Víctor Balaguer)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 141–60.

Grelewski, S. (1924), *La Réaction contre les ordalies en France depuis le IXe siècle jusqu'au décret de Gratien. Agobard, archevêque de Lyon, et Yves, évêque de Chartres* (Rennes).

Gros i Pujol, Miquel dels Sants (2002), 'El Sacramentari II de Gellona (Montpellier, Bib. Mun., ms. 18)', *Miscel·lània Litúrgica Catalana*, 20: 53–231.

Grotefend, H. (2007), *Taschenbuch der Zeitrechnung des deutschen Mittelalters und der Neuzeit* (14th edn., Hannover: Hahn).

Gudiol, J. (1927), 'De peregrins i peregrinatges religiosos catalans', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 3: 93–119.

Guillot, O. (1997), 'Le duel judiciaire: du champ légal (sous Louis le Pieux) au champ de la pratique en France (XIe s.)', in , *La giustizia nell'alto medioevo, secoli IX-XI* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44, Spoleto), 715–95.

Guyon, G. D. (1974), 'La procédure du duel judiciaire dans l'ancien droit coutumier bordelais', *Recueil de mémoire et travaux publiés par la Société d'histoire du droit et des institutions des anciens pays de droit écrit*, 9: 385–409.

Halsall, G. (1998) (ed.), *Violence and society in the early medieval West* (Rochester, NY, USA: Boydell Press).

Hartmann, W., and Pennington, K. (2016) (eds.), *The History of Courts and Procedure in Medieval Canon Law*, W. Hartmann and K. Pennington (Catholic University of America Press).

Head, T., and Landes, R. (1992) (eds.), *The Peace of God*: *Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press).

Heidecker, K. (2000), *Charters and the Use of the Written Word in Medieval Society* (Utrecht Studies in Medieval Literacy 5, 5, Brepols: Turnhout).

Hélène Débax (2013), 'Le lien d'homme à homme au féminin. Femmes et féodalité en Languedoc et en Catalogne (XIe-XIIe siècles)', *Etudes roussillonnaises*, 25: 71–82.

Hicklin, A. (2020), 'The scabini in historiographical perspective', *History Compass*, 18/10.

Homs Brugarolas, M., and Cingolani, S. M. (2017), 'Els orígens familiars dels Cartellà al llarg de deu generacions (s. X-XIV)', *Butlletí de la Societat Catalana d'Estudis Històrics*, 28: 281–311.

Homs Guzmán, A. (2003), 'Relats de pelegrinatge a Terra Santa en llengua catalana. Un cami de set segles', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 76: 5–44.

Iglesia Ferreirós, A. (1996), *La creación del derecho*: *Una historia de la formación de un derecho estatal español: manual* (2ª ed. corr, Madrid: Marcial Pons).

Iglesia i Ferreirós, A. (2011), 'The Birth of the Usatici', *Imago Temporis. Medium Aevum*, 5: 119–134.

Iglesia Ferreirós, A. (2001), 'De usaticis quomodo inventi fuerunt', *Initium: Revista catalana d'historia del dret*, 6: 25–212.

Iglesia y Ferreirós, A. (1981), 'El proceso del conde Bera y el problema de las ordalías', *Anuario de Historia del Derecho Español*, 1981: 1–222.

Iglesia i Ferreirós, A. (1977), 'La creación del derecho en Cataluña', *Anuario de Historia del Derecho Español*, 1977: 99–423.

Jacob, R. (2017), *La gracia de los jueces*: *La institución judicial y lo sagrado en Occidente* (Valencia: Tirant lo Blanch).

Jaime Moya, J. M. (2015), 'El lèxic d'origen germànic en el llatí medieval de Catalunya', PhD Thesis, (Barcelona, Universitat de Barcelona).

Janini, J. (1978), 'Dos calendarios de Barcelona. (Siglos X y XIV)', *Revista Catalana de Teologia*, 3: 313–325.

Jarrett, J. (2003), 'Power over past and future: Abbess Emma and the nunnery of Sant Joan de les Abadesses', *Early Medieval Europe*, 12/3: 229–258.

Jarrett, J. (2010), *Rulers and Ruled in Frontier Catalonia, 880-1010: Pathways of Power* (Woodbridge [u.a.]: Royal Historical Society).

Jarrett, J. (2013), 'Comparing the Earliest Documentary Culture in Carolingian Catalonia', in J. A. Jarrett and A. S. McKinley (eds.), *Problems and possibilities of early*

medieval charters (International medieval research, volume 19, Turnhout, Belgium: Brepols), 89–126.

Jarrett, J. (2020), 'A Likely Story: Purpose in Narratives from Charters of the Early Medieval Pyrenees', in S. Barton and R. Portass (eds.), *Beyond the reconquista*. *New Directions in the history of medieval Iberia (711-1085) : in honour of Simon Barton* (The medieval and early modern Iberian world, volume 76, Leiden, Boston: Brill), 123–42.

Jaspert, N. (2004), 'Die deutschsprachige Mittelalterforschung und Katalonien: Geschichte, Schwerpunkte, Erträge', *Zeitschrift für Katalanistik*, 17: 155–226.

Jaspert, N. (2015), 'Eleventh-Century Pilgrimage from Catalonia to Jerusalem: New Sources on the Foundations of the First Crusade.', *Crusades*, 14: 1–48.

Jégou, L. (2015), 'Scabini, témoins, boni homines… acteurs de la communauté judiciaire à l'époque carolingienne', in J. Péricard (ed.), *La part de l'ombre*. *Artisans du pouvoir et arbitres des rapports sociaux: VIIIe-XVe siècles* (Histoire. Trajectoires, Limoges: Pulim).

Jong, M. de (1996), *In Samuel's image*: *Child oblation in the early medieval West* (Brill's studies in intellectual history, v. 12, Leiden, New York: E.J. Brill).

Jordan, L. (1905), 'Zur Entwicklung des gottesgerichtlichen Zweikampfs in Frankreich', *Zeitschrift für romanische Philologie (ZrP)*, 29/4: 385–401.

Jordan, L. (1908), 'Das fränkische Gottesgericht', *Archiv für Kulturgeschichte*, 6: 265–298.

Junyent, E. (1975), *La pau i treva* (Barcelona: Rafael Dalmau).

Jütte, D. (2015), *The Strait gate*: *Thresholds and power in western history* (New Haven: Yale University Press).

Kantorowicz, H. (1970), 'De pugna. La letteratura longobardistica sul duello giudiziario', in H. Kantorowicz, H. Coing, and G. Immel (eds.), *Rechtshistorische Schriften* (Freiburger rechts- und staatswissenschaftliche Abhandlungen, 30), 255–71..

Keller, H. (1969), 'Der Gerichtsort in oberitalienischen und toskanischen Städten. Untersuchungen zur Stellung der Stadt im Herrschaftssystem des Regnum Italicum vom 9. bis 11. Jahrhundert', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 49: 1–72.

Kennelly, K. (1968), 'La paz de dios y la sagrera en el condado de Barcelona', *Anuario de Estudios Medievales*, 5: 107–136.

Kienast, W. (1968), 'Das Fortleben des gotischen Rechtes in Südfrankreich und Katalonien', in , *Album J. Balon* (Namur), 97–115.

Kosto, A. J. (1996-1997), 'Making and keeping agreements in medieval Catalonia. 1000-1200', *Medievalia*, 13: 35–48.

Kosto, A. J. (1998), 'The "convenientiae" of the catalan counts in the eleventh century: a diplomatic and historical analysis.', *Acta historica et archaeologica mediaevalia*, 19: 191–228.

Kosto, A. J. (1999), 'Oliba, Peacemaker', in Ollich i Castanyer, Imma (ed.), *Actes del Congrès Internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del 1r mil·leni (Vic-Ripoll, 10-13 de novembre de 1999)*, 135–50.

Kosto, A. J. (2001), *Making agreements in medieval Catalonia*: *Power, order, and the written word, 1000-1200* (Cambridge studies in medieval life and thought, 4th ser., 51, Cambridge, UK, New York: Cambridge University Press).

Kosto, A. J. (2001), 'The Liber feudorum maior of the counts of Barcelona: the cartulary as an expression of power.', *Journal of Medieval History*, 2001: 1–22.

Kosto, A. J. (2001), 'The limited impact of the "Usatges of Barcelona in twelfth-century Catalonia', *Traditio*, 2001: 53–88.

Kosto, A. J. (2005), 'Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia', *Speculum*, 80: 44–74.

Kosto, A. J. (2010), 'Ideas of peace in medieval Catalonia: the world of the "Convenientiae" (11th-12th century)', in Sabaté i Curull, Flocel and M. Pedrol (eds.), *Idees de pau a l'Edat Mitjana* (Aurembiaix d'Urgell, 23, Lleida), 137–60.

Kosto, A. J. (2016), 'The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert', *Viator*, 47/2: 67–94.

Kwiatkowski, S. (2012), 'Friedensbestrebungen im Mittelalter. Zwischen geistigen Quellen und pragmatischer Denkart. Geistige Quellen, kulturelle Werte und pragmatische Kalkulationen', in R. Czaja, E. Mühle, and A. Radzimiński (eds.), *Konfliktbewältigung und Friedensstiftung im Mittelalter* (Toruń), 15–36.

Lambert, T. B. (2009), 'Introduction. Some Approaches to Peace and Protection in the Middle Ages', in Lambert T.B. and D. W. Rollason (eds.), *Peace and protection in the*

Middle Ages (Durham medieval and renaissance monographs and essays, 1, Toronto: Pontifical Institute of Medieval Studies), 1–16.

Lasch, R. (1908), *Der eid, seine entstehung und beziehung zu glaube und brauch der naturvölker.*: *Eine ethnologische studie* (Stuttgart: Strecker & Schröder).

Lauranson-Rosaz, C. (2000), 'La "mutación feudal": una cuestión controvertida', *Historiar: Revista cuatrimestral de historia*, 4: 12–31.

Lear, F. S. (1951), 'The Public Law of the Visigothic Code', *Speculum*, 26/1: 1–23.

Ledesma y Rubio, María Luisa (1986), 'Acerca de las ordalias y del duelo judicial "de escudo y bastón" en el Aragón medieval.', in , *Estudios en homenaje al Dr. Antonio Beltrán Martínez*, A. Beltrán Martínez (Zaragoza: Facultad de filosofía y letras, Universidad de Zaragoza), 999–1006.

Leeson, P. T. (2011), 'Trial by Battle', *Journal of Legal Analysis*, 3/1: 341–375.

Leeson, P. T. (2012), 'Ordeals', *The Journal of Law & Economics*, 55/3: 691–714.

Lefebvre, J.-L. (2002), 'Prud'hommes et bonnes gens', *Le Moyen Âge*, 108/2: 253–300.

Lefeuvre, P. (2018), 'Sicuti boni homines et masnaderii: dépendance et distinction sociale dans les seigneuries du contado florentin (XIIe-XIIIe siècles)', *Mélanges de l'École française de Rome. Moyen Âge*, 2018: 363–379.

Lemesle, B., 'La pratique du duel judiciaire au XIe siècle, à partir de quelques notices de l'abbaye Saint-Aubin d'Angers', in , *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public, 31^{e} congrès, Angers, 2000. Le règlement des conflits au Moyen Âge.*, 149–68.

Lemesle, B. (2008), *Conflits et justice au Moyen Age*: *Normes, loi et résolution des conflits en Anjou aux XIe et XIIe siècles* (Le noeud gordien; 1st edn., Paris: PUF).

Lemosse, M. (2001), 'Technique juridique et culture romaine selon Isidore de Séville', *Revue historique de droit français et étranger (1922-)*, 79/2: 139–152.

Little, L. K., and Rosenwein, B. H. (2003) (eds.), *La Edad Media a debate* (Akal universitaria. Serie historia medieval, 221, Tres Cantos, Madrid: Ediciones Akal).

Lluch i Bramon, Rosa (2018), 'El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)', *Anuario de Estudios Medievales*, 48/2: 793–820.

Lluis Corral, F. (2015), 'Lugares de reunión, boni homines y presbíteros en Valdevimbre y Ardón en la Alta Edad Media', *Medievalista on-line*, 18.

López Bravo, C. (2002), 'El Legado Iusfilosófico de San Isidoro de Sevilla. Ley y Derecho en el Libro V de las Etimologías', *Isidorianum*, 12: 9–44.

Loschiavo, L. (2016), 'Isidore of Seville and the construction of a common legal culture in early medieval Europe', *Clio@Thémis*, 10: 1–21.

Loschiavo, L. (2019), 'Isidore of Seville', in P. L. Reynolds (ed.), *Great Christian Jurists and legal collections in the first millennium* (Law and Christianity, Cambridge: Cambridge University Press), 381–96.

M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (2003) (ed.), *El feudalisme comptat i debatut.*: *Formació i expansió del feudalisme català.* (Valencia).

M. Tamm (2003), 'Saints and the demoniacs: Exorcistic rites in medieval Europe (11th - 13th century).', *Folklore-electronic Journal of Folklore*, 23: 7–24.

MacLean, S. (2007), 'Review article: Apocalypse and revolution: Europe around the year 1000.', *Early Medieval Europe*, 1/15: 86–105.

Magnou-Nortier, E. (2002), 'La "féodalité" méridionale a-t-elle existé? Réflexions sur quelques sources des Xe-XIIe siècles', in P. Bonnassie, B. Cursente, and H. Débax (eds.), *Fiefs et féodalité dans l'Europe méridionale (Italie, France du Midi, Péninsule ibérique) du Xe au XIIIe siècle. Colloque international organisé par le Centre Européen d'art et civilisation médiévale de Conques et l'Université de Toulouse -Le Mirail ", Conques, 6-8 juillet 1998* (Toulouse), 167–201.

Maier, G. (2005), *Amtsträger und Herrscher in der Romania Gothica*: *Vergleichende Untersuchungen zu den Institutionen der ostgermanischen Völkerwanderungsreiche* (Stuttgart: Franz Steiner Verlag).

Mallorquí, E. (2009), 'Les celleres medievals de les terres de Girona.', *Quaderns de la selva*, 21: 117–148.

Malpica y Cuello, Antonio, and Quesada y Quesada, Tomás (1994) (eds.), *Los orígenes del feudalismo en el mundo mediterráneo* (Biblioteca chronica nova de estudios históricos, 30, Granada: Universidad de Granada).

Mària i Serrano, M., and Minguell i Font, J. C. (2010), 'The Bishop's Palace of Barcelona: architectural chronology of a building of twenty centuries of history', *locus*, 10: 63–86.

Marlasca Martínez, O. (1998), 'Algunos requisitos para la validez de los documentos en la lex Visigothorum', *Revue internationale des droits de l'antiquité*, 45: 563–584.

Marlasca Martínez, O. (2001), 'Quelques points de droit commercial et maritime dans la lex Visigothorum', *Revue internationale des droits de l'antiquité*, 48: 213–236.

Martí i Castelló, Ramon (1988), 'L'ensagrament: L'adveniment de les sagreres feudals.', *Faventia*, 10: 153–182.

Martí i Castelló, Ramon (2007), 'L'ensagrerament: Utilitats d'un concepte', in Farías i Zurita, Víctor, Martí i Castelló, Ramon, and A. Catafau (eds.), *Les sagreres a la Catalunya medieval: jornada d'estudi organitzada per l'Associació d'Història Rural de les Comarques Gironines, 2000* (Associació d'Història Rural de les Comarques Gironines), 85–204.

Martin, C. (2020), 'Ervig and Capital Penalties: The Way of Exile', in E. Dell' Elicine and C. Martin (eds.), *Framing Power in Visigothic Society*. *Discourses, Devices, and Artifacts* (Late Antique and Early Medieval Iberia, Amsterdam: Amsterdam University Press), 133–58.

Martín Gamero, D. A. (1889), 'Memoria leída por el Académico de número D. Andrés Martín Gamero, en la sesión del 8 de Febrero último.', *El Ateneo: revista científica, literaria y artística*, 1889: 177-185;

Martín Gamero, D. A. (1889), 'Memoria leída por el Académico de número D. Andrés Martín Gamero, en la sesión del 8 de Febrero último. (Conclusion).', *El Ateneo: revista científica, literaria y artística*, 1889: 361-372.

Martines, J., and Montserrat, S. (2014), 'Subjectivació i inferència en l'evolució semàntica i en l'inici de la gramaticalització de Jaquir (ss. XI-XII)', *Caplletra*, 2014: 185–211.

Martínez Diez, G. (1962), 'La tortura judicial en la legislación histórica española', *Anuario de Historia del Derecho Español*, 32: 223–300.

Martínez Gázquez, J., Escolà Tuset, J. M., Petrus Pons, N. et al. (2005), 'Las fórmulas de imprecación en Cataluña en los siglos IX al XI', *Faventia*, 27/1: 73–96.

Martyn, G. (2019), 'Divine legitimation of judicial power and its iconographical impact in Western culture', *Humanities and rights global network journal*, 1/1: 230–271.

Mas i Solench, J. M. (1991) (ed.), *Documents jurídics de la història de Catalunya* (1. ed., Barcelona: Generalitat de Catalunya Departament de Justícia).

Masferrer, A. (2015), 'Antonio Pérez Martín. Notas sobre su contribución a la historiografía jurídica española y europea', *Historia et iusrivista di storia giuridica dell'età medievale e moderna*, 7/19: 1–19.

Masnou, J. M. (1999), 'L'escola de la catedral de Vic al segle XI', in Ollich i Castanyer, Imma (ed.), *Actes del Congrès Internacional Gerbert d'Orlhac i el seu temps:*

Catalunya i Europa a la fi del 1r mil·leni (Vic-Ripoll, 10-13 de novembre de 1999), 621–34.

Massip i Fonollosa, J. (1996), *Costums de Tortosa*: *Edició crítica* (Textos i documents. "Major", 1; 1. ed., Barcelona: Fundació Noguera).

Maurer, H. (2001), '"Grenznachbarn" und boni homines. Zur Bildung kommunikativer Gruppen im hohen Mittelalter', *Vorträge und Forschungen: Mediaevalia Augiensia*, 54: 101–123.

Mensching, G. (2003) (ed.), *Gewalt und ihre Legitimation im Mittelalter*: *Symposium des Philosophischen Seminars der Universität Hannover vom 26. - 28. Februar 2002* (Contradictio, 1, Würzburg: Königshausen & Neumann).

Miret i Sans, Joaquim (1901), 'Los vescomtes de Cerdanya, Conflent y Bergadà', *Memorias de la Real Academia de las Buenas Letras de Barcelona*, 8: 117–185.

Montagut Estragués, T. d. (2008), 'Barcelona, a Society and its Law. 11th-13th Centuries', *Catalan Historical Review*, 1: 35–46.

Moore, R. I. (1992), 'The peace of god and the social revolution', in T. Head and R. Landes (eds.), *The Peace of God*. *Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press), 308–27.

MooreMoore, R. I. (2003), 'Feudalism and revolution in the making of europe.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), 19–34., R. I. (2003), 'Feudalism and revolution in the making of europe.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), 19–34.

Morán i Ocerinjauregui, J., and Ferrer, J. (2007), 'Greuges de Ponç I, comte d'Empúries, contra Gausfred II, comte de Rosselló (~1050-1060)', *Llengua i literatura: Revista anual de la Societat Catalana de Llengua i literatura.*, 18: 7–44.

Moran i Ocerinjauregui, Josep (1992-1993), 'Jurament de pau i treva del comte Pere Ramon de Pallars Jussà al bisbe d'Urgell. Transcripció i estudi lingüístic', *Llengua i literatura: Revista anual de la Societat Catalana de Llengua i literatura.*, 5: 147–169.

Morosi, R. (1981), 'I saiones, speciali agenti di polizia presso i goti', *Athenaeum*, 1981: 150–165.

Morris, C. (1975), 'Judicium Dei: the social and political significance of the ordeal in the eleventh century', *Studies in Church History*, 12: 95–111.

Mundó, A. M. (2003), 'El jutge Bonsom', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 101–18.

Mundó, A. M. (2003), 'La introducció de Bonsom i les seves fonts', in Alturo i Perucho, Jesús et al. (ed.), *Liber iudicum popularis*. *Ordenat pel jutge Bonsom de Barcelona* (1, Barcelona: Departamento de Justícia i Interior), 223–30.

Mundó i Marcet, A. (1967), 'La datació de documents pel rei Robert (996-1031) a Catalunya', *Anuario de Estudios Medievales (AEM)*, 1967: 13–34.

Mundó i Marcet, A. (1991), 'El Liber Iudiciorum a Catalunya.', in J. M. Mas i Solench (ed.), *Documents jurídics de la història de Catalunya* (1. ed., Barcelona: Generalitat de Catalunya Departament de Justícia), 13–22.

Mundó i Marcet, A. (1994), 'El concili de Tarragona de 1180 dels anys dels reis francs als de l'ecarnació', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 67/1: 23–43.

Nehlsen von Stryk, K. (1981), *Die boni homines des frühen Mittelalters* (Freiburger rechtsgeschichtliche Abhandlungen, 2, Freiburg).

Neiske, F. (2001), 'Les enfants dans lesmonastères du Moyen Âge', *Mémoires de la Société pour l'Histoire du Droit et des institutions des anciens pays bourguignons, comtois et romands*, 58: 229–244.

Netterstrøm, J. B. (2007), 'The Study of Feud in Medieval and Early Modern History', in J. B. Netterstrøm (ed.), *Feud in medieval and early modern Europe* (Århus: Aarhus University Press), 9–68.

Niles, J. D. (2009), 'Trial by ordeal in Anglo-Saxon England: what's the problem with barley?', in S. Baxter, C. Karkov, J. L. Nelson et al. (eds.), *Early Medieval Studies in Memory of Patrick Wormald* (Studies in Early Medieval Britain and Ireland, Florence: Taylor and Francis), 369–82.

Olivar i Daydí, A. (1948), '«Serie de benedictiones lectionum en cod. Montserratensis 72»', *Ephemerides Liturgicae*, 62: 230-234.

Olivar i Daydí, A. (1953), *El sacramentario de Vich* (Monumenta Hispaniae Sacra. Serie litúrgica., 4, Barcelona).

Olivar i Daydí, A. (1964), *Sacramentarium Rivipullense* (Monumenta Hispaniae Sacra. Serie litúrgica., 7, Madrid: CSIC).

Ollich i Castanyer, Imma (1999) (ed.), *Actes del Congrès Internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del 1r mil·leni (Vic-Ripoll, 10-13 de novembre de 1999)*.

Ordeig i Mata, R. (2014), 'Suplement del «Diplomatari i escrits literaris de l'abat i bisbe Oliba» d'Eduard Junyent', *Analecta sacra tarraconensia: Revista de ciències historicoeclesiàstiques*, 87: 47–118.

Ors, Á. d' (2014), *El Código de Eurico* (Cuadernos del Instituto Jurídico Español Serie de estudios visigóticos, 2; 2a; ed., Madrid: Boletín Oficial del Estado).

Orti Gost, P. (2000), *Renda i fiscalitat en una ciutat medieval*: *Barcelona, segles XII-XIV* (Anuario de estudios medievales. Anejo, 41, Barcelona: Consejo Superior de Investigaciones Científicas).

Osaba García, E. (2006), 'Deudores y derecho de asilo en la "lex visigothorum"', *Revue internationale des droits de l'antiquité*, 53: 299–322.

Ourliac, P. (1994), 'Juges et justiciables au XIe siècle: les boni homines', *Recueil de mémoires et travaux publiés par la Société d'histoire du droit et des institutions des anciens pays du droit écrit*, 1994: 17–33.

Patzold, S. (1999), 'Konflikte als Thema der modernen Mediävistik', in H.-W. Goetz (ed.), *Moderne Mediävistik*. *Stand und Perspektiven der Mittelalterforschung* (Darmstadt), 198–205.

Patzold, S. (2012), *Das Lehnswesen* (Beck'sche Reihe, 2745 : C. H. Beck Wissen; Orig.-Ausg, München: Beck).

Paxton, F. S. (1992), 'History, Historians, and the Peace of God', in T. Head and R. Landes (eds.), *The Peace of God*. *Social Violence and Religious Response around the Year 1000* (Ithaca, New York: Cornell University Press), 21–40.

Pérez Martín, A., 'Hacia una edición crítica del texto latino de los Usatges de Barcelona', *Glossae. Revista de Historia del Derecho Europeo.*, 1995/7: 9–32.

Piel, C. (1999), 'Le Moyen Âge de Dominique Barthélemy. À propos de la parution de son ouvrage La mutation de l'an mil a-t-elle eu lieu?', *Cahiers d'Histoire. Revue d'histoire critique*, 74: 125–134.

Pladevall i Font, Antoni, 'Parroquia de Santa Eugenia de Berga', *Ausa*, 10/1: 436–443.

Pladevall i Font, Antoni (1966), 'Els senescals dels comtes de Barcelona durant el segle XI', *Anuario de Estudios Medievales*, 3: 111–130.

Pladevall i Font, Antoni (1975), *La comtessa Ermessenda. Comtessa de Barcelona, Girona i d'Osona*: *esbós biogràfic en el mil·lenari del seu naixement* (Barcelona: Comtes de la vall de Marlès i barons d'Eroles).

Pladevall i Font, Antoni (1981), *Tous, mil anys d'història* (Biblioteca Abat Oliba, 21, Barcelona).

Pladevall i Font, Antoni, Dalmau Font, A., and Casas i Font, P. (1997), *Santa Eugènia de Berga*: *Història i vida d'un vell poble osonenc* (Vic: Eumo).

Poly, J.-P., and Bournazel, E. (1980), *La mutation féodale, Xe-XIIe siècle* (2. Auflage, Paris: PUF).

Poly, J.-P., and Bournazel, E. (1994), 'Que faut-li préférer au 'mutationnisme'? ou le problème du changement social.', *Revue historique de droit français et étranger*, 72: 401–412.

Poly, J.-P., and Bournazel, E. (1995), 'Post scriptum', *Revue historique de droit français et étranger*, 73: 361–362.

Pons i Guri, Josep M. (1989), 'Documents sobre aplicació dels Usatges de Barcelona anteriors al segle XIII', in , *Recull d'estudis d'història jurídica catalana* (Barcelona: Fundació Noguera), 51–65.

Pons i Guri, Josep M. (1989), 'El dret als segles VIII-XI', in , *Recull d'estudis d'història jurídica catalana* (Barcelona: Fundació Noguera), 19–51.

Pons i Guri, Josep M. (1986), 'Relació jurídica de la remença i els mals usos a les terres gironines', *Revista de Girona*, 118: 436–443.

Pons i Guri, Josep M. (1989), 'Documents sobre aplicació dels Usatges de Barcelona anteriors al segle XIII', in , *Recull d'estudis d'història jurídica catalana* (Barcelona: Fundació Noguera), 51–65.

Pons i Guri, Josep M. (1991), 'El Dret als segles VIII-XI', in , *Symposium internacional sobre els orígens de Catalunya*. *Segles VIII-XI: [celebrat a Barcelona del 11 al 15 de desembre de 1989]* (Memorias de la Real Academia de Buenas Letras de Barcelona, [Barcelona]: Comissió del mil·lenari de Catalunya; Generalitat de Catalunya), 131–59.

Portella i Comas, Jaume (1986) (ed.), *La formació i expansió del feudalisme Català: Actes del col·loqui organitzat pel Col·legi Universitari de Girona* (Estudi general, 5-6, Girona: Universitari de Girona).

Powers, J. F. (2015), 'Judicial Combat in Medieval Iberia During the Twelfth and Thirteenth Centuries: Evidence in Law and Image', *Viator*, 46/3: 123–153.

Powers, J. F., and Attreed, L. C. (2018), 'Justice, Conflict, and Dispute Resolution in Romanesque Art: The Ecclesiastical Message in Spain', *Gesta*, 57/1: 5–22.

Puig i Oliver, J. de (2017-2019), 'Catalunya Carolíngia: Cent Anys', *Arxiu de Textos Catalans Antics*, 32: 719–750.

Puig i Ventosa, I. (1980), 'L'ascendència pallaresa dels Bisbes d'Urgell Bernat Guillem (1076-1092) i Guillem Arnau de Montferrer (1092-1095)', *Urgellia: Anuari d'estudis històrics dels antics comtats de Cerdanya, Urgell i Pallars, d'Andorra i la Vall d'Aran.*, 3: 185–193.

Pujol i Casademont, Enric (1996), 'Fi de segle i avenç científic. La historiografia catalana a la fi del Vuit-cents', *El contemporani: revista d'història*, 10: 32–37.

Pujol i Casademont, Enric (2001), *Ferran Soldevila i la historiografia catalana del seu temps, 1894-1971* (Ed. microfotogràfica, Bellaterra: Publicacions de la Universitat Autònoma de Barcelona).

Pujol i Casademont, Enric (2004), 'La historiografia del noucentisme i del període republicà', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 187–204.

Pujol i Casademont, Enric (2009), 'Noucentisme historiogràfic', in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), 351–63.

Pujol i Casademont, Enric, Congost i Colomer, Rosa, and Torres i Sans, Xavier (2009), 'Historiografia marxista', in Simon i Tarrés, Antoni (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València), 325–44.

Ramon d'Abadal i de Vinyals (1958), *Els primers comtes catalans.* (Barcelona: Vicens Vives).

Ramon d'Abadal i de Vinyals (1962), *L'abat Oliba, bisbe de Vic i la seva època* (3rd edn., Barcelona: Aedos), first pub. 1948, El Guió d'Or.

Ramon d'Abadal i de Vinyals (1969), *Dels Visigots als Catalans* (Barcelona: Edicions 62).

Reuter, T. (1997), 'The "Feudal Revolution".', *Past & Present*, 1997: 177–195.

Reynolds, S. (2012) (ed.), *The Middle Ages without feudalism*: *Essays in criticism and comparison on the medieval West* (Farnham: Ashgate Variorum).

Reynolds, P. L. (2018), 'Isidore of Seville', in R. Domingo and J. Martínez-Torrón (eds.), *Great Christian jurists in Spanish history* (Law and Christianity, Cambridge: Cambridge University Press), 31–49.

Riera i Melis, Antoni (1997), 'La Historia Medieval en Cataluña (1990-1995). Un balance breve de las últimas investigaciones.', *Anuario de Estudios Medievales (AEM)*, 27/1: 501–570.

Riera i Sans, J. (2014), 'Saig, morrodevaques, botxí. The executioner and his names in the Medieval Catalan-Speaking Lands', *Recerques: Història, economia i cultura*, 2014: 7–27.

Riu, M., and Valdepeñas Lozano, M. (1994), 'El espacio eclesiastico y la formación de las parroquias en la Cataluña de los siglos IX al XII', in M. Fixot and E. Zadora-Rio (eds.), *L'environnement des églises et la topographie religieuse des campagnes médiévales. Actes du IIIe congrès international d'archéologie médiévale (Aix-en-Provence, 28-30 septembre 1989)*, 57–67.

Rius Serra, J. (1940), 'El derecho visigodo en Cataluña', *Gesammelte Aufsätze zur Kulturgeschichte Spaniens*, 8: 65–80.

Roca i Pascual, B. (2011), 'Els Tous: ascens i caiguda d'un llinatge nobiliari català (segles XIII, XIV i XV)', *Miscel·lània Aqualatensia*, 14: 41–77.

Rodón, E. (1957), *El lenguaje técnico del feudalismo en el siglo XI en Cataluña* (Barcelona).

Rodón i Binué, Eulalia (1957), *El lenguaje técnico del feudalismo en el siglo XI en Cataluña*: *contribución al estudio del latín medieval* (Barcelona).

Rodríguez Bernal, F. (2011), 'Folc II, vescomte de Cardona, bisbe electe d'Urgell i bisbe de Barcelona (c. 1040 - 1099)', *Paratge*, 24: 253–269.

Rodríguez-Escalona, M. P., and Fornés Pallicer, M. Antònia (2016), 'Caput scolae y expresiones equivalentes en la documentación latina de la Cataluña altomedieval', in E. Borrell Vidal, P. Gómez i Cardó, and S. E. d. E. Clásicos (eds.), *Omnia mutantur*. *Canvi, transformació i pervivència en la cultura clàssica, en les seves llengües i en el seu llegat* (Barcelona: Edicions de la Universitat de Barcelona), 205–14.

Rosenberg, D., and Grafton, A. (2010), *Cartographies of time* (New York: Princeton Architectural Press).

Rubellin, M. (1987), 'Combattant de Dieu ou combattant du Diable ? Le combattant dans les duels judiciaires aux IXe et Xe siècles', in , *Le combattant au Moyen Âge*

(Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public, 18), 111–20.

Ruiz y Torres, Pedro (2002), 'De la síntesis histórica a la historia de Annales. La influencia francesa en los inicios de la renovación de la historiografía española', in G. Chastagnaret (ed.), *La historiografía francesa del siglo XX y su acogida en España*. *Coloquio internacional (noviembre de 1999). Actas reunidas y presentades por Benoît Pellistrandi* (Collection de la Casa de Velázquez, 80, Madrid), 83–108.

Ruiz-Domènec, J. E. (1982), 'Las prácticas judiciales en la Cataluña feudal', *Historia. Instituciones. Documentos.*, 9: 245–272.

Ruiz-Domènec, J. E. (2006), *Quan els vescomtes de Barcelona eren.*: *Història, crònica i documents d'una família catalana dels segles X, XI i XII.* (Barcelona: Fundació Noguera).

Russell-Gebbett, Paul S. N. (1973), 'Mossèn pere pujol's documents en vulgar dels segles XI, XII, & XIII ... (Barcelona, 1913): A partial retranscription and commentary.', in W. Rothwell, W. R. J. Barron, D. Blamires et al. (eds.), *Studies in Medieval Literature and Languages: In Memory of Frederick Whitehead* (Manchester: Manchester University Press), 257–77.

Sabaté, F. (2019), *The death penalty in late-medieval Catalonia*: *Evidence and significations* (Studies in medieval history and culture; 1st, London: Routledge).

Sabaté i Curull, Flocel (1998), 'La castralització de l'espai en l'estructuració d'un territori conquerit (Urgell, Pla d'Urgell, Garrigues i Segriá)', *Urtx: revista cultural de l'Urgell*, 11: 7–40.

Sabaté i Curull, Flocel (2007), *La feudalización de la sociedad catalana* (Monográfica. Biblioteca de humanidades. Chronica nova estudios históricos, 108, Granada: Universidad de Granada).

Sabaté i Curull, Flocel (2010), 'La Catalunya dels segles X-XII i la definició historiogràfica del feudalisme', *Catalan Historical Review*, 3: 163–184.

Sabaté i Curull, Flocel, and Farré, J. (2002) (eds.), *Els grans espais baronials a l'Edat Mitjana, desenvolupament socioeconòmic*: *Reunió científica* (Curs d'Estiu Comtat d'Urgell, 1, Lleida: Pagès).

Sabaté i Curull, Flocel, and Farré, J. (2004) (eds.), *El temps i l'espai del feudalisme* (Curs d'Estiu Comtat d'Urgell, 6, Lleida: Pagès Editors).

Sabaté i Marín, G., and Soriano i Robles, L. (2015), 'La cavalleria a la Corona d'Aragó: tractats teòrico-jurídics de producció pròpia.', *eHumanista: Journal of Iberian Studies*, 31: 154–170.

Salrach i Marés, Josep Maria, 'Les modalités du règlement des conflits en Catalogne aux XIe et XIIe siècles', in , *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public, 31ᵉ congrès, Angers, 2000. Le règlement des conflits au Moyen Âge.*, 117–34.

Salrach i Marés, Josep Maria (1998) (ed.), *La formació de la societat feudal VI-XII* (Història, política, societat i cultura dels Països Catalans, 2, Barcelona).

Salrach i Marés, Josep Maria (1973), 'El comte Guifré de Besalú i la revolta de 957. Contribució a l'estudi de la Noblesa Catalana del segle X', *Amics de Besalú*, 1973: 3–38.

Salrach i Marés, Josep Maria (1973), 'El Comte Guifré de Besalú i la revolta de 957. Contribució a l'estudi de la Noblesa Catalana del segle X', *Quaderns de les Assemblees d'Estudis.*, 2: 3–36.

Salrach i Marés, Josep Maria (1978), 'Miró Bonfill i la solemnitat ripollesa de 977', *Revista de Girona*, 1978.

Salrach i Marés, Josep Maria (1984), *Miquel Coll i Alentorn, Historiador*: *Miscel·lània Coll i Alentorn en el seu vuitantè aniversari* (Barcelona).

Salrach i Marés, Josep Maria (1989), 'El comte-bisbe Miró Bonfill i l'acta de consagració de Cuixà de l'any 974', *Acta historica et archaeologica mediaevalia*, 1989.

Salrach i Marés, Josep Maria (1990), 'El comte-bisbe Miró Bonfill i la fundació i dotació de Sant Pere de Besalú (977-978)', *Annals del Patronat d'Estudis Històrics d'Olot i Comarca*, 1990: 9–44.

Salrach i Marés, Josep Maria (1992), 'Agressions senyorials i resistències pageses en el procés de feudalització (segles IX-XII).', in , *Revoltes populars contra el poder de l'estat* (Col·lecció Actes de congressos, no. 3, Barcelona: Generalitat de Catalunya, Departament de Cultura), 11–29.

Salrach i Marés, Josep Maria (1992), 'Formació, organització i defensa del domini de Sant Cugat en els segles X-XII', *Acta historica et archaeologica mediaevalia*, 1992: 127–173.

Salrach i Marés, Josep Maria (1996), 'Les difícils relacions dels comtes de Besalú i de Barcelona els anys 1054-1057. VIII Assemblea d'Estudis sobre el comtat de Besalú', *Amics de Besalú*, 1996: 299–308.

Salrach i Marés, Josep Maria (1997), 'Prácticas judiciales, transformación social y acción política en Cataluña (siglos IX-XIII)', *Hispania: Revista española de historia*, 57/197: 1009–1048.

Salrach i Marés, Josep Maria (1997), 'Prácticas judiciales, transformación social y acción política en Cataluña (siglos IX-XIII)', *Hispania*, 57/197: 1009–1048.

Salrach i Marés, Josep Maria (1999), 'Disputes i compromisos entre l'església de Girona i la noblesa. Notes d'unes difícils relacions: Segles XI i XII', *Anuario de Estudios Medievales (AEM)*, 29: 927–958.

Salrach i Marés, Josep Maria (2000), 'Justicia y violencia. El porqué de una problemática', *Historiar: Revista cuatrimestral de historia*, 4: 99–115.

Salrach i Marés, Josep Maria (2000), 'Les modalités du règlement des conflits en Catalogne aux XIe et XIIe siècles.', in , *Le règlement des conflits au Moyen Âge* (Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public. 31^{e} congrès., Angers), 117–34.

Salrach i Marés, Josep Maria (2000), '"Multa placita et contenciones". Conflictos de los siglos X - XII en el Cartulario de Sant Cugat del Vallès', in C. Sánchez-Albornoz, J. Pérez, and S. Aguadé Nieto (eds.), *Les origines de la féodalité*. *Hommage à Claudio Sánchez Albornoz : actes du colloque international tenu à la Maison des Pays ibériques les 22 et 23 octobre 1993* (Collection de la Casa de Velázquez, v. no 69, Madrid: Casa de Velázquez; Universidad de Alcalá), 197–229.

Salrach i Marés, Josep Maria (2003), 'Tradicions jurídiques en l'administració de justícia a l'edat mitjana: El cas de l'"Aliscara-Harmiscara" i la humiliació penitencial.', in M. Barceló, G. Feliu, A. Furió, M. Miquel, J. Sobrequés (ed.), *El feudalisme comptat i debatut. Formació i expansió del feudalisme català.* (Valencia), 71–102.

Salrach i Marés, Josep Maria (2004), *Catalunya a la fi del primer mil·lenni* (Lleida).

Salrach i Marés, Josep Maria (2009), '"Ad reparandum scripturas perditas": El valor del documento en la sociedad de los condados catalanes (siglos IX y X)', in F. J. Fernández Conde and García de Castro Valdés, César (eds.), *Symposium Internacional Poder y Simbología en Europa, siglos VIII-X* (Oviedo), 309–30.

Salrach i Marés, Josep Maria (2013), *Justícia i poder a Catalunya abans de l'any mil* (Vic: Eumo).

Salrach i Marés, Josep Maria (2013), 'La recreación judicial de diplomas perdidos. Sobre la escritura y el poder en los condados catalanes (siglos XI-XII)', in J. Escalona and H. Sirantoine (eds.), *Chartes et cartulaires comme instruments de pouvoir*. *Espagne et Occident chrétien (VIIIe-XIIe siècles)* (Méridiennes. Études Médiévales Ibériques, Madrid: Consejo Superior de Investigaciones Científicas; Toulousse : CNRS), 219–32.

Salrach i Marés, Josep Maria, and Rubiés i Mirabet, Joan Pau (1985-86), 'Entorn de la mentalitat i de la ideologia del bloc de poder feudal a través de la historiografía medieval fins a les quatre grans cròniques', *Estudi general: Revista de la Facultat de Lletres de la Universitat de Girona*, 1985-86: 467–510.

Sánchez, R. (2020), '«El duelo es una necesidad de los tiempos presentes»: opiniones sobre el carácter civilizador del duelo en la España del siglo XIX', *Memoria y civilización*, 23.

Sánchez-Albornoz, C., Pérez, J., and Aguadé Nieto, S. (2000) (eds.), *Les origines de la féodalité*: *Hommage à Claudio Sánchez Albornoz : actes du colloque international tenu à la Maison des Pays ibériques les 22 et 23 octobre 1993* (Collection de la Casa de Velázquez, v. no 69, Madrid: Casa de Velázquez; Universidad de Alcalá).

Shideler, J. C. (1983), *A medieval Catalan noble family*: *The Montcadas 1000-1230* (Berkeley, London: University of California Press).

Simon i Tarrés, Antoni (2009) (ed.), *Tendències de la historiografia catalana* (Valencia: Universitat de València).

Simon i Tarrés, Antoni (2004), 'La historiografia del segle de les llums (de Maians a Capmany)', in Balcells i González, Albert (ed.), *Història de la historiografia catalana* (Barcelona), 117–40.

Sobrequés i Vidal, Santiago (1985), *Els grans comtes de Barcelona* (4th edn., Barcelona: Vicens-Vives).

Société Jean Bodin pour l'histoire comparative des institutions (1996), *L'assistance dans la résolution des conflits* (Recueils de la Société Jean Bodin pour l'histoire comparative des institutions = Transactions of the Jean Bodin Society for Comparative Institutional History, 63-65, Bruxelles: De Boeck Université).

Sunyer i Molné, Magí (2006), *Els mites nacionals catalans* (Vic: Eumo).

Sureda i Jubany, M. (2016), '"Juxta septem dona Spiritus Sancti". Teología, política y diseño del espacio sagrado de Sant Miquel de Cuixà.', *Codex aquilarensis*, 32: 57–82.

Sutterlüty, F., Jung, M., and Reymann, A. (2019) (eds.), *Narrative der Gewalt*: *Interdisziplinäre Analysen* (Frankfurt am Main: Campus).

Sutterlüty, F., Jung, M., and Reymann, A. (2019), 'Narrative der Gewalt. Eine Einleitung', in F. Sutterlüty, M. Jung, and A. Reymann (eds.), *Narrative der Gewalt*. *Interdisziplinäre Analysen* (Frankfurt am Main: Campus), 9–31.

Swanson Hernández, R., *Tradicions i transmissions iconogràfiques dels manuscrits de la Ribagorça entre els segles X – XII*, PhD Thesis Barcelona.

Szabò, T. (2012), 'Zur Geschichte der boni homines', in G. Cherubini and D. Balestracci (eds.), *Uomini, paesaggi, storie*. *Studi di storia medievale per Giovanni Cherubini*, 2 vols. (Siena: Salvietti & Barabuffi), 301–22.

Taylor, N. L. (1995), 'The will and society in medieval Catalonia and Languedoc, 800-1200' (Harvard University).

Taylor, N. L. (2001), 'Testamentary Publication and Proof and the Afterlife of Ancient Probate Procedure in Carolingian Septimania.', in K. Pennington, S. Chodorow, and Kendall Keith H. (eds.), *Proceedings of the tenth International Congress of Medieval Canon Law* (Vatican City), 767–80.

Taylor, N. L. (2006), 'Testaments, leur validation, et ordre public en Catalogne et Languedoc au Moyen Age (IXe-XIIe siècle)', *Annales du Midi*, 118: 447–451.

Terradas Saborit, I. (2012), 'Què és la justícia vindicatòria? (Definició i característiques fonamentals)', *Recerques: Història, economia i cultura*, 64: 13–30.

To i Figueras, Lluís (1991), 'Un regard périphérique sur La mutation de l'an mil', *Medievales: Langue, textes, histoire.*, 21: 47–53.

To i Figueras, Lluís (1993), 'Señorío y familialos orígenes del "hereu" catalán (siglos X-XII)', *Studia historica. Historia medieval.*, 1993: 57–80.

To i Figueras, Lluís (1995), 'Drets de justícia i masos: hipòtesi sobre els orígens de la pagesia de remença', *Revista d'historia medieval*, 6: 139–149.

Troescher, G. (1939), 'Weltgerichtsbilder in Rathäusern und Gerichtsstätten', *Westdeutsches Jahrbuch für Kunstgeschichte: Wallraf-Richartz Jahrbuch*, 11: 139–214.

Tuten, B. S. (2003), 'Women and Ordeals', in W. Brown and P. Górecki (eds.), *Conflict in medieval Europe*. *Changing perspectives on society and culture* (Aldershot, Hants, England, Burlington, VT: Ashgate), 163–74.

Tuten, B. S., White, S. D., and Billado, T. L. (2010), *Feud, violence and practice*: *Essays in medieval studies in honor of Stephen D. White* (Farnham, Surrey, Burlington, VT: Ashgate Pub.).

Udina i Abelló, A. (1992), 'L'Administració de Justícia en els Comtats Pirinencs (Segles IX-XII)', in J. Lladonosa and J. Alturo i Perucho (eds.), *Miscel·lània*. *Homenatge a Josep Lladonosa.* (Lleida: Institut d'Estudis Ilerdencs), 129–46.

Udina i Abelló, A. (1996), '"Mandatarius vel assertor", un aspect de l'assistance judiciaire dans la Catalogne du Haut Moyen Âge', in , *L'assistance dans la résolution des conflits* (Recueils de la Société Jean Bodin pour l'histoire comparative des institutions = Transactions of the Jean Bodin Society for Comparative Institutional History, 63-65, Bruxelles: De Boeck Université), 39–49.

Udina i Abelló, Antoni (1995), 'La adveración sacramental del testamento en la Cataluña altomedieval', *Medievalia*, 12: 51–64.

Udina i Martorell, Frederic, and Udina i Abelló, Antonio M. (1986), 'Consideracions a l'entorn del nucli originari dels " Usatici Barchinonae"', in Portella i Comas, Jaume (ed.), *La formació i expansió del feudalisme Català:*. *Actes del col·loqui organitzat pel Col·legi Universitari de Girona* (Estudi general, 5-6, Girona: Universitari de Girona), 87–107.

Valls i Taberner, Ferran (1925), 'El problema de la formació dels "Usatges" de Barcelona', *Revista de Catalunya*, 2: 26–33.

Valls i Taberner, Ferran (1935), 'Noves recerques sobre els "Usatges de Barcelona"', *Estudis universitaris catalans*, 20: 69–83.

Valls i Taberner, Ferran (1952-1961), 'El problema de la formació dels Usatges de Barcelona', in Valls i Taberner, Ferran and d'Abadal i de Vinyals, Ramon (eds.), *Obras selectas de Fernando Valls-Taberner*, 4 vols. (Barcelona), 45–54.

Valls i Taberner, Ferran (1952-1961), 'Notes sobre el duel judicial a Catalunya', in Valls i Taberner, Ferran and d'Abadal i de Vinyals, Ramon (eds.), *Obras selectas de Fernando Valls-Taberner*, 4 vols. (Barcelona), 247–57.

Valls i Taberner, Ferran, and Corpas Pastor, G. (2010) (eds.), *St. Raymond of Pennafort*: *A critical edition and English translation* (Colección Estudios ingleses, 19, Granada: Comares).

Valls i Taberner, Ferran, and d'Abadal i de Vinyals, Ramon (1952-1961) (eds.), *Obras selectas de Fernando Valls-Taberner*, 4 vols. (Barcelona).

van Opstall, E. M. (2018) (ed.), *Sacred thresholds*: *The door to the sanctuary in late antiquity* (Religions in the Graeco-Roman world, 185, Leiden, Boston: Brill).

van Opstall, E. M. (2018), 'General Introduction', in E. M. van Opstall (ed.), *Sacred thresholds*. *The door to the sanctuary in late antiquity* (Religions in the Graeco-Roman world, 185, Leiden, Boston: Brill), 1–27.

Ventosa i Serra, E. (2009), *Les Portes ferrades catalanes* (Diputació de Tarragona).

Vergés Trias, M., and Vinyoles Vidal, T. M. (2000), 'De la Seu de Frodoí a la Catedral romànica de Barcelona', *Boletín de la Real Academia de Buenas Letras de Barcelona*, 47: 9–49.

Viaut, L. (2017), 'In mallo publica… Le scabinat et l'exercice de la justice dans la Bourgogne carolingienne (IXe siècle)', 89/2: 7–18.

Vilanova i Vila-Abadal, Francesc (2002), 'Ferran Soldevila, "Dietaris de l'exili i el retorn"', *Els Marges: revista de llengua i cultura*, 69: 120–122.

Villegas-Aristizabal, L., 'Norman and Anglo-Norman participation in the Iberian Reconquista, 1018-1248', PhD thesis (University of Nottingham).

Vives i Gatell, José, Fábrega i Grau, Ángel (1949), 'Calendarios hispánicos anteriores al siglo XII', *Hispania sacra. Revista española de historia eclesiástica*, 2: 119-146; 339-380.

Vogel, C. (2019), *Individuelle und universelle Kontinuitäten*: *Testamente und Erbverfahren auf der Iberischen Halbinsel im frühen Mittelalter (ca. 500-1000)* (Geschichte und Kultur der iberischen Welt, Band 16, Berlin: Lit).

Wassenaar, J. I. (2016), 'Social justice in the Carolingian world in the ninth century. Poverty, hierarchy, and the (non)uses of Pseudo-Cyprian's De duodecim abusivis saeculi.', Master Thesis. (University of Utrecht).

Welti, M. (1995), '„Vir Bonus"/„Homo Bonus"/„Preudome": Kleine Geschichte dreier nahe verwandter Begriffe', *Archiv für Begriffsgeschichte*, 38: 48–65.

Werkmüller, D. (1993), 'Per pugnam probare: Zum Beweisrecht im fränkischen Prozeß', in S. Buchholz, P. Mikat, and D. Werkmüller (eds.), *Überlieferung,*

Bewahrung und Gestaltung in der rechtsgeschichtlichen Forschung (Rechts- und Staatswissenschafliche Veröffentlichungen der Görres-Gesellschaft, 69, Paderborn), 379–90.

White, H. V. (1973), *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore).

White, S. D. (1995), 'Proposing the Ordeal and Avoiding It. Strategy and Power in Western French Litigation, 1050-1110', in T. N. Bisson (ed.), *Cultures of Power*. *Lordship, Status, and Process in Twelfth-Century Europe* (The Middle Ages Series, Philadelphia, Pa.: University of Pennsylvania Press), 89–123.

White, S. D. (1996), 'The "Feudal Revolution"', *Past & Present*, 152: 205–223.

White, S. D. (2005), *Feuding and peace-making in eleventh-century France* (Variorum collected studies series, Aldershot, Hants, England, Burlington, VT: Ashgate).

White, S. D. (2005), *Re-thinking kinship and feudalism in early medieval Europe* (Aldershot).

Wickham, C. (1997), 'Justice in the kingdom of Italy in the eleventh century', in , *La giustizia nell'alto medioevo, secoli IX-XI* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44, Spoleto), 179–255.

Wickham, C. (1997), 'The "Feudal Revolution"', *Past & Present*, 1997: 196–208.

Wickham, C. (2000), 'Le forme del feudalesimo', in , *Il feudalesimo nell'alto medioevo*. *Settimane di Studi del Centro Italiano di Studi sull'Alto Medioevo*, 2 vols. (Spoleto), 15–46.

Wolfram, H. (2009), *Die Goten*: *Von den Anfängen bis zur Mitte des sechsten Jahrhunderts; Entwurf einer historischen Ethnographie.* (Frühe Völker; 5th edn., München: Beck).

Zajtay, I. (1954), 'Le Registre de Varad. Un monument judiciaire du début du XIIIe siècle', *Revue historique de droit français et étranger (1922-)*, 31: 527–562.

Zeumer, K. (1944), *Historia de la legislación visigoda* (Barcelona: Universidad de Barcelona, Facultad de Derecho).

Zimmermann, M. (1973), 'L'usage du Droit wisigothique en Catalogne du IXe au XIIe siècle: approches d'une signification culturelle', *Mélanges de la Casa de Velázquez*, 9: 233–281.

Zimmermann, M. (1982), 'Un formulaire du Xème siècle conservé à Ripoll', *Faventia*, 4/2: 25–86.

Zimmermann, M. (1994), ‘Le vocabulaire latin de la malédiction du IXe au XIIe siècle: construction d'un discours eschatologique’, *Atalaya*, 5: 37–55.

Zimmermann, M. (2003), *Ecrire et lire en Catalogne*: *IXe-XIIe siècle* (Bibliothèque de la Casa de Velázquez, 23, Madrid: Casa de Velázquez).

VI.2. Published Documents and Editions

Abadal, *Catalunya carolíngia,* II: Ramon d´Abadal. *Catalunya carolíngia. II. Els diplomes carolingis a Catalunya*. Barcelona (Institut d´Estudis Catalans), 1926-1950, 2 vols.

Abadal, *Catalunya carolíngia,* III: Id. *Catalunya carolíngia. III. Els comtats de Pallars i Ribagorça*. Barcelona (Institut d´Estudis Catalans), 2007, 2 vols. (segona edició).

Ordeig, *Catalunya carolíngia,* IV: Ramon Ordeig. *Catalunya carolíngia. IV. Els comtats d'Osona i Manresa.* Barcelona (Institut d´Estudis Catalans), 1999, 2 vols.

Sobrequés, Riera, Rovira, *Catalunya carolíngia,* V: Santiago Sobrequés, Santiago Riera and Manuel Rovira. *Catalunya carolíngia. V. Els comtats de Girona, Besalú, Empúries i Peralada*. Barcelona (Institut d´Estudis Catalans), 2003, 2 vols.

Ponsich, *Catalunya carolíngia,* VI: Pere Ponsich. *Catalunya carolíngia. VI. Els comtats de Rosselló, Conflent, Vallespir i Fenollet.* Barcelona (Institut d'Estudis Catalans), 2006, 2 vols.

Baiges, Puig, Soler, *Catalunya carolíngia, VII*: CC VII: Ignasi J. Baiges, Pere Puig Josep Soler. *Catalunya carolíngia. VII. El comtat de Barcelona.* Barcelona (Institut d'Estudis Catalans), 2019, 3 vols.

Altisent, *Diplomatari*: Agustí Altisent, *Diplomatari de Santa Maria de Poblet*, *I, 960-1177,* Barcelona (Abadia de Poblet-Generalitat de Catalunya), 1993.

Alturo, *L'arxiu*: Jesús AlturoP erucho, *L'arxiu antic de Santa Anna de Barcelona del 942 al 1200: aproximació històrico-lingüística*, Barcelona (Fundació Noguera), 1985, 3 vols.

Alturo, *Diplomatari d'Alguaire de 1076 a 1244*: Jesús Alturo Perucho, *Diplomatari d'Alguaire i del seu monestir santjoanista de 1076 a 1244*, Barcelona (Fundació Noguera), 1999.

Alturo, Bellès, Font, García, Mundó, *Liber Iudicum Popularis*: Jesús Alturo, Joan Bellès, Josep M. Font Rius, Yolanda García, Anscari M. Mundó, *Liber Iudicum Popularis. Ordenat pel jutge Bonsom de Barcelona.* Textos jurídics catalans, 23*.* Barcelona, 2003.

Álvarez, *Òdena*: María del Carmen Álvarez Márquez, *La baronia de la Conca d'Òdena,* Barcelona (Fundació Noguera), 1990.

Bach, *Els documents*: Antoni Bach, *Els documents del priorat de Santa Maria de Gualter a l'arxiu episcopal de Solsona (segles XI-XIII),* "Urgellia", VIII, La Seu d'Urgell, 1986-1987, p. 211-269.

Bach, *Col·lecció*: Id., *Col·lecció diplomàtica del monestir de Santa Maria de Solsona: el Penedès i altres llocs del comtat de Barcelona (segles X-XV),* Col. Fonts i Estudis, 1, Barcelona (Generalitat de Catalunya), 1987.

Bach, *Diplomatari*: Id., *Diplomatari de l'Arxiu Diocesà de Solsona (1101-1200)*, Barcelona (Fundació Noguera), 2002, 2 vols.

Baiges, Fages, *Diplomatari*: Ignasi J. Baiges i Mariona Fages, *Diplomatari de la Vall d'Andorra (segle XIV)*, Andorra (Govern d'Andorra), 1993.

Baiges, Feliu, Salrach, *Els pergamins*: Ignasi J. Baiges, Gaspar Feliu i Josep M. Salrach, *Els pergamins de l'Arxiu Comtal de Barcelona de Ramon Berenguer II a Ramon Berenguer IV*, Barcelona (Fundació Noguera), 2010, 4 vols.

Barau-Dihigo, Massó, *Gesta*: Lluís Barrau-Dihigo, Jaume Massó Torrents, *Gesta Comitum Barcinonensium*. *Cróniques Catalanes*, II. Barcelona: Institut d'Estudis Catalans, 1925.

Baraut, «Les actes de consagració»: Cebrià Baraut, *Les actes de consagració d'esglésies del bisbat d'Urgell (segles IX-XII). Segles IX-XII,* "Urgellia", I, La Seu d'Urgell, 1978, p. 11-182.

Baraut, «Els documents», I: Id., *Els documents conservats a l'arxiu capitular de la Seu d'Urgell. Segles IX-X,* "Urgellia", II, La Seu d'Urgell, 1979, p. 7-145.

Baraut, «Els documents», II: Id., *Els documents conservats a l'arxiu capitular de la Seu d'Urgell. II. 981-1010,* "Urgellia", III, La Seu d'Urgell, 1980, p. 7-146.

Baraut, «Els documents», III: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. III. 1010-1035,* "Urgellia", IV, La Seu d'Urgell, 1981, p. 7-186.

Baraut, «Els documents», IV: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. IV. 1035-1050,* "Urgellia", V, La Seu d'Urgell, 1982, p. 7-158.

Baraut, «Els documents», V: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. V. 1051-1075,* "Urgellia", VI, La Seu d'Urgell, 1983, p. 7-243.

Baraut, «Els documents», VI: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. VI. 1076-1092,* "Urgellia", VII, La Seu d'Urgell, 1984-85, p. 7-218.

Baraut, «Els documents», VII: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. VII. 1093-1100,* "Urgellia", VIII, La Seu d'Urgell, 1986-87, p. 7-149.

Baraut, «Els documents», VIII: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. VIII. 1101-1150,* "Urgellia", IX, La Seu d'Urgell, 1988-89, p. 7-312.

Baraut, «Els documents», IX: Id*., Els documents conservats a l'arxiu capitular de la Seu d'Urgell. IX. 1151-1190,* "Urgellia", IX, La Seu d'Urgell, 1990-91, p. 7-349.

Baraut, *Cartulari*: Id., *Cartulari de la Vall d'Andorra. Segles IX-XIII*, Andorra la Vella (Conselleria d'Educació i Cultura del Govern d'Andorra), 1988-1990, 2 vols.

Bastardas, *Usatges*: Joan Bastardas Parera, *Usatges de Barcelona. El codi a mitjan segle XII*: *Establiment del text llatí i edició de la versió catalana del manuscrit del segle XIII del L'Arxiu de la corona d'Aragó de Barcelona.* Barcelona (Fundació Noguera), 1991.

Baucells, *Diplomatari*: Josep Baucells et al., *Diplomatari de l'Arxiu Capitular de la Catedral de Barcelona. Segle XI,* Barcelona (Fundació Noguera), 2006, 5 vols.

Benet, *La família Gurb-Queralt*: Albert Benet, *La família Gurb-Queralt (956-1276). Senyors de Sallent, Oló, Avinyó, Gurb, Manlleu,Voltregà, Queralt i Santa Coloma de Queralt,* Sallent (Institut d'Arqueologia, Història i Ciències Naturals), 1993.

Bennister, *Missale gothicum,* I: Henry Marriot Bennister, *Missale gothicum. A gallican sacramentary.* Henry Bradshaw Society, 52), London, 1917.

Bennister, *Missale gothicum,* II: Henry Marriot Bennister, *Missale gothicum. A gallican sacramentary.* Henry Bradshaw Society, 54), London, 1919.

Bolòs, *Diplomatari de Serrateix*: Jordi Bolòs, *Diplomatari del monestir de Santa Maria de Serrateix (segles X-XV)*, Barcelona (Fundació Noguera), 2006.

Bolòs, *Diplomatari de la Portella*: Id., *Diplomatari del monestir de Santa Maria de Sant Pere de la Portella*, Barcelona (Fundació Noguera), 2009.

Boretius, *Capitularia regum Francorum*: Alfred Boretius, *Capitularia regum Francorum*, vol. 1, Hannover 1883.

Boretius, Krause, *Capitularia regum Francorum*: Alfred Boretius, Victor Krause, *Capitularia regum Francorum,* vol. 2, MGH, Hannover 1897.

Brossa, *«Estudi lingüístic»*: Maria Brossa, «Estudi lingüístic d'un document català del segle XII (*Zo són clams*) de l'Arxiu de la Seu d'Urgell», *Urgellia*, 6, 1983, p. 335-359.

Browe, *De ordaliis,* I: Petrus Browe, *De ordaliis, Decreta Pontificium Romanorum et Synodorum*, Textus et documenta in usum exercitationum et praelectionum academicarum. Series theologia, 4. Rome, 1932.

Browe, *De ordaliis,* II: Id., *De ordaliis, Decreta Pontificium Romanorum et Synodorum*, Textus et documenta in usum exercitationum et praelectionum academicarum. Series theologia, 11. Rome, 1933.

Camprubí, *Catedral de Girona*: Josep Camprubí Sensada, *La catedral de Girona entre 1101 i 1144 col·lecció diplomàtica i estudi històric.* Doctoral thesis. Universitat Autònoma de Barcelona, Dir. Alturo i Perucho, Jesús 2012

Carreras, *Lo Castell-bisbal*: Francesc Carreras Candi, *Lo Castell-bisbal de Llobregat. Apuntacions històriques de l'Edat Mitjana*, Barcelona, 1900.

Castillón, *«Las posesiones»*: Francisco Castillón Cortada, «Las posesiones del monasterio de Vallbona», *Studia Monastica,* 33/2 (1991).

CCSL 148: Charles Munier, *Concilia Galliae, 314-506.* CCSL 148. Turnhout, 1974.

Chesé, *Col·lecció*: Ramon Chesé Lapeña, *Col·lecció diplomàtica de Sant Pere d'Àger fins 1198*, Barcelona (Fundació Noguera), 2011.

Cingolani, Álvarez, *Gestes*: Stefano M. Cingolani (ed.), Robert Álvarez Masalias (transl.), *Gestes dels comtes de Barcelona i reis d'Arago - Gesta comitum Barchinone et regum Aragonie*, Santa Coloma de Queralt (Obrador Edèndum - Publicacions URV), 2012.

Constans, *Diplomatari:* Lluís G. Constans, *Diplomatari de Banyoles,* Banyoles (Centre d'Estudis Comarcals de Banyoles), 1985-1993, 6 vols.

Fàbrega, Baucells, *Diplomatari*: Àngel Fàbrega i Josep Baucells, *Diplomatari de la Catedral de Barcelona. Documents dels anys 844-1000*, Barcelona (Arxiu Capitular de la S. E. Catedral de Barcelona), 1995.

Feliu, Salrach, *Els pergamins*: Gaspar Feliu i Josep M. Salrach, *Els pergamins de l'Arxiu Comtal de Barcelona de Ramon Borrell a Ramon Berenguer I*, Barcelona (Fundació Noguera), 1999, 3 vols.

Ferrer, *Diplomatari*: Joan Ferrer i Godoy, *Diplomatari del monestir de Sant Joan de les Abadesses (995-1273),* Barcelona (Fundació Noguera), 2009.

Font, *Cartas*: José María Font Rius, *Cartas de población y franquicia de Cataluña*, Madrid-Barcelona (CSIC), 1969, 2 vols.

Franz, *Benediktionen*: Adolph Franz, *Die kirchlichen Benediktionen im Mittelalter,* Freiburg im Breisgau (Herder), 1909, 2 vols.

Galera, *Diplomatari*: Andreu Galera, *Diplomatari de la vila de Cardona (anys 966-1276)*, Barcelona (Fundació Noguera), 1998.

GONZALVO, *Pau i Treva*: Gener Gonzalvo Bou, *Les constitucions de Pau i Treva de Catalunya (segles XI-XIII)*. Textos jurídics catalans, 9. Barcelona 1994.

GROS, *«El Col·lectari-Ordinari»*: Miquel dels Sants Gros Pujol, «El Col·lectari-Ordinari de l'Abadia de Santa Maria de la Grassa (París, BnF, ms. Lat. 933)», *Miscel·lània Litúrgica Catalana,* 16, 2008, p. 203-453.

HENDERSON, *Manuale Eboracense*: William George Henderson, *Manuale et processionale ad usum insignis ecclesiae Eboracensis,* ed. S. W. Lawley, The publications of the Surtees Society, 63, 1875.

HINOJOSA, *El régimen*: Eduardo de Hinojosa, *El régimen senyorial y la cuestión agraria en Cataluña*, Pamplona (Urgoiti Editores, S. L.), 2003 (1st Ed. 1905).

JUNYENT, MUNDÓ, *Diplomatari*: Eduard Junyent Anscari M. Mundó, *Diplomatari i escrits literaris de l'abat i bisbe Oliba,* Barcelona (IEC), 1992.

JUNYENT, *Diplomatari de Vic*: Eduard Junyent Subirà, *Diplomatari de la catedral de Vic (segles IX-X)*, Vic (Patronat d'Estudis Ausonencs), 1980-1996, 5 fasc.

KAGAY, *The Usatges of Barcelona*: Donald J. Kagay, *The usatges of Barcelona: The fundamental law of Catalonia.* Philadelphia (University of Pennsylvania Press), 1994.

LIEBERMANN, *Gesetze*: Felix Liebermann, *Die Gesetze der Angelsachsen*, 3 vol. Halle (M. Niemeyer),1903-16.

LLOP, *Col·lecció*: Irene Llop, *Col·lecció diplomàtica de Sant Pere de Casserres*, Barcelona (Fundació Noguera), 2009.

MARCA, Marca: Pierre de Marca, *Marca Hispanica sive Limes Hispanicus: hoc est, geographica & historica descriptio Cataloniae, Ruscinonis & circumjacentium populorum*, Paris,1688.

MAGNOU-NORTIER, *Recueil*: Elisabeth Magnou-Nortier, Anne Marie Magnou, *Recueil des chartes de l'Abbaye de La Grasse*, I, 779-1119, Collection de documents inédits sur l'histoire de France 24. Paris CTHS, 1996.

MALLORQUÍ, *Col·lecció*: Elvis Mallorquí, *Col·lecció diplomàtica de Sant Pere de Galligants (911-1300)*, Barcelona (Fundació Noguera), 2013, 2 vols.

MALLORQUÍ, *Cruïlles*: Id., *El monestir de Sant Miquel de Cruïlles a l'Edat Mitjana. Estudi i edició dels documents (1035-1300),* La Bisbal d'Empordà (Ajuntament de la Bisbal d'Empordà), 2000.

MARTÍ, *Oleguer, servent de les esglésies...*: Josep M. Martí Bonet, *Oleguer, servent de les esglésies de Barcelona i Tarragona*, Barcelona, 2003.

MARQUÈS, *El cartoral de Roses*: Josep Maria Marquès Planagumà, *El cartoral de Santa Maria de Roses (segles X-XIII)*, Barcelona (IEC), 1986.

MARQUÈS, *Cartoral de Carlemany*: Id., *Cartoral, dit de Carlemany, del bisbe de Girona (segles IX-XIV)*, Barcelona (Fundació Noguera), 1993, 2 vols.

Marqués, Escriptures: Id., *Escriptures de Santa Maria de Vilabertran (968-1300)*, Figueres, Institut d'Estudis Empordanesos, 1995

MARQUÈS, *Col·lecció*: Id., *Col·lecció diplomàtica de Sant Daniel de Girona (924-1300)*, Barcelona (Fundació Noguera), 1997.

MARQUÈS, *Cartoral de Rúbriques Vermelles*: Id., *El Cartoral de Rúbriques Vermelles de Pere de Rocabertí, bisbe de Girona (1318-1324),* Barcelona (Fundació Noguera), 2009.

MARTÍ, *Col·lecció*: Ramon Martí, *Col·lecció diplomàtica de la seu de Girona (817-1100),* Barcelona (Fundació Noguera), 1997.

MARTÈNE, *De Antiquis*: Edmond Martène, *De Antiquis Ecclesiae Ritibus. Libri Ex variis insigniorum Ecclesiarum Pontificalibus, Sacramentariis, Missalibus, Breviariis.* Antwerp, 1736, 4 vols.

MASSIP, *Costums de Tortosa*: Jesús Massip Fonollosa, *Costums de Tortosa*: *Edició crítica,* Barcelona (Fundació Noguera), 1996.

MIQUEL, *Liber Feudorum*: Francisco Miquel Rosell, *Liber Feudorum Maior*, Barcelona (CSIC), 1945-1947, 2 vols.

MIRET, *«Documents»*: Joaquim Miret Sans, «Documents en langue catalane (haute vallée du Segre, XIe-XIIe siècles)», *Revue Hispanique*, XIX, 55-56, París, 1908.

MIRET, *«Aplech»*: Id., «Aplech de documents dels segles XI y XII per a l'estudi de la llengua catalana», *Butlletí de la Reial Acadèmia de Bones Lletres de Barcelona*, VI, 1912.

MIRET, *«Documents sur les juifs catalans»*: Id., «Documents sur les juifs catalans aux XIe, XIIe et XIII siècles», *Revue des Études Juives*, LXVIII (1915). p. 49-83 and 174-197.

MONSALVATJE, *Noticias históricas XI, XII, XIII, XV, XIX*: Francisco Monsalvatje y Fossas, *Colección diplomàtica del Condado de Besalú,* Col. Noticias Históricas, XI, XII, XIII, XV, XIX, Olot (Imprenta y Librería J. Bonet), 1901-1908, 5 vols.

MONSALVATJE, *Noticias históricas XXI, XXII, XXIII, XXIV*: Francisco Monsalvatje y Fossas, *El obispado de Elna*, Col. Noticias Históricas, XXI, XXII, XXIII, XXIV, Olot (Imprenta y Librería J. Bonet), 1911-1915, 4 vols.

MONTSERRAT, *Canònica de Cardona*: Montserrat Casas Nadal, *La canònica de Sant Vicenç de Cardona a l'Edat Mitjana: Alguns aspectes de la seva història des dels seus orígens fins al 1311.* Cardona (1992).

MONTSERRAT, *Monestir de Cardona*: Id., *El Monestir de Sant Vicenç de Cardona a l'Edat Mitjana: Alguns aspectes de la seva història des dels orígens fins al 1314. Barcelona* (1989).

Mordek, Zechiel-Eckes, Glatthaar, *Admonitio*: Hubert Mordek, Klaus Zechiel-Eckes, Klaus, Michael Glatthaar, *Die Admonitio generalis Karls des Großen,* MGH. Fontes iuris Germanici antiqui in usum scholarum separatim editi, 16. Hannover 2012.

MUTGÉ, *Pergamins*: Josefina Mutgé Vives, *Pergamins del monestir benedictí de Sant Pau del Camp de Barcelona: de l'Arxiu de la Corona d'Aragó (segles XII-XIV),* Barcelona (CSIC), 2002.

NEGRE, *«Dos importantes»*: Pelai Negre, «Dos importantes documentos del conde de Ampurias, Poncio I», *Anales del Insituto de Estudios Gerundenses*, XIV, 1960, p. 229-261.

OLIVAR, *Sacramentario de Vich*: Alexandre Olivar Daydí, *El sacramentario de Vich*, Monumenta Hispaniae Sacra. Serie litúrgica, 4, Barcelona, 1953.

OLIVAR, *Sacramentarium Rivipullense*: Id., *Sacramentarium Rivipullense,* Monumenta Hispaniae Sacra. Serie litúrgica, 7. Madrid (CSIC), 1964.

ORDEIG, *Diplomatari*: Ramon Ordeig Mata*, Diplomatari de la Catedral de Vic (segle XI)*, Vic (Publicacions del Patronat d'Estudis Osonencs i Publicacions de l'Arxiu i Biblioteca Episcopal), 2000 – 2009.

ORS, *Código de Eurico*: Álvaro d'Ors Pérez-Peix, *El Código de Eurico,* Madrid (Boletín Oficial del Estado), Cuadernos del Instituto Jurídico, Serie de estudios visigóticos), 2nd ed., 2014.

OSTOS, *«Vizcondado de Vilamur»*: Ostos Salceldo, Pilar, «Documentación del Vizcondado de Vilamur en el Archivo Ducal de Medinaceli (1126-1301). Estudio diplomático y edición. *Historia. Instituciones. Documentos*, 8, 1981, p. 267-370.

Pailhès, *Recueil*: Claudine Pailhès, *Recueil des chartes de l'Abbaye de La Grasse*, II, 1117-1279, Collection de documents inédits sur l'histoire de France 26. Paris CTHS, 2000.

Papell, *Diplomatari*: Joan Papell Tardiu, *Diplomatari del monestir de Santa Maria de Santes Creus (975-1225)*, Barcelona (Fundació Noguera), 2005, 2 vols.

Pardo, *Mensa*: Maria Pardo Sabatés, *Mensa episcopal de Barcelona (878-1299),* Barcelona (Fundació Noguera), 1994.

Pérez, *Diplomatari*: Xavier Pérez Gómez, *Diplomatari de la cartoixa de Montalegre (segles X-XII),* Barcelona (Fundació Noguera), 1998.

Pons, *El Cartoral*: Josep Maria Pons Guri, *El Cartoral de Santa Maria de Roca Rossa*, Barcelona (Fundació Noguera), 1984.

Pons, *Diplomatari*: Id., *Diplomatari del monestir de Sant Pol de Mar*, Barcelona (Fundació Noguera), 1989.

Pons, Palou, *Un cartoral*: Josep M. Pons Guri, Hug Palou Miquel, *Un cartoral de la canònica agustiniana de Santa Maria del castell de Besalú (segles X-XV)*, Barcelona (Fundació Noguera), 2002.

Pruenca, *Diplomatari*: Esteve Pruenca Bayona, *Diplomatari de Santa Maria d'Amer*, Barcelona (Fundació Noguera), 1995.

Puig, *El cartoral*: Ignasi Puig Ferreté, *El cartoral de Santa Maria de Lavaix: el monestir durant els segles XI-XIII*, La Seu d'Urgell (Societat Cultural Urgel·litana), 1984.

Puig, *El monestir de Gerri*: Id., *El monestir de Santa Maria de Gerri (segles XI-XVI): I. Estudi històric. II. Col·lecció diplomàtica,* Barcelona (IEC), 1991, 2 vols.

Puig, *El monestir de Sant Llorenç del Munt*: Pere Puig Ustrell, *El monestir de Sant Llorenç del Munt sobre Terrassa. Diplomatari dels segles X i XI,* Barcelona (Fundació Noguera), 1995, 3 vols.

Puig, Ruiz i Soler, *Diplomatari*: Pere Puig, Vicenç Ruiz, Joan Soler, *Diplomatari de Sant Pere i Santa Maria d'Ègara. Terrassa, 958-1207*, Barcelona (Fundació Noguera), 2001.

Pujol, *Documents*: Pere Pujol, *Documents en vulgar dels segles XI, XII i XIII procedents del bisbat de la Seu d'Urgell,* 1913.

Rasico, *«El català»*: Philip D. Rasico, «El català pre-literari en uns documents de l'antic bisbat d'Urgell (segles XI-XII)», *Urgellia*, 7, 1984-85, p. 281-305.

Riu, *Diplomatari*: Manuel Riu Riu, *Diplomatari del monestir de Sant Llorenç de Morunys (971-1613),* "Urgellia", IV, La Seu d'Urgell, 1981, p. 187-259.

Rius, *Cartulario*: Josep Rius Serra, *Cartulario de Sant Cugat del Vallés*, Barcelona (CSIC), 1945-1947, 3 vols.

Rodríguez, *Col·lecció*: Francesc Rodríguez Bernal, *Col·lecció diplomàtica de l'Archivo Ducal de Cardona (965-1230)*, Barcelona (Fundació Noguera), 2016.

Russel-Gebbet, *Medieval Catalan*: *Medieval Catalan Linguistic Texts,* Oxford (The Dolphin Book), 1964.

Salrach, Montagut, *Justícia*: Josep M. Salrach, Tomàs Montagut (dir.), Justícia i resolució de conflictes a la Catalunya medieval. Col·lecció diplomàtica. Segles IX-XI. Textos Jurídics Catalans, 37. Barcelona 2018.

Sangés, *Recull*: Domènec Sangés, *Recull de documents del segle XI referents a Guissona i la seva plana,* "Urgellia", III, La Seu d'Urgell, 1980, p. 195-305.

Sans, *Col·lecció*: Josep Maria Sans Travé, *Col·lecció diplomàtica de la Casa del Temple de Barberà (945-1212)*, Barcelona (Departament de Justícia), 1997.

Sarobe, *Col·lecció*: Ramon Sarobe Huesca, *Col·lecció diplomàtica de la Casa del Temple de Gardeny (1070-1200),* Barcelona (Fundació Noguera), 1998, 2 vols.

Sarobe, *Història*: Ramon Sarobe Huesca, *Història del Rosselló de Segrià*, Rosselló de Segrià (Ajuntament), 2011.

Schmitz, *Collectio capitularium*: Gerhard Schmitz, *Die Kapitulariensammlung des Ansegis*, MGH, Capit. N. S. 1, 1996.

Soler, *El cartulario*: Josefina Soler Garcia, *El cartulario de Tavérnoles*, "Boletín de la Sociedad Castellonense de Cultura", XXXVI-XL, 1960-1964.

To, *El monestir*: Lluís To Figueras, *El monestir de Santa Maria de Cervià i la pagesia: una anàlisi local del canvi feudal. Diplomatari segles X-XII,* Barcelona (Fundació Vives Casajuana), 1991.

Tréton, *Diplomatari*: Rodrigue Tréton, *Diplomatari de Masdéu,* Barcelona (Fundació Noguera), 2010, 5 vols.

Udina, *El "Llibre Blanch"*: Federico Udina Martorell, *El "Llibre Blanch" de Santes Creus (Cartulario del siglo XII),* Barcelona (CSIC), 1947.

Udina, *El Archivo*: Id., *El Archivo condal de Barcelona en los siglos IX-X. Estudio crítico de sus fondos,* Barcelona (CSIC), 1951.

Udina, *La successió*: Antoni M. Udina Abelló, *La successió testada a la Catalunya altomedieval*, Barcelona (Fundació Noguera), 1984.

Urpí, Resina, *El castell*: Rosa Maria Urpí Casals, J. A. Resina Navas, *El castell i terme de Banyeres del Penedès, dels seus orígens al segle XIV*, Banyeres del Penedès (Ajuntament de Banyeres del Penedès), 1991.

Vayreda, *El priorat*: Pere Vayreda Olivas, *El priorat de Lladó i les seves filials*, Barcelona (Biblioteca Balmes), 1930.

Virgili, *Diplomatari*: Antoni Virgili, *Diplomatari de la catedral de Tortosa (1062-1193)*, Barcelona (Fundació Noguera), 1997.

Villanueva, *Viaje*: Jaume Villanueva Astengo, *Viaje literario a las iglesias de España*

Vives, *Concilios*: José Vives Gatell (Ed.), Tomás Marín Martínez, Gonzalo Martínez Díez, *Concilios visigóticos e hispano-romanos*, España Cristiana. Textos 1, Barcelona (CSIC), 1963.

Zeumer, *Formulae*: Karl Zeumer, *Formulae Merowingici et Karolini aevi*. MGH, *Leges Formulae Merowingici et Karolini aevi,* 1. (Hannover), 1886.

Zeumer, *Leges Visigothorum*: Karl Zeumer, *Leges Visigothorum.* MGH, *Leges nationum Germanicarum*, 1. (Hannover-Leipzig 1902), (2nd Ed. Graz 1973).

VI.3. Ancient Authors & Translations

Barney, *Etymologies*: Barney, S. A., Lewis W. J., Beach, J. A. et al. *The etymologies of Isidore of Seville* (Cambridge: Cambridge University Press), 2006.

Cassiodorus, *Variae*: CCSL 96, Josefsson Fridh, Åke, *Magni Avrelii Cassiodori Senatoris Variarvm libri dvodecim* (CCSL, 96). Brepols, Turnhout 1973.

Hincmarus Remensis, *De Ordine Palatii*: Thomas Gross and Rudolf Schieffer (ed.) , Hannover:Hahn, 1980.

Jerome, *Select Letters*: Jerome. *Select Letters.* Translated by F. A. Wright. Loeb Classical Library 262. Cambridge (MA: Harvard University Press), 1933.

Kendall, Wallis, *On the Nature of Things*: Kendall, C. B.; Wallis, F., *On the nature of things* (Translated texts for historians, Volume 66, Liverpool: Liverpool University Press), 2016.

Llull, *Arbre*: Ramon Llull, *Obres de Ramon*, Llull edició original (1906) Palma de Mallorca: Commissió Editora Lulliana.

Llull, *Llibre de Contemplació*: Ramon Llull, Rubio, J. E. (Ed., 2009), *Llibre de contemplació*: *Antologia* (Biblioteca Barcino, 5, Barcelona: Barcino).

Isidor, *Etymologies*: Isidor of Seville, *Etymologiarum sive originum*, ed. by Wallace Martin Lindsay, 1911. MPL.

Isidor, *Sententiae*: Pierre Cazier, *Isidorus Hispalensis Sententiae*, CCSL 111 (Turnhout: Brepols, 1998).

VII. Summary in English & Catalan

Summary

This doctoral thesis presents an analysis of the judicial procedure in Catalonia between the years 950 and 1130.

Catalan Archives preserve an exceptional number of documents related to justice which thanks to recent and systematic publication are now available for extensive research. Its aim is to analyse the change of legal procedure of a society in the midst of the process of feudalisation. To do so the work introduces a new method of the visualisation that allows for a detailed analysis of legal conflicts: The Wheel of Justice. The main body of the thesis is divided into three chapters that follow the inherent chronological order of court cases: Preludes, Trial and Resolution.

In the first the work deals with dimensions - the place and the date as well as the necessary prearrangements for trials. The second part focuses on the trial itself: the composition of the tribunal and its attendees and the dynamics of the courts. This chapter pays special attention to judicial ordeals and duels in the practice of conflict resolution, as well as the abandonment of trials and their political, social and legal significance. Finally, the last chapter addresses new forms of resolution to highlight changes to the system.

The thesis aims to provide new insight into the continuities and transformations that took place in Catalonia during this period, and what role the courts and the administrators of justice played as well as how these processes were narrated.

Resum

Aquesta tesi doctoral presenta una anàlisi del procediment judicial a Catalunya entre els anys 950 i 1130.

Els arxius catalans conserven un nombre excepcional de documents relacionats amb la justícia que gràcies a la publicació recent i sistemàtica ja estan disponibles per a una extensa investigació. El seu objectiu és analitzar el canvi de procediment legal d'una societat en ple procés de feudalització. Per fer-ho, el treball introdueix un nou mètode de visualització que permet fer una anàlisi detallada dels conflictes legals: la roda de la justícia. El cos principal de la tesi es divideix en tres capítols que segueixen l'ordre cronològic inherent dels casos judicials: preludis, judici i resolució.

A la primera part, l'obra tracta de les dimensions: el lloc i la data, així com els prolegòmens necessaris per a les proves. La segona part se centra en el judici en si mateix: la composició del tribunal i els seus assistents i la dinàmica dels tribunals. Aquest capítol presta especial atenció a les proves i als duels judicials en la pràctica de la resolució de conflictes, així com a l'abandonament dels processos i la seva importància política, social i jurídica. Finalment, l'últim capítol tracta de noves formes de resolució per ressaltar els canvis al sistema.

La tesi pretén donar una nova visió de les continuïtats i transformacions que es van produir a Catalunya durant aquest període, quin paper van tenir els tribunals i els administradors de justícia, així com la manera com es van narrar aquests processos.