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Lex et consuetudines:

Local Law and Legal Change in Norman Italy, c. 1077-1189

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy
in History

by

Patrick Raymond Morgan

2024

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ABSTRACT OF THE DISSERTATION

Lex et consuetudines:

Local Law and Legal Change in Norman Italy, c. 1077-1189

by

Patrick Raymond Morgan

Doctor of Philosophy in History

University of California, Los Angeles, 2024

Professor Jessica Lillian Goldberg, Chair

This dissertation investigates the dynamics of law and legal change in the twelfth-century Norman Kingdom of Sicily; specifically, how ambitious local experts dislodged traditional legal regimes, consolidated power in judicial institutions, and centralized control of documentary culture. The first part of the dissertation traces how changes in the diplomatic, content, and personnel of local legal documents from the area around Salerno reveal larger-scale processes of legal consolidation by experts intent on perpetuating and expanding their authority. The main source base is a large corpus of unpublished archival documents from in and around the city of Salerno stored in the monastic archive of Cava. In light of these conclusions, the second part of the dissertation reevaluates the nature of royal power at the local level through an analysis of a diverse set of sources, including royal legislative texts, literary sources, and both published and unpublished documents related to the area around Salerno. Beginning the analysis from local

documents eschews traditional narratives of legal change in the twelfth-century Norman Kingdom that prioritize royal legislation and legal administration. When viewed from the local perspective, royal power appears much more limited and dependent on local legal cultures that developed without significant influence from royal law.

The dissertation of Patrick Raymond Morgan is approved.

Teofilo F Ruiz

Maureen C. Miller

Luke Benson Yarbrough

Alexandre Roberts

Jessica Lillian Goldberg, Committee Chair

University of California, Los Angeles

2024

For my wife and sons, *d'altro non calme*

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Map 1: The Salernitano



Map 2: The Kingdom of Sicily

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VITA

Patrick Morgan graduated *cum laude* from the University of California, Berkeley in 2016 with a Bachelor of Arts in History and Medieval Studies. He received a Master of Arts in History from the University of California, Los Angeles, in 2019. His master's thesis was titled, "Seeking the Threshold of the Church: Marriage and Legal Revival in the Legislation of Roger II." Patrick is a Fulbright Scholar and received a Study Grant for Italy during the 2021-2022 academic year. He was also the editor of the 55th volume of the UCLA CMRS Center for Early Global Studies' graduate student journal, *Comitatus*. Patrick advanced to candidacy in 2020 and submitted this dissertation in 2024.

Introduction

Two Documents

In February of 1089, a family of four—Iohannes the priest, his wife Stephania, their son Stephanus and his wife Tortora—sold some land in Casole (modern Cassola) in Nocera to a man named Petrus, son of Littus the monk. Nocera was a small town on the coastal plain between the Norman Principality of Capua (1058-1129) in the north and the Norman Duchy of Apulia (1077-1127) in the south. Until only a few years earlier, both the Principality of Capua (887-1058) and the Duchy (formerly the Principality of Salerno (851-1077)) had been ruled by princes of Lombard origin. But over the course of the previous half century or so (c. 1015-1077), both were conquered by ambitious outsiders from Normandy who first integrated themselves into the military retinues of the princes and then took power for themselves. This long process of integration and takeover is called by historians the Norman conquest of southern Italy.¹

As far as Iohannes, Stephania, and their son and daughter-in-law were concerned, these political changes were probably of little consequence, though they were aware of them. The document of sale that they requested from Petrus, the *protonotarius* of Nocera,² reflects the uncertainty of the times by refraining from mentioning any political figure in the dating clause.³ The diplomatic of the sale is simple. It begins with an invocation and the dating clause before launching straight into the narration of the transaction, which happened “in front of the subscribed witnesses (*ante subscripti testes*).” After describing the boundaries of the property

¹ The best account of this process, which connects it to larger narratives of expansion in eleventh century Europe, is: G. A. Loud, *The Age of Robert Guiscard: Southern Italy and the Northern Conquest*, 1 edition (London: Routledge, 2000).

² We will meet Petrus the *protonotarius* again. See Ch. 3, introduction.

³ The year is reckoned only from the incarnation of Jesus (*ab incarnatione*). In earlier decades, when Nocera was within the territory of the Lombard Principality of Salerno, the regnal year of the prince had been a standard part of the dating clause: Arca xi 62 (1060); xi 64 (1060).

and the sale price (twenty-six gold *tari*),⁴ the document records the pledges and guarantors given by the sellers to the buyer to ensure the transaction was followed through on, the penalty clause (a composition payment of thirty gold *solidi* of Constantine) should they not do so, and the request for the notary to write the document (*quam te Petrus protonotarius scribere rogabimus*). After the notarial request, Petrus writes the phrase “*Actum Nucerie*,” a reference to a Lombard administrative district called a *gastaldatus*,⁵ and then his unique notarial sign. In the empty space at the foot of the document, two witnesses, called simply Petrus and Lando, mark their signs of the cross, signifying their willingness to testify about the terms and existence of the sale if it is ever disputed.⁶ These witnesses were essential to the document’s usefulness as legal proof; without their signatures, it is only parchment and ink (Figure 1).

This document of sale, preserved in the monastic archive of La Santissima Trinità della Cava just outside of Salerno, is in most ways very typical of a Lombard document from eleventh-century southern Italy. It is narrated in the first person by one of the parties to the transaction, written by a notary at that party’s request, and signed by two witnesses before whom the transaction took place. The transaction was conducted among private individuals capable of doing legal business amongst themselves; except for the notary who wrote the document, there are no special legal personnel involved. These features are shared by the vast majority of

⁴ The gold coin that circulated in Sicily and southern Italy, equivalent to an Islamic quarter-dinar. Four of them made one *solidus*. See: Philip Grierson, “The Salernitan Coinage of Gisulf II (1052-77) and Robert Guiscard (1077-85),” in *Later Medieval Numismatics (11th-16th Centuries)*, ed. Philip Grierson (London: Variorum Reprints, 1979), 37–59; Philip Grierson, *Medieval European Coinage: With a Catalogue of the Coins in the Fitzwilliam Museum, Cambridge* (Cambridge: Cambridge University Press, 1998), 106.

⁵ A *gastaldatus* was the administrative district of a *gastald*, a fiscal and judicial official in the Lombard Principality of Benevento (774-900). They continued as administrative districts under the Lombard Princes of Salerno (849-1077) after 849. See: Huguette Taviani-Carozzi, *La principauté Lombarde de Salerne (IXe-XIe Siècle): Pouvoir et Société En Italie Lombarde Méridionale*, Collection de l’École Française de Rome (Rome: École française de Rome, 1991), 278–79, 491–96.

⁶ Arca xiv 83 (1089). Edition in: Carmine Carlone, Leone Morinelli, and Giovanni Vitolo, eds., *Codex Diplomaticus Cavensis*, vol. XII (Badia di Cava: Laveglia & Carlone, 2015), no. 96.

southern Italian documents in the eleventh century, regardless of their political context; it was the standard way to conduct a sale and make a document according to the Lombard legal tradition and had been for at least two centuries.⁷

Only fifty-four years later, in 1143, all of that had changed, as another document of sale from June of that year reveals.⁸ First of all, the political landscape was very different. In 1089, Nocera was a frontier on the edge of two Norman polities—the Principality of Capua and the Duchy of Apulia—but by 1143, both had been conquered and subsumed in the new Kingdom of Sicily, founded by Roger II in 1130. King Roger (r. 1130-1154) consolidated a host of Norman territories, mostly conquered by his ambitious relatives of the previous generation. He was the son of Count Roger I (r. 1071-1101), the Norman adventurer who had spent twenty years (1071-1091) conquering Sicily alongside his brother Robert Guiscard, first Duke of Apulia (r. 1059-1085). When Guiscard's grandson, William (r. 1111-1127), died without heirs in 1127, Roger II laid claim to the Duchy of Apulia. In 1130, with the blessing of Pope Anacletus II (r. 1130-1138)—one of two claimants to the papal throne along with Innocent II (r. 1130-1143)—Roger declared himself king of the new Kingdom of Sicily, comprised of the southern half of the peninsula and the island of Sicily. After nearly a decade spent subduing other Norman lords of the peninsula and fending off invasions from the pope and the German emperors, Roger's kingship was formally recognized by Innocent II (who had outlasted Anacletus) in the 1139 Treaty of Mignano. Further hostilities would break out after Roger's death in 1154, but the 1156 Treaty of Benevento between Roger's son, William I (r. 1154-1166) and Pope Adrian IV (r. 1154-1159) finally settled the question of the Kingdom's existence. The next thirty-three years

⁷ Taviani-Carozzi, *La principauté Lombarde de Salerne (IXe-XIe siècle)*, 525–30.

⁸ Arca xxv 72 (1143).

(1156-1189) were largely peaceful, punctuated by a few unsuccessful noble rebellions, but no major internal wars.⁹ By 1143, Nocera had ceased to be a borderland; it was now part of a much larger and more consequential political entity. All of this is reflected in the 1143 document's dating clause, which declares the year as being "in the time of our lord Roger, most glorious king of Sicily and Italy (*temporibus domini nostri Rogerii Sicilie et Italie gloriosissimi regis*)."

The 1143 document of sale is also evidence of fundamental changes to Nocera's legal and documentary institutions. Gone are the witnesses who had been so central to the 1089 document. They have been replaced by a judge (*iudex*), whom the diplomatic now presents as the narrator and central figure of the legal action. The judge, Gottifredus, narrates in the first person how the sellers, brothers named Romoaldus and Malgerius, and buyers, a group of three men,¹⁰ were brought together by agreement (*per convenientiam coniuncti sunt*) "in front of me (*ante me Gottifredum iudicem*)."

The brothers laid out the boundaries of the property and, freely, by agreement, and through the document (*sponte per convenientiam per hanc cartulam*), sold it (*vendiderunt*) for eight *tari* of Salerno (*tarenos presentis monete Salernitane civitatis octo*). Some aspects of traditional legal practice endured: the parties exchanged pledges and guarantors in Lombard fashion, promising to defend the transaction and to pay composition of twenty royal gold *solidi* (*auri solidos regales*) if they broke any of the terms. The document then switches back to the first person as the judge orders the notary, Petrus *notarius*, to write it (*et taliter tibi Petro notario scriber precepi*) before signing the document with his large, elaborate, and distinctive judicial signature (Figure 2).

⁹ This story can be found in many places. The account which best combines rigor and readability (though the lack of footnotes is frustrating) is: Donald Matthew, *The Norman Kingdom of Sicily* (Cambridge: Cambridge University Press, 1992), chap. 2; Also excellent is: Hubert Houben, *Roger II of Sicily: A Ruler between East and West*, trans. G. A. Loud and Diane Milburn (Cambridge: Cambridge University Press, 2002), chaps. 2, 3.

¹⁰ Landulfus de Alberada, son of Risus, Ademarius son of Ademarius, and Guilielmo son of Iohannes of Magenulfo.

By 1143, this new diplomatic, which centered the judge and represented him as the sole legal authority capable of authenticating the document, was used for every kind of legal act in Nocera. But where had it come from? How had it taken hold in the town in such a short time and achieved dominance so quickly? What relationship did this legal and institutional change have to the political changes that had taken place in southern Italy in the fifty-four years between 1089 and 1143? Did similar legal change occur in other nearby regions, and if so, when? How would it show up in the sources? These are the central questions of this dissertation, which analyzes the dynamics of legal change in the Salernitano (the regions around the city of Salerno roughly continuous with the former Lombard Principality) during the Norman period (c. 1077-1189), and the role of political power in shaping that change.

Why the Salernitano in the Norman Period?

Temporally, I am interested in the Norman period in Salerno, which stretches from Robert Guiscard's conquest of the city in 1077 to the death of King William II in 1189. This timespan combines two periods that are usually considered separately. Studies of the 'Norman conquest' period often begin with the arrival of the first Normans in southern Italy and end with the foundation of the Kingdom in 1130, which is seen as a definitive break with the previous period.¹¹ Likewise, studies of the Norman Kingdom usually devote only a cursory opening chapter to the 'conquest' before moving on to the 'kingdom' period.¹² By considering these two

¹¹ Loud, *The Age of Robert Guiscard*; Valerie Ramseyer, *The Transformation of a Religious Landscape: Medieval Southern Italy, 850–1150* (Ithaca: Cornell University Press, 2006); This is also true of Loud's entries on the South in the New Cambridge Medieval History: G. A. Loud, "Southern Italy in the Eleventh Century," in *The New Cambridge Medieval History*, ed. David Luscombe and Jonathan Riley-Smith (Cambridge: Cambridge University Press, 2004), 94–119; G. A. Loud, "Norman Sicily in the Twelfth Century," in *The New Cambridge Medieval History*, ed. David Luscombe and Jonathan Riley-Smith (Cambridge: Cambridge University Press, 2004), 442–74.

¹² Matthew, *The Norman Kingdom of Sicily*; Houben, *Roger II of Sicily: A Ruler between East and West*; Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, First edition (Roma: Viella, 2018).

periods together, I deemphasize both the conquest and the monarchy as explanatory frameworks and instead take my cues about significant periodization from my documents. The death of William II in 1189 and the end of the dynasty founded by Roger II is a convenient ending point because of the disorder that soon consumed the Kingdom between 1189 and 1194 as the German Emperor, Henry VI Hohenstaufen, took the throne he had married into.¹³

Geographically, the majority of the material examined in this dissertation originates from the city of Salerno, and the lands of the former Lombard Principality of Salerno, referred to as the Salernitano. Though borders evolved, this large region included much of the contemporary regions of Campania and Basilicata, from Sarno in the north eastward towards Potenza and south along the Tanagro River to the Gulf of Policastro. Salerno was arguably the most important political and economic center in southern Italy throughout the Norman period: it had been the capital of a Lombard principality and, following its conquest by Robert Guiscard in 1077, became the capital of the Norman Duchy of Apulia as well. After the establishment of the monarchy in 1130, Salerno became the *de facto* mainland capital of the kingdom, the counterpart to Palermo on the island, and royal officials like chamberlains, justiciars, and *stratigoti* were headquartered in the city.¹⁴ In 1174, it became the headquarters of the *duana baronum*, the branch of the royal administration responsible for the mainland.¹⁵ Naples only surpassed Salerno

¹³ Henry had married Constance, the daughter of King Roger II, in 1186 and thus laid claim to the Sicilian throne. His claim was resisted by Tancred of Lecce, an illegitimate cousin of King William II, who claimed the throne at William's death in 1189. When Tancred died in 1194 and was succeeded by his son William III, Henry quickly defeated the Sicilian armies and claimed the throne. See: Matthew, *The Norman Kingdom of Sicily*, 285–93.

¹⁴ Paul Oldfield, *City and Community in Norman Italy* (Cambridge: Cambridge University Press, 2009), 76; *Stratigotus*: Arca xxiii 119 (1136); Arca xxiv 68 (1138); xxiv 69 (1138); Arca xxvii 64 (1150). Justiciar: Arca xxv 3 (1141-3). Chamberlain: Arca xxv 117 (1146); Arca xxvi 61 (1146).

¹⁵ Oldfield, 84; Hiroshi Takayama, *The Administration of the Norman Kingdom of Sicily* (Leiden: Brill, 1993), 145–55.

in importance after the end of the Norman kingdom—after the city’s leaders made an unfortunate political choice in the tumultuous politics of the 1190s that resulted in some retaliatory razing.

Under the Normans, Salerno became larger and more prosperous than it had been as a Lombard capital: its strongly fortified Lombard citadel (the imposing Castello d'Arechi), its city walls, its mint that struck both gold (*tari*) and copper (*follari*) coins,¹⁶ and its multiple markets were now glorified by a large new cathedral (largely financed by Robert Guiscard) dedicated to the city's patron, San Matteo, while an eleventh-century maritime building program resulted in an improved port and fleet—both of which could rival those of Amalfi and Gaeta.¹⁷ Like merchants from those cities, we know Salernitans traveled at least as far as Alexandria on business, since exemption from the usual taxes on this commerce was one of the liberties Roger II granted to the city in 1137 as a reward for its loyalty during the unsuccessful invasion of the German Emperor, Lothar.¹⁸ The city, which already had a reputation around Europe in the ninth and tenth centuries as a place of healing, now hosted a medical school where Constantine Africanus famously translated works of Arabic medical knowledge into Latin.¹⁹ The city seems to have earned its nickname of Salerno *Opulenta*, as it is called on certain Salernitan copper *follari*.²⁰

¹⁶ Grierson, “The Salernitan Coinage of Gisulf II (1052-77) and Robert Guiscard (1077-85)”;
Grierson, *Medieval European Coinage*, 106; Loud, *The Age of Robert Guiscard*, 140.

¹⁷ Loud, *The Age of Robert Guiscard*, 139–41; Oldfield, *City and Community in Norman Italy*, 25–26, 30; Arma Magna D 33 (1105); G. A. Loud, *The Social World of the Abbey of Cava, c. 1020-1300* (Woodbridge: Boydell Press, 2021), 25; Paolo Delogu, *Mito di una città meridionale* (Naples: Liguori Editore, 1977), 152-3, 181–90.

¹⁸ Brühl, *Rogarii II. Regis Diplomata Latina*, II:131 no. 46: *preterea decimas et alia iura mercatorum que Salernitani in Alexandria prius persolvere soliti erant ad morem et modum Sicilie negotiatorum reduci faciemus quatenus eadem lex et similis consuetudo Siculis et Salernitanis permaneat*; Oldfield, *City and Community in Norman Italy*, 75.

¹⁹ Delogu, *Mito di una città meridionale*, 153–54.

²⁰ Grierson, “The Salernitan Coinage of Gisulf II (1052-77) and Robert Guiscard (1077-85),” 38, 56.

Yet for all its administrative importance, and the presence of numerous royal officials, Salerno remained oddly removed from the Norman regime. It appears rarely in the rich set of politico-literary sources produced by and for the Norman court; and plays a modest role in the colorful political and military dramas these sources record. Despite the presence of royal officials, the city enjoyed considerable autonomy. During the wars establishing the monarchy in the late 1120s and 1130s, the city had remained steadfastly loyal to the king and was rewarded with extensive immunities and privileges in both 1127 and 1137.²¹ The city's records reveal royal officials played little to no part in the day-to-day governance of the city, which was instead left to local elites like the city's judges. In fact, in the only notable anecdote of Salerno in the literary sources, it is the native judges of the city who play a starring role. In the *Liber de Regno Sicilie*, William I, after being persuaded not to destroy the city for its role in the 1161-2 rebellion against him, asks the *stratigotus* and judges (*iudices*) to bring him the traitors still in the city to be hanged, rather than entering the city himself.²² This disjuncture between the city's administrative, social, cultural, and economic importance and the relative lack of royal documentation about it make it an interesting place to study the relationship of royal and local law.

²¹ The entry for Salerno in the *Catalogus Baronum*—the royal register of military obligations for the kingdom's army, the *magne expeditionis*, and an important source for prosopography and social history in southern Italy—is very short considering the city's importance. *Catalogus Baronum*, ed. Evelyn Jamison, *Fonti per La Storia d'Italia* vol. 101, (Roma: Istituto storico italiano per il Medio Evo, 1972), paras. 514-517 (Salerno). The main narrative sources for the early and central kingdom period (1130-1170), the chronicles of Alexander of Teles and Falco of Benevento, are mostly interested in the events of Roger II's war to create the kingdom and, in Falco's case, the internal politics of Benevento and its relationship with the papacy. Oldfield, *City and Community in Norman Italy*, 75; Brühl, *Rogerii II. Regis Diplomata Latina*, II:129–31, no. 46; Donald Matthew, “Semper Fideles. The Citizens of Salerno in the Norman Kingdom,” in *Salerno nell’XII Secolo: Istituzioni, Società, Cultura* (Salerno: Centro studi salernitani “Raffaele Guariglia,” 2004), 32-34.

²² G. A. Loud and T. E. J. Wiedemann, eds., *A History of the Tyrants of Sicily By “Hugo Falcandus” 1153-69* (Manchester: Manchester University Press, 1998), 131–33; G.B. Siragusa, ed., *La Historia o Liber de Regno Sicilie e La Epistola Ad Petrum Panormitane Ecclesie Thesaurarium Di Ugo Falcando*, vol. 22, *Fonti per La Storia d'Italia* (Roma: Istituto Storico Italiano, 1897), 80–84

The Historiographical Landscape

While there has been, since the 1990s, a flowering of interest in the Norman Kingdom of Sicily among Anglophone historians,²³ especially in the realm of social history,²⁴ there has not been a similar level of interest in the Kingdom's legal history. In three different historiographic essays laying out the state of the field, the most recent of which is from 2010, there is no mention of legal history.²⁵ Italian and French historians of the Lombard period (774-1077) have worked on its legal tradition, though there is still no synthetic work on southern Lombard law incorporating the most recent scholarship.²⁶ Generally, the law lurks in the background of studies of other

²³ Graham Loud must be credited with beginning this new period of Anglophone interest in the Norman Kingdom of Sicily. His early work on the bishops of Capua inspired interest in the church: G. A. Loud, *Church and Society in the Norman Principality of Capua, 1058-1197*, Oxford Historical Monographs (Oxford: Clarendon Press, 1985); Ramseyer, *The Transformation of a Religious Landscape*; G. A. Loud, *The Latin Church in Norman Italy*, Reissue edition (Cambridge: Cambridge University Press, 2011); Patricia Skinner's interest in the social history of southern Italy would prove to be influential: Patricia Skinner, *Family Power in Southern Italy: The Duchy of Gaeta and Its Neighbours, 850-1139*, Cambridge Studies in Medieval Life and Thought, 4th ser., 29 (Cambridge: Cambridge University Press, 1995); Joanna Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194* (Ithaca: Cornell University Press, 2002); The historiography of the Norman Kingdom's administration is vast: Takayama, *The Administration of the Norman Kingdom of Sicily*; Jeremy Johns, *Arabic Administration in Norman Sicily: The Royal Diwan* (Cambridge: Cambridge University Press, 2002); Annliese Nef, *Conquérir et Gouverner La Sicile Islamique Aux XIe et XIIe Siècles*, Bibliothèque Des Écoles Française d'Athènes et de Rome, fascicule trois cent quarante-sixième (Rome: École française de Rome, 2011); Muslims in Sicily: Alex Metcalfe, *Muslims and Christians in Norman Sicily: Arabic Speakers and the End of Islam* (New York: RoutledgeCurzon, 2003); The Norman Kingdom and the Byzantines: Vera von Falkenhausen, "The Greek Presence in Norman Sicily: The Contribution of Archival Material," in *The Society of Norman Italy*, ed. G.A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 253–88; James Morton, *Byzantine Religious Law in Medieval Italy*, Oxford Studies in Byzantium (Oxford: Oxford University Press, 2021); Urban history: Oldfield, *City and Community in Norman Italy*; Lordship: Carocci, *Lordships of Southern Italy*; Nobility and counts: Hervin Fernández-Aceves, *County and Nobility in Norman Italy: Aristocratic Agency in the Kingdom of Sicily, 1130-1189* (New York: Bloomsbury Academic, 2020).

²⁴ The volume dedicated to the subject is a who's who of scholars of the Norman Kingdom: G. A. Loud and Alex Metcalfe, *The Society of Norman Italy* (Leiden: Brill, 2002).

²⁵ Jean-Marie Martin, "Historiographie récente de l'Italie méridionale pendant le haut moyen âge," *Cahiers de civilisation médiévale* 41, no. 164 (1998): 331–51; Loud, *The Age of Robert Guiscard*, 314–20; Sarah C. Davis-Secord, "Medieval Sicily and Southern Italy in Recent Historiographical Perspective," *History Compass* 8, no. 1 (January 1, 2010): 61–87.

²⁶ The essential study of southern Lombard law remains: Paolo Delogu, "La giustizia nell'Italia meridionale Longobarda," in *La giustizia nell'alto Medioevo, secoli IX-XI* (Spoleto: Centro italiano di studi sull'alto Medioevo, 1997), 257–312; Carozzi's book on Lombard Salerno contains a long chapter on the law, which is important throughout the book: Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe Siècle)*; As future chapters will make clear, Galante's work on the legal and documentary history of Salerno is essential: Maria Galante, "Il giudice a Salerno in età Normanna," in *Salerno Nel XII Secolo. Istituzioni, Società, Cultura*, ed. Paolo Delogu and Paolo

topics as a structuring force or source of useful evidence, but it is rarely a subject of study in its own right. This dissertation therefore fills a conspicuous gap in the growing historiography of the Norman Kingdom of Sicily.

A major reason for the lack of interest in the law may be that, as with many aspects of the historiography of the Normans in Sicily, the study of the Kingdom's legal history has been dominated for over a century by the monarchy, specifically royal legislation and royal administration.²⁷ The evidence of both literary and documentary sources testifies that the foundation of the Norman Kingdom in the 1130s by Roger II was accompanied by the development of new legal institutions like justiciars and chamberlains and the issuing of legislation, which survives in two manuscript versions.²⁸ The legislation and new institutions attracted scholars in the early- to mid-twentieth century who were interested in constructing narratives about state-building and sought in the medieval period the origins of the modern state and European world hegemony. The most prominent and concise formulation of this strand of historiography, Joseph Strayer's 1970 book *On the Medieval Origins of the Modern State*, praises the Normans in the South while simultaneously condemning them to the sidelines of his story, arguing that "the brilliant promise of the twelfth-century kingdom of Sicily failed to

Peduto (Salerno: Centro studi salernitani "Raffaele Guariglia," 2004), 46–60; Maria Galante, "Il notaio e il documento notarile a Salerno in epoca longobarda," in *Per una storia del notariato meridionale*, Studi storici sul notariato Italiano, VI (Rome: Consiglio Nazionale del Notariato, 1982), 71–94; Maria Galante, "Un necrologio e le sue scritture: Salerno, sec. XI-XVI," *Scrittura e Civiltà* 13, no. 13 (1989): 49–89; Maria Galante, "Documenti giudiziari e atti d'ufficio nella tradizione salernitana: magistrature e 'scritture' dalla costituzione del Regnum all'età di Federico II," *Bullettino dell'Istituto storico italiano per il medio evo* 117 (2015): 117–221; Fischer-Drew's study and translation of the Lombard laws remains indispensable, if too short: Katherine Fischer Drew, trans., *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973).

²⁷ See Carocci's perceptive comments on the "myth of the monarchy": Carocci, *Lordships of Southern Italy*, 30–32.

²⁸ "King Roger...established peace and good order in his kingdom and to preserve that peace instituted chamberlains and justiciars throughout the land, promulgated laws which he had newly drafted and removed evil customs from their midst." G. A. Loud, trans., "Romuald of Salerno, Chronicon Sive Annales, 1125-54," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259; Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.C.1178)*, ed. C. A. Garufi. (Città di Castello, 1914), 225.

survive the misfortunes and the political blunders of the thirteenth century,” by which he means the interminable wars and bitter conflicts between Frederick II, the papacy, and the Angevins.²⁹ Strayer was echoing Charles H. Haskins with this sentiment, who fifty-five years earlier had also called the Norman Kingdom “brilliant but ephemeral, precocious but lacking in permanent results.”³⁰ To find such permanent results, Haskins argued, one must look at Norman Sicily’s English sibling, which was similarly precocious but survived into the modern era.³¹

Though the brilliance of the Norman Kingdom did not endure, Norman royal legislation, traditionally called the *Assizes of Ariano*, offered exciting evidence of the precocious and forward-looking mindset that scholars like Strayer and Haskins were seeking. The legislative ideology expressed in the prologue attached to one version of the text and echoed in some statutes seemed to be based on a sophisticated understanding of Roman legal principles, and the understanding of royal sovereignty that the laws evinced was similarly learned and nuanced. Based on this evidence of highly-developed legal thinking, Haskins even went so far as to label the Norman kingdom a “modern state.”³² Others called it a “model state,” eschewing the

²⁹ Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970), 35.

³⁰ Charles H. Haskins, *The Normans in European History* (Boston: Houghton Mifflin Company, 1915), 244.

³¹ Charles H. Haskins, “England and Sicily in the Twelfth Century,” *The English Historical Review* 26, no. 103 (1911): 433–47; There is a whole genre of books devoted to this comparison: David C. Douglas, *The Norman Achievement 1050 - 1100* (Berkeley: University of California Press, 1969); David C. Douglas, *The Norman Fate: 1100-1154* (Berkeley: University of California Press, 1976); John Julius Norwich, *The Kingdom in the Sun, 1130-1194* (New York: Faber and Faber, 2011); Loud’s work is most critical of this narrative: G. A. Loud, “How ‘Norman’ Was the Norman Conquest of Southern Italy?,” *Nottingham Medieval Studies* 25 (January 1, 1981): 13–34; G. A. Loud, “The Gens Normannorum: Myth or Reality?,” in *Conquerors and Churchmen in Norman Italy* (Brookfield: Ashgate Publishing Company, 1999), 104–13; G. A. Loud, “The Kingdom of Sicily and the Kingdom of England, 1066–1266,” *History* 88, no. 4 (292) (2003): 540–67; G. A. Loud, “Norman Traditions in Southern Italy,” in *Norman Tradition and Transcultural Heritage: Exchange of Cultures in the “Norman” Peripheries of Medieval Europe*, ed. Stefan Burkhardt and Thomas Foerster (Burlington: Ashgate Publishing Company, 2013), 35–57.

³² Haskins, *The Normans in European History*, 233.

temporal frame of modernity and rendering their evaluation timeless;³³ still others were even more bombastic, calling it the “first modern territorial state in the West, with the first modern Western system of royal law.”³⁴ These claims about the Kingdom’s modern or model nature were always rooted in the *Assizes of Ariano*, which provided evidence of a sophisticated and learned legal agenda, if not its realization in practice.

But one major issue with using the *Assizes* as evidence of anything is that they pose serious problems of dating and provenance, and the nature of the legislative project they represent remains ambiguous. Early evaluations of the laws placed their origins in a legislative assembly—involving the whole kingdom—held in the Apulian castle of Ariano in 1140, where the king supposedly issued a complete body of laws preserved in a manuscript held in the Vatican library.³⁵ Ménager’s iconoclastic 1969 argument rejected this tidy story by claiming that the laws were not genuine at all and were instead an intellectual product of monastic centers in the late-twelfth and early-thirteenth centuries.³⁶ Neither argument is accepted today;³⁷ instead, scholars have come to accept the uncertainty about the texts’ exact historical origins while insisting on their authenticity as legislation of the Norman kings, particularly Roger II. Such a consensus made space for Kenneth Pennington to argue, in an important 2007 article, for the

³³ Antonio Marongiu, “A Model State in the Middle Ages: The Norman and Swabian Kingdom of Sicily,” *Comparative Studies in Society and History* 6, no. 3 (1964): 319.

³⁴ Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 414.

³⁵ Erich Caspar, *Roger II (1101-1154) und die Grundung der Normannisch-Sicilischen Monarchie* (Innsbruck: Wissenschaftliche Buchgesellschaft, 1904); Hans Niese, *Die Gesetzgebung der Normannischen Dynastie im Regnum Siciliae* (Halle: Max Niemeyer Verlag, 1910); Evelyn Jamison, “The Norman Administration of Apulia and Capua,” *Papers of the British School at Rome* 6, no. 6 (1913): 255–56.

³⁶ Léon Robert Ménager, “La législation sud-italienne sous la domination normande,” in *I Normanni e la loro espansione in Europa nell’alto Medioevo*, Settimane di studio del Centro italiano di studi sull’alto medioevo 16 (Spoleto, 1969), 439–96.

³⁷ Antonio Marongiu, “La Legislazione Normanna,” in *Atti del Congresso Internazionale di studi sulla Sicilia normanna*, 1973, 195–212.

connection of the *Assizes* to the legal revival in Bologna. Pennington claims, in an analysis of the themes and composition of the legal text, that the laws as preserved in the Vatican manuscript were an official compilation of laws created by a jurist at Roger's court with considerable knowledge of Roman law. Since Bologna was the place where such legal expertise was acquired in the twelfth century, that jurist must have been trained there.³⁸

Pennington's argument is basically about plugging the Norman Kingdom into the narrative of the twelfth-century legal revival, which focuses on the rediscovery and intensive study of the ancient texts of Justinianic Roman law and the related study of canon law, primarily in Bologna.³⁹ The Norman Kingdom has largely been left out of this narrative, partly because of the Italian historiographical bias against the South and the racist attitudes of earlier scholarly generations that consigned the region to backwardness and made it unworthy of serious scholarly attention.⁴⁰ But it is also due to the fact that southern Italy and Sicily were never part of the Carolingian world and are therefore left out of narratives, like the legal revival and those about state formation, that emerge from that context. By plugging the Norman Kingdom into the legal revival narrative, Pennington also connects it to Strayer's state-formation story. Legal experts trained in Roman legal principles were fundamental to the development of the new bureaucracies of the twelfth- and thirteenth-century monarchies, and in the Kingdom of Sicily, according to

³⁸ Kenneth Pennington, "The Normans in Palermo: King Roger II's Legislation," *Haskins Society Journal: Studies in Medieval History* 18 (2007): 140–67.

³⁹ Charles H. Haskins, *The Renaissance of the Twelfth Century* (Cambridge: Harvard University Press, 1927); Stephan Kuttner, "The Revival of Jurisprudence," in *Renaissance and Renewal in Twelfth Century*, ed. Robert Benson and Giles Constable (Cambridge: Harvard University Press, 1982), 339–84; Anders Winroth, "The Legal Revolution of the Twelfth Century," in *European Transformations: The Long Twelfth Century*, ed. John Van Engen and Thomas F. Noble (Notre Dame: University of Notre Dame Press, 2012), 338–53.

⁴⁰ Chris Wickham, *Sleepwalking into a New World: The Emergence of Italian City Communes in the Twelfth Century*, The Lawrence Stone Lectures (Princeton, NJ: Princeton University Press, 2015), 3–5; Carocci again summarizes this problem extremely clearly: Carocci, *Lordships of Southern Italy*, 36–42; Maureen C. Miller, "Reframing the 'Documentary Revolution' in Medieval Italy," *Speculum* 98, no. 3 (July 1, 2023): 674–80.

Pennington, it appears that there were such legal experts advising the king on his legislative project.⁴¹

Notably, the Kingdom of Sicily was also home to an entirely different set of experts unconnected to the revival of Roman law; namely, the Arabic- and Greek-speaking bureaucrats that staffed the royal *dīwāns*, or administrative offices, in Palermo. Jeremy Johns' work has convincingly shown that the Normans attempted to preserve or revive the fiscal administration they had inherited from the previous Islamic rulers after they conquered the island. They did this by employing Arabic-speaking bureaucrats from Fāṭimid Egypt, propping up a system weakened by the political fragmentation of the ṭā'ifa period (c. 1042-1061).⁴² This ambitious administrative project was initially run by George of Antioch, a well-traveled bureaucrat who had worked in both Byzantine and Fāṭimid successor administrations before fleeing Ifrīqīya to Sicily to work at Roger's court.⁴³ George's story shows the incredible opportunity that Sicily represented in the twelfth century. The Normans had conquered one of the Mediterranean's great prizes, a spectacularly wealthy place, and thus been thrust into the economic and political structures of the southern and eastern Mediterranean world.⁴⁴ But that wealth was only useful to the counts (then kings) if it could be extracted; fortunately, there were existing fiscal institutions (or at least their remnants) in place to do so. Those institutions would have been unfamiliar to Latin administrators, so the Norman rulers of Sicily turned to the Arabic- and Greek-speaking technocrats who knew how to run them. When the Kingdom of Sicily was created by appending

⁴¹ Strayer, *On the Medieval Origins of the Modern State*, 24–26.

⁴² Johns, *Arabic Administration in Norman Sicily: The Royal Diwan*, chs. 1-2; The history of the period of the ṭā'ifas, petty states, is characterized by difficult sources and many lacunae. There is very little information. See: Alex Metcalfe, *The Muslims of Medieval Italy*, 1st edition (Edinburgh: Edinburgh University Press, 2009), 82–85.

⁴³ Johns, *Arabic Administration in Norman Sicily: The Royal Diwan*, 80–90.

⁴⁴ Sarah Davis-Secord, *Where Three Worlds Met: Sicily in the Early Medieval Mediterranean*, 1st ed. (Ithaca: Cornell University Press, 2017), 213-214.

the mainland territories north of Calabria to the former County of Sicily, the fiscal administration characteristic of the island could not easily be extended northward because those institutions had never existed in the rest of southern Italy.

This geographic disjuncture has caused a great many problems for historians of the royal administration, the other major topic of Italo-Norman legal history. On the one hand, in Calabria and Sicily, there was what looks like a very sophisticated and effective administration where fiscal and legal duties were distinct and officials had certain defined roles; and on the other, there was the confused world of immunities and lordships on the mainland. But the kings ruled both, and for many years historians of the mainland tried to reconstruct the administrative structure of mainland southern Italy with the assumption that it was as organized, structured, and, most importantly, centralized as it was in Sicily. The remarkable work of scholars like Evelyn Jamison (1913), Mario Caravale (1966), and, most recently, Hiroshi Takayama (1993), attempts to reconstruct a coherent picture of this administration out of literary texts, royal legislation, and the scattered references to royal officials in local documents.⁴⁵ Their work consistently assumes that there must have been a structure to royal administration, even if it is not entirely clear from the sources available, and that such a structure was a product of royal initiative imposed by the central court in Palermo.

In their formulation, the kings and their government were the prime movers of legal change in the Norman Kingdom. Jamison is most explicit about this. She states clearly that in Roger's time "the foundations were firmly laid of the best organized state of the Middle Ages. The explanation of this change can only be found in the personality of Roger II...His political

⁴⁵ Jamison, "The Norman Administration of Apulia and Capua"; Mario Caravale, *Il Regno Normanno Di Sicilia* (Milan: Giuffrè, 1966); Takayama, *The Administration of the Norman Kingdom of Sicily*.

genius saw the needs of the country and adopted a scheme which should perfectly satisfy them.”⁴⁶ Such a view leaves little room for other narratives or sources of legal change, and it influences her understanding of the local documentary evidence. She claims that local judges, like those who appeared in the 1143 document from Nocera that we began with, were named by the king and that “from this time onwards [they] always add the expression *regius* or *regalis* to their title, thus showing that they were in fact royal functionaries.”⁴⁷ Others like Caravale and Paul Oldfield similarly discuss these local judges as if they were royal officials that owed their appointment and legal authority to the king.⁴⁸ They assume that the royal administration was both interested in and capable of supervising all aspects of the law in their kingdom, down to the local level, as if all legal authority in the kingdom devolved from the king.

Scholars have proposed other frameworks for understanding the problem of legal authority. Most notably, Sandro Carocci’s book on lordship in the South, which makes extensive reference to local evidence, devotes a chapter to what he calls ‘Seigneurial Justices,’ in which he examines local law through the lens of lordship.⁴⁹ He is mostly concerned with the problem of judicial authority: who gave judges (understood in the broad sense of any person who judges) the right to make judgements?⁵⁰ Because he is interested in lordship, his guiding questions are influenced by the ‘feudal revolution’ debates of the 1990s about the nature of political authority in Mediterranean Europe around the year 1000: how and when did local lords get control of governmental powers like the administration of justice, taxation, or defense (the powers of banal

⁴⁶ Jamison, “The Norman Administration of Apulia and Capua,” 265.

⁴⁷ Jamison, 267.

⁴⁸ Caravale, *Il Regno Normanno Di Sicilia*, 338–44; Oldfield, *City and Community in Norman Italy*, 107.

⁴⁹ Carocci, *Lordships of Southern Italy*, chap. 9.

⁵⁰ Carocci, chaps. 5, 9.

lordship)?⁵¹ Carocci examines this question in the context of the twelfth-century Norman Kingdom and finds that southern-Italian lords had a limited capacity to use justice as a way of establishing control over local society, in contrast to their contemporaries in other parts of Italy and the rest of Europe.⁵² His argument is based largely on the evidence of privileges called *consuetudines* granted by lords to their subjects that claim to structure legal practice in local communities.⁵³ But, as I discuss in Chapter Three, the documentary evidence from the Salernitano suggests that the lords did not always possess the judicial rights they claimed power over in the *consuetudines* documents.⁵⁴ Lordship is therefore not a particularly useful frame of analysis for understanding local law and legal authority.

The primary issue with both the narrative of royal administration and Carocci's study of lordship is that they do not engage in a meaningful way with what local people actually did in terms of the law or the nature of legal institutions and how they changed under Norman kingship. The lack of interest in local practice is neatly encapsulated in Donald Matthew's statement (made in the context of discussing royal administration) that, "although the extent to which the doing of justice remained a local matter in the twelfth century cannot be examined in detail, it ought to be assumed in general."⁵⁵ The legislation of the Norman kings, which explicitly sanctioned the continued observance of local customary law, also reserved the king's right to change it.

Scholars like Matthew therefore largely seem to have accepted the royal legislative ideology and

⁵¹ Thomas N. Bisson, "The 'Feudal Revolution,'" *Past & Present*, no. 142 (1994): 6–42; Dominique Barthélemy and Stephen D. White, "The 'Feudal Revolution,'" *Past & Present*, no. 152 (1996): 196–223; Timothy Reuter and Chris Wickham, "The 'Feudal Revolution,'" *Past & Present*, no. 155 (1997): 177–208; Chris Wickham, "The 'Feudal Revolution' and the Origins of Italian City Communes," *Transactions of the Royal Historical Society* 24 (December 2014): 29–55.

⁵² Carocci, *Lordships of Southern Italy*, 363.

⁵³ Carocci, 172, fn. 23.

⁵⁴ See Ch. 3, fn. 53–77..

⁵⁵ Matthew, *The Norman Kingdom of Sicily*, 246.

assumed that local law did not change very much.⁵⁶ In other words, if the Lombard customary law that was observed before the advent of the monarchy (the same Lombard law that structured the 1089 document we began with) was allowed to continue under royal auspices, it must have looked more less as it did in the period preceding the monarchy. Why look at it any closer? The assumption seems to be that customary law was essentially unchanging and that real legal change, the kind that put a kingdom on the tracks to modern statehood and was thus worth studying, only happened when kings legislated or developed new legal institutions.⁵⁷

But, to return to the two documents from Nocera we began with, change clearly occurred between 1089 and 1143. At the same time, it is not clear that the Norman kings, their government, or the rediscovered Roman law that so influenced royal legislation had anything to do with it. The judge who had become so central to the town's legal institutions does not call himself a royal judge (*contra* Jamison). Indeed, the king is only mentioned in the dating clause. Nor is there any indication that the judge was educated in Roman law or had gone to Bologna. And yet it seems clear that the legal institutions of Nocera had come under the control of legal experts calling themselves judges. But if those judges were not royal judges and they had no Roman legal training, who were they? How had they taken control of Nocera's legal institutions?

⁵⁶ For the general tendency of medieval legislation to leave much legal practice up to custom, see: Ada Maria Kuskowski, "The Time of Custom and the Medieval Myth of Ancient Customary Law," *Speculum* 99, no. 1 (January 1, 2024): 145. The Norman assize saying so, which will be discussed in Chapter Four, is VL I, *De legum interpretatione: Leges a nostra maiestate noviter promulgatas pietatis intuitu asperitatem nimiam mitigantes mollia quodam moderamine exacuentes obscura dilucidantes generaliter ab omnibus precipimus observari moribus consuetudinibus legibus non cassatis pro varietate populorum nostro regno subiectionum sicut usque nunc apud eos optinuit nisi forte nostris his sanctionibus adversari quid in eis manifestissime videatur*. We order that the laws newly promulgated by our majesty, mitigating excessive harshness through piety, in this manner encouraging pleasant things through government and elucidating obscurities, be generally observed by all. On account of the variety of peoples subject to our rule, the usages, customs, and laws that up until now they have observed are not abrogated, unless perhaps what is in them seems very obviously contrary to our present decrees.

⁵⁷ Kuskowski, 143–47, 152–53.

To answer this question, it is necessary to break free from paradigms that center the monarchy or lordship. Chris Wickham, in his contribution to the feudal revolution debates, proposed that the long period between about 950 and 1100 be characterized by the shift from “previously informal patterns of practice, domination, solidarity, or identity” to ones that were “formal, rule-bound, and explicit.”⁵⁸ Lords who claimed the powers of banal lordship (governmental powers like the right to judge, tax, and defend their lands),⁵⁹ he argues, initially did so in a *de facto* way, but over the course of the eleventh century, those *de facto* rights increasingly became *de jure*. Wickham also points out that the justice of banal lordship “was not unrivalled;” other sources of legal authority like the city or the Peace of God were consolidating themselves in the same period.⁶⁰ In other words, the period just before and including the twelfth century was one of formalization and institutional change.

Both a cause and consequence of this process of formalization was that, as Susan Reynolds has argued in the context of the twelfth century legal revival, the law “began to become the business of experts.”⁶¹ The long twelfth century, marked by significant transformations in many aspects of Western European society and culture, has intrigued medieval historians since the publication of Charles H. Haskins’ provocative book, *The Renaissance of the Twelfth Century*.⁶² Common to many of the changes that Haskins and others

⁵⁸ Timothy Reuter and Chris Wickham, “The ‘Feudal Revolution,’” *Past & Present*, no. 155 (1997): 206.

⁵⁹ Carocci’s discussion of the terms for lordship in the Foreword to the English Edition of his book is extremely helpful for sorting out these often bewildering categories. See: Carocci, *Lordships of Southern Italy*, 19–25.

⁶⁰ Reuter and Wickham, “The ‘Feudal Revolution,’” 1997, 204.

⁶¹ Susan Reynolds, “Medieval Law,” in *The Medieval World*, ed. Peter Linehan and Janet L. Nelson (London: Routledge, 2003), 572–73.

⁶² Haskins, *The Renaissance of the Twelfth Century*; Haskins’ book spawned two excellent compilations of studies of this period: Robert Benson and Giles Constable, eds., *Renaissance and Renewal in Twelfth Century* (Cambridge: Harvard University Press, 1982); John Van Engen and Thomas F. Noble, eds., *European Transformations: The Long Twelfth Century* (Notre Dame: University of Notre Dame Press, 2012).

have identified in this period is the increased interest (sometimes bordering on fanatical obsession) in expertise among medieval people. Peter Abelard, the theologian and philosopher, recalls with rather smug satisfaction in his autobiography how when he built his hermitage in the woods outside Paris in 1122, students “flock[ed] thither from all sides, leaving their towns and castles to dwell in the wilderness.”⁶³ In a similar vein, the fledgling university in Bologna and its professors dedicated to the study of the newly-rediscovered Justinianic law and the law of the church attracted eager students from all over Western Europe.⁶⁴ Just as Roger II turned to George of Antioch for his expertise on the fiscal administration of Sicily, the German Emperor, Frederick Barbarossa, when confronted with legal problems, asked for advice from the famous Four Doctors of Bologna.⁶⁵ Everywhere one turns in the twelfth century, experts, or the search for expertise, abound. It is in this context that Reynolds argues that “the new law practiced both by the elite and by notaries or country attorneys involved far more rules than the old. These rules, together with ways to apply or circumvent them, had to be learned.”⁶⁶ For Reynolds, these rules came from Roman or canon law, but I would argue that they did not have to. Local legal cultures could also be a source of experts and expertise.

Sources and Places

⁶³ Peter Abelard, *The Story of My Misfortunes: The Autobiography of Peter Abélard*, trans. Henry Adams Bellows (New York: Macmillan, 1972), chap. XI.

⁶⁴ Winroth, “The Legal Revolution of the Twelfth Century,” 343–45; Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000), 162–68; Anders Winroth, “The Teaching of Law in the Twelfth Century,” in *Law and Learning in the Middle Ages*, ed. Helle Vogt and Mia Münster-Swendsen (Copenhagen: Djoef Publishing, 2006), 41–62.

⁶⁵ Kenneth Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley: University of California Press, 1993).

⁶⁶ Susan Reynolds, “The Emergence of Professional Law in the Long Twelfth Century,” *Law and History Review* 21, no. 2 (2003): 350.

Understanding processes of legal and institutional change in the Salernitano and the Kingdom of Sicily more broadly requires examining a wide variety of sources. Archival documents are the core of my evidence base, but just as important are normative legal texts like the *Assizes of Ariano* and Lombard law, as well as literary historical sources from the twelfth-century Norman Kingdom. Putting these different kinds of evidence in conversation with one another is central to the argument and method of this dissertation. Much of the legal historiography tends to focus on the legislation or literary texts while neglecting the documentary evidence. When documents are used, they are plucked from scattered temporal and geographical contexts, instead of being understood as part of a distinct local legal culture. This dissertation develops a holistic view of Salernitan legal culture by analyzing both the documentary evidence and the normative and literary sources that provide evidence of the broader legal setting.

This dissertation is based primarily on original, unpublished archival documents from the Benedictine Abbey of La Santissima Trinità della Cava (henceforth, simply Cava), just northwest of Salerno.⁶⁷ Cava's archive holds the largest collection of such documents in southern Italy: there are around 15,000 Latin parchments spanning the eighth to the fifteenth centuries. Of these

⁶⁷ The abbey of Cava was founded around the year 1020 by a Salernitan nobleman turned hermit named Alferius. The monastery quickly became a favorite of the Lombard Princes of Salerno and later the Norman Dukes of Apulia, who lavished it with donations and gifts, so that it had acquired a significant patrimony by the end of the twelfth century. The monastery was also active in buying land and dependent churches to augment its patrimony. It was later granted the honor of sending monks to staff King William II's royal monastery of Monreale outside Palermo. For an excellent introduction, see: Loud, *The Social World of the Abbey of Cava, c. 1020-1300*; G. A. Loud, "The Medieval Archives of the Abbey of S. Trinità, Cava," in *People, Texts and Artefacts*, ed. David Bates, Edoardo D'Angelo, and Elisabeth van Houts, Cultural Transmission in the Medieval Norman Worlds (University of London Press, 2017), 127–52.

15,000 single sheet parchments, 1,500 (10%) are from the eleventh century, most of which have been published,⁶⁸ and 3,550 (24%) are from the twelfth, most of which are unpublished.⁶⁹

The archive is split into two unequal sections. The smaller *Armaria Magna* contains the most important documents in the monastery's collection, usually charters of donation from important political figures like dukes, princes, kings, or bishops (even the pope).⁷⁰ The majority of the parchments, however, are stored in the other section, the *Arcae*.⁷¹ The *Arcae* contain the humbler, more workaday documents made by the monastery's less politically powerful donors. Most of this dissertation is based on documents from the *Arcae*, since the documents are much more numerous and, by virtue of their being made by and for Salernitans, representative of local institutions of production.

The parchments are the monastery's records, so they are primarily concerned with its considerable property holdings. As we will see, the legal culture of the Salernitano produced many documents of varying types. Sales, donations, purchases, oblations, agreements, wills, case records, marriage agreements, and confessions all survive in Cava's archive. As I will discuss in

⁶⁸ The archive's earliest documents, from 792 to 1090, have been edited and published in the *Codex diplomaticus Cavensis* series: M. Morcaldi et al, eds., *Codex diplomaticus Cavensis*, vol. 1–8 (Milan, 1873); G. Vitolo and L. Leone, eds., *Codex diplomaticus Cavensis*, vol. 9–10 (Badia di Cava, 1984); Carmine Carlone, Leone Morinelli, and Giovanni Vitolo, eds., *Codex diplomaticus Cavensis*, vol. XI (Badia di Cava: Laveglia & Carlone, 2015); Carmine Carlone, Leone Morinelli, and Giovanni Vitolo, eds., *Codex diplomaticus Cavensis*, vol. XII (Badia di Cava: Laveglia & Carlone, 2015).

⁶⁹ The larger share of the documents in the archive, those from the twelfth through fifteenth centuries, are largely unedited and unpublished. Some documents from the twelfth and thirteenth centuries have been edited, but they are largely scattered and difficult to locate: G. A. Loud, "The Medieval Archives of the Abbey of S. Trinità, Cava," in *People, Texts and Artefacts*, ed. David Bates, Edoardo D'Angelo, and Elisabeth van Houts, *Cultural Transmission in the Medieval Norman Worlds* (University of London Press, 2017), 127; Loud has recently published a selection of twelfth-century documents from Cava, but these were largely chosen for their interest for the history of the church in southern Italy: *Pergamene scelte della Badia di Cava: 1097-1200* (Ariano Irpino: Centro europeo di studi normanni, 2019).

⁷⁰ The *Armaria* are organized alphabetically, so references will include the letter of the chest, the number of the document, and the date: Arma Magna A 1 (year).

⁷¹ The *Arcae* are organized by Roman numeral, which denotes the chest, and an Arabic numeral for the individual document. References will include the Roman numeral, Arabic numeral, and date: Arca I 1 (year).

Chapter Four, there are no records of criminal cases in my documentary corpus (or anywhere in southern Italy). The breadth of types of documents is helpful in that change can be traced not only through time and space, but also through different kinds of transactions. The two documents of sale that began this introduction are an example of this. Most of the documents have to do with the monastery and its dependents, but sometimes small archives of documents produced by both laymen and other clerics were transferred as part of a property transaction. These small archival backlogs are the ultimate source of most of the archive's exclusively lay documentation and allow me to evaluate whether there were significant differences between lay and clerical documentary practices.

Cava's parchments are stored and archived individually as rolled parchments; the monks of Cava did not create a monastic cartulary or register in the twelfth century, in contrast to many of their monastic contemporaries in Western Europe during this period.⁷² The present-day monastery has only a limited register of its parchments;⁷³ using this and physical examination, I was able to identify and transcribe a corpus of 419 mostly unpublished documents from the eleventh and twelfth centuries that attest to law and legal practice in the Salernitano. In temporal terms, 52 (12% of corpus, 3.4% of eleventh-century total) are from the eleventh century and 367 (88% of corpus, 10% of twelfth-century total) from the twelfth. Of the twelfth-century

⁷² The early-thirteenth century administrative register of Abbot Balsamon of Cava, which recorded the amounts due in cash to the abbot's chapel from certain of the monastery's properties, is being worked on by Maureen Miller. See: Maureen C. Miller, "Abbot Balsamon's Book: The Origins of Administrative Registers at Cava Dei Tirreni," *The Catholic Historical Review* 108, no. 1 (January 2022): 1–43; Miller, "Reframing the 'Documentary Revolution' in Medieval Italy," 691.

⁷³ There is a modern register which provides dates and a short summary for each of the archive's documents, including the documentary type (*venditio*, *emptio*, *traditio*, *oblatio*, etc), details about the parties to the case, and the amounts of money involved. The physical copy of this register is the only way to navigate the archive, which has minimal online presence and is not yet digitized: Carmine Carleo, ed., *Repertorio delle pergamene dell'Archivio Cavense, Periodo Normanno: 1077-1194* (Badia di Cava: Biblioteca statale del monumento nazionale Badia di Cava (Salerno), 2007).

documents, 260 (62% of corpus) are from the early to central years of the Norman monarchy, 1130-1170, when most of Roger II's administrative changes were implemented, including the creation of the offices of royal justiciar, chamberlain, and later, *baiulus*.⁷⁴

Most of these parchments are from the city of Salerno, but thanks to Cava's extensive property holdings, I was also able to focus my attention on three selected regions in the Salernitano—Eboli, Nocera, and the Cilento peninsula—and one in Apulia—Sant'Agata di Puglia. Each of these places was chosen for specific reasons, and the three within the Salernitano are the subject of case studies in Chapter Three. I chose Eboli because of its proximity to Salerno (the two cities are only about 33 kilometers apart) and the distinctive nature of its documents. As will be discussed in more detail in Chapter Three, Ebolitan documents have a distinct visual aspect and diplomatic that differs from Salerno, at least in the early twelfth century. In a similar way, Nocera and the Cilento peninsula were chosen because of their connection to Cava (the monastery had many properties and dependent monasteries in both regions) and the initially distinct nature of their documents. I chose Sant'Agata di Puglia because it was one of the few places in Apulia where Cava had a dependency (S. Pietro di Olivola) whose documents ended up in its archive. Those documents comprise a sizeable but manageable corpus of original, unpublished documents (29 documents, spanning the years 1095-1187) and I was able to examine them all. Sant'Agata was handed over to the king during the wars establishing the kingdom in the 1130s, so the castle and its documents will reappear in Chapter Four in my discussion of royal law.⁷⁵

⁷⁴ See Part Two, Chs. 4 and 5.

⁷⁵ G. A. Loud, trans., "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), bk. II.51, p. 96; G. A. Loud, trans., "The Chronicle of Falco of Benevento," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 235.

The principal advantages of using these single-sheet parchment originals lie in their status as documents of practice and in their materiality. When put into conversation with literary and normative sources, the documents make it possible to draw out the relationship between the idealized world of norms and the reality of how the law worked at the local level. Additionally, as Chapter One will discuss in detail, the materiality of the documents gives insight into their production, use, and afterlife, all of which are relevant to understanding the legal culture of the Salernitano.

The documents also have considerable limitations for social history. Sales, donations, purchases, and other such economic documents adhered to a set of formulaic documentary conventions that made them useful to twelfth-century people as legal documents. At the same time, these formulae make it difficult to use the documents as evidence for social-historical or extended-case analyses, mostly because of the difficulty of prosopography. People only tend to be mentioned once, or if they are mentioned more than once, it is difficult to trace them because of the lack of patronyms. The exception are case records, which contained, as part of their diplomatic, some space for the narration of events.

In my discussion of royal law in Part Two, I supplement these original unpublished parchments with the royal documents from the reigns of Roger II (r. 1130-1154) and William I (r. 1154-1166) edited by Carlrichard Brühl and Horst Enzensberger in the volumes of the *Codex Diplomaticus Regni Siciliae* series.⁷⁶ These collections compile the known documents issued by the royal chancery during the two kings' reigns and organize them chronologically. Each document is introduced with the archival citation of the original, when available, any editions in

⁷⁶ Brühl, *Rogerii II. Regis Diplomata Latina*; Horst Enzensberger, ed., *Guillelmi I. Regis Diplomata*, *Codex Diplomaticus Regni Siciliae* (Cologne: Bohlaus, 1996).

which it has already appeared in print, and a substantial discussion of the relevant diplomatic and historical details needed to understand the document. These introductions are especially useful in that they note which documents are forgeries and, where possible, the probable circumstances of that forgery. The series intended to publish all the documents of the Norman kings, but the documents of King William II (r. 1166-1189) have not yet been published.

In addition to these documentary sources, I use authoritative legal texts like law codes and legislation. I discuss the sources and textual history of the Norman royal legislation known as the *Assizes of Ariano* in detail in Chapter Four, so I will not do so here.⁷⁷ Suffice it to say that the texts of the laws are found in two manuscript versions, one in the Vatican library and one at Montecassino. Neither version contains clear information about its date or circumstances of promulgation, so the statutes will generally be used individually to elucidate certain legal issues, rather than considered as part of a cohesive legislative project. The texts of Lombard law show up repeatedly, sometimes to contextualize certain Lombard legal practices, but also in arguments about how local judges used and sometimes refashioned the Lombard legal tradition for their own purposes. Lombard law was the foundation of the Salernitano's legal culture, and it underpins most of the region's legal procedure and documentary norms. These laws are readily available both in translation and in editions.⁷⁸ I have used the same collection of Lombard law, the MGH edition of the *Liber Papiensis*, throughout, though many different versions of the Lombard laws circulated in southern Italy.⁷⁹ The *Liber Papiensis*, compiled by jurists in

⁷⁷ See Ch. 4, fn. 22-41.

⁷⁸ The 1973 translation and short introductory study of the Lombard laws by Katherine Fischer Drew is the main source available for the Lombard laws in English. Her introduction is helpful and concise, as are the glossary and notes, but an updated study of the laws is long overdue. Drew, *The Lombard Laws*.

⁷⁹ Alfredus Boretius, *Liber Leges Langobardorum Papiensus Dictus*, vol. Leges IV, Monumenta Germaniae Historica (Hannover: Monumenta Germaniae Historica, 1868).

eleventh-century Pavia, contained the edicts of all the Lombard kings, as well as Carolingian and Ottonian legislation.⁸⁰ It was also one of the texts bound alongside the Vatican version of the royal legislation, so it was certainly known and used in southern Italy.

The final set of sources are southern-Italian historical texts, including the chronicles of Falco of Benevento⁸¹ and Romuald of Salerno,⁸² and the more polemical works of Alexander of Telese, a royal propagandist who wrote a history of Roger's wars of pacification in the 1130s,⁸³ and the anonymous *Liber de Regno Sicilie*, a scathing account and indictment of the corruption at the royal court in Palermo during the 1150s and 1160s.⁸⁴ The *Liber*, in particular, is an under-appreciated source for the legal history of the Norman Kingdom. It narrates, in detail, seven trials at the royal court and, in contrast to documentary case records, identifies and follows up on the people involved. These trials are our best and essentially only evidence for how criminal legal trials worked in the Norman Kingdom and are especially useful for evaluating how criminal punishment worked in practice. The *Liber de Regno Sicilie* is an essential source for understanding royal legal culture, the perception of royal justice among the king's subjects, and the structure and procedure of the court in Palermo.

⁸⁰ Chris Wickham, *Early Medieval Italy: Central Power and Local Society, 400-1000*, New Studies in Medieval History (London: Macmillan, 1981), 124.

⁸¹ Loud, "The Chronicle of Falco of Benevento"; Falco of Benevento, *Cronisti e scrittori sincroni della dominazione normanna nel Regno di Puglia et Sicilia*, ed. Giuseppe Del Re, vol. 1: I Normanni (Napoli: Stamperia dell'Iride, 1845).

⁸² Loud, "Romuald of Salerno, Chronicon Sive Annales, 1125-54"; Romuald of Salerno, "Chronicon Sive Annales, 1153-1169," in *The History of the Tyrants of Sicily by "Hugo Falcandus" 1154-1169*, ed. G. A. Loud and T. E. J. Wiedemann (Manchester: Manchester University Press, 1998); Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.C.1178)*.

⁸³ Loud, "Abbot Alexander of Telese, The History of the Most Serene Roger, First King of Sicily"; Ludovica de Nava and Dione Clementi, eds., *Alexandri Telesini Abbatis Ystoria Rogerii Regis Sicilie Calabrie Atque Apulie* (Rome: Istituto storico Italiano, 1991).

⁸⁴ G. A. Loud and T.E.J. Wiedemann, eds., *A History of the Tyrants of Sicily By "Hugo Falcandus" 1153-69* (Manchester: Manchester University Press, 1998); G.B. Siragusa, ed., *La historia o Liber de Regno Sicilie e la epistola ad Petrum Panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, Fonti per la storia d'Italia (Roma: Istituto storico Italiano, 1897).

Methodology: Legal Culture, Institutions, and Documents

This dissertation is, at its core, a study of legal culture, a term that is notoriously hard to define and undertheorized. Scholars tend to use the word freely to mean all manner of things ranging from the ideology and practices of the professional legal class to the set of cultural attitudes about the law (or its practitioners) held by nonprofessionals. The definition preferred here is David Nelken's formulation that legal culture is the exploration of "systematic variations in patterns in 'law in the books,' in 'law in action,' and above all, in the relation between them."⁸⁵ Studies of legal culture do not view the law in purely intellectual terms as a closed system, what David Wagschal calls "a very human rule game" that was "secular, instrumental, and quasi-mechanical."⁸⁶ Viewing the law this way, as a rational system of rules with its own internal logic designed to produce a legal remedy for every conceivable situation, is itself a product of a modern Western legal culture built by generations of lawyers. Instead, studies using the legal-cultural paradigm try to understand how the law in both its textual and practical expressions shaped and was shaped by socio-cultural attitudes about justice, morality, order, community relationships, and government, among other things. The 'law in the books,' meaning law codes and other authoritative legal texts, were important in twelfth-century southern Italy, and structured certain elements of legal practice. But as we will see at multiple points in the following chapters, the relationship between norm and practice was not straightforward and the medieval inhabitants of the Salernitano often reshaped or reinterpreted what they found in law books to suit their needs.

⁸⁵ David Nelken, "Culture, Legal," in *Encyclopedia of Law and Society: American and Global Perspectives* (Los Angeles: SAGE Publications, 2007).

⁸⁶ David Wagschal, *Law and Legality in the Greek East: The Byzantine Canonical Tradition, 381-883* (Oxford: Oxford University Press, 2015), 287.

In general, I use the term ‘legal culture’ to describe the whole set of texts, norms, practices, assumptions, and, most importantly, institutions that structured how people approached and solved disputes and legal problems. Institutions are an essential part of the narratives of legal change and state formation that this dissertation responds to; indeed, they are the central feature of the incipient states Strayer describes and the main thing that he is looking for in his sources. Strayer’s institutions are impersonal, specialized, permanent, and, most importantly, political.⁸⁷ On the other end of the spectrum from Strayer’s state-centered definition, is Marina Rustow’s understanding of institutions as “a set of socially legible practices that constrain human behavior, give it meaning, and tend to get perpetuated because people perceive them as constitutive of social reality.”⁸⁸ Such a definition is useful for its capaciousness; even relatively informal practices like scribal protocols or other habitual behaviors can be defined and analyzed as institutions. Somewhere between these two ends of the spectrum is the definition provided by Chris Wickham when he identifies the change, between 950 and 1100, from “informal patterns of practice, domination, solidarity, or identity” to ones that were “formal, rule-bound, and explicit.”⁸⁹ The process of legal and institutional change that I track in this dissertation is essentially one of formalization, in which previously informal and community-based legal institutions were standardized and subjected to the authority of experts.

To understand this process of institutional change, I investigate how the mental world of the law—the assumptions people had about how the law worked, how it should be used, and the

⁸⁷ Strayer, *On the Medieval Origins of the Modern State*, 6–8; See the comments in: Frederic L. Cheyette, “The Invention of the State,” in *Essays in Medieval Civilization: The Walter Prescott Webb Memorial Lectures* (Austin: University of Texas Press, 1978), 146–50.

⁸⁸ Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton: Princeton University Press, 2020), 62.

⁸⁹ Reuter and Wickham, “The ‘Feudal Revolution,’” 1997, 206.

nature of justice and authority—interacted with legal practice. People are therefore central to my understanding of legal and institutional change. Institutions are composed by and of agents who interact with existing social structures (by which I simply mean the repeated and regular interaction of individuals)⁹⁰ as conscious people. Legal change happens when people (as agents) introduce variations of socially legible practices that are then taken up, accepted, and repeated because they satisfy some perceived need. The nature of my evidence is such that in most cases, the agents of this change are not visible, or, if they are there, their agent-ness is not evident. The lack of explicit evidence of agents means that I must examine the products of their institutional action to try and puzzle out what they were doing and how that changed over time. In my case, those institutional products are primarily the legal documents of the Cava archive.

As a result, this dissertation is also a documentary history. I understand a document as a record of both a discrete legal act and the institutions and assumptions that went into making it.⁹¹ It is both a product and a producer of institutions: a document had to conform to institutional expectations to be considered legitimate, and by conforming to those expectations, it reinscribed them as meaningful and binding. I trace how such institutional expectations changed over time by analyzing changes in diplomatic and the legal personnel involved with creating legitimate documents. I call this legal change.

Structure of the Dissertation

This dissertation has two parts. In Part One, I trace the story of how, all over the Salernitano in the first half of the twelfth century, traditional legal and documentary institutions associated with Lombard law were replaced by a legal model based on the practices and institutions of the city of

⁹⁰ Nathan Hofer, *The Popularisation of Sufism in Ayyubid and Mamluk Egypt, 1173-1325*, Edinburgh Studies in Classical Islamic History and Culture (Edinburgh: Edinburgh University Press, 2015), 16.

⁹¹ In Rustow's formulation, documents were "records of the workings of power": Rustow, *The Lost Archive*, 9.

Salerno. The source-base for these chapters is composed almost entirely of local unpublished documents from the Cava archive. The first two chapters define the essential features of that Salernitan model, which remained remarkably stable and independent during the entirety of the Norman period (c. 1077-1189). Chapter One describes the distinctive diplomatic of Salernitan documents, including their material, visual, and legal character, and the distinctive ways that Salernitan documents were used in legal contexts. Central to Salerno's documentary institutions were the city's judges, the subject of Chapter Two. These professional judges were members of the city's local elite and controlled all aspects of legal procedure, documentary production, and legal authentication in the city. Together, these two chapters define the Salernitan model, which was characterized by a standardized diplomatic and the centrality of the institution of judgeship. Chapter Three then traces the process of legal change through a series of case studies on Nocera, the Cilento Peninsula, and Eboli. I show how and when the Salernitan model was adopted in each place and the local contingencies that influenced the course of legal change.

Whereas Part One was primarily a local, regional study of legal change, Part Two places this local legal change in the larger context of Norman royal law and examines how the two legal cultures interacted. Chapter Four sets the stage by discussing what we know about royal law and legislation from literary and legislative texts before examining the subjects of royal legal interest displayed in both legislation and documents, as well as the capacity of royal government to act on those interests. I focus on royal legal output (administrative and legal documents) and royal administration, since these were the aspects of royal legal culture most likely to be reflected in my documentary corpus. The final chapter, Chapter Five, returns to the Salernitano to examine the evidence of royal power at the local level. Using the documentary evidence of royal administration from the Cava archive, I show how royal officials did not have a great deal of

legal power; instead, they worked within the structures of local law and were subject to local custom. A short conclusion discusses the implications of my argument, the path forward, and how the findings of Part Two reinforce those of Part One: local law in the Salernitano changed according to models associated with the city of Salerno and not royal law.

Images

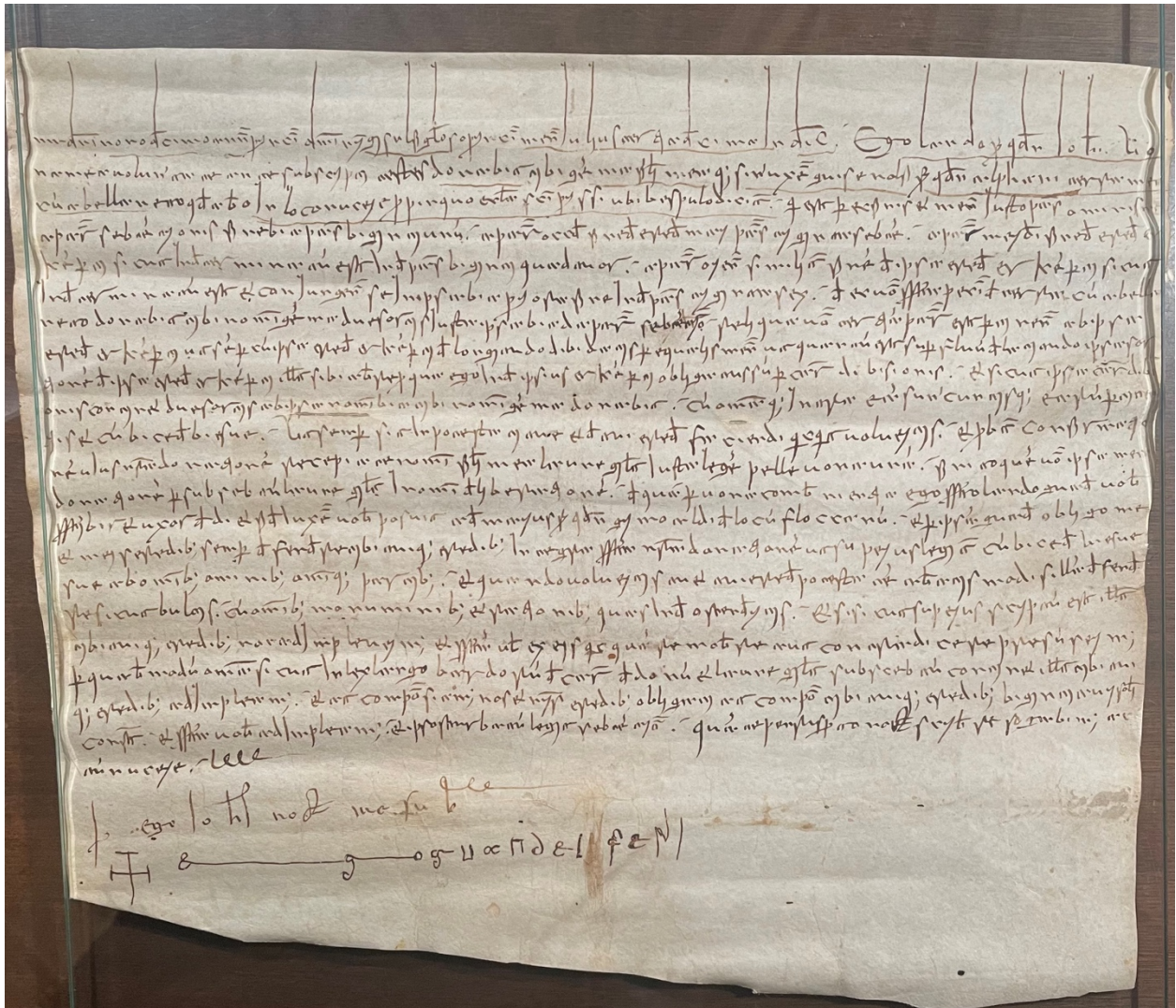


Figure 1: Arca xi 64 (1089)

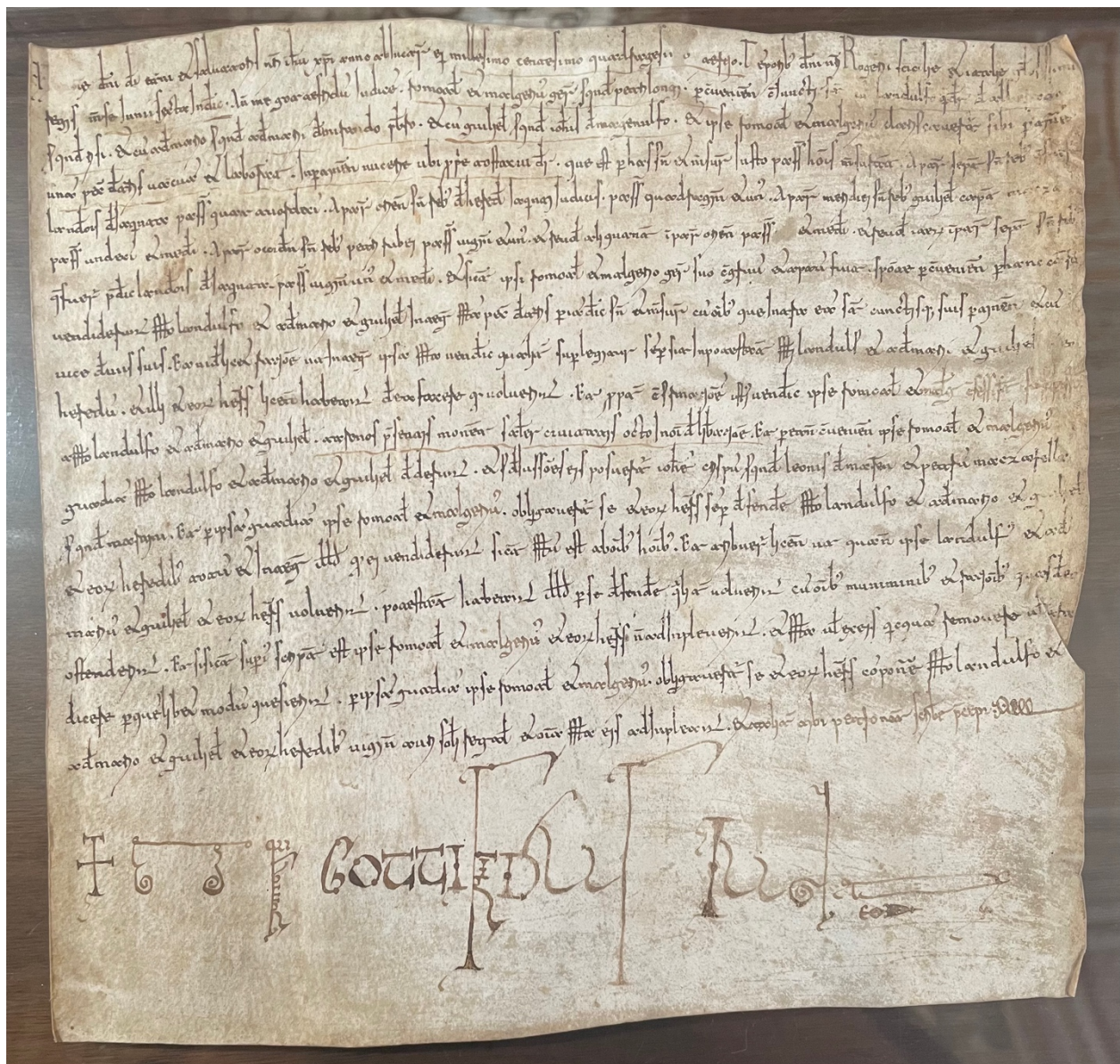


Figure 2: Arca xxv 72 (1143)

Chapter One: Documentary Culture and Diplomatic in Norman Salerno

Introduction

Legal documents were both very important and very commonplace in twelfth-century Salerno. Essentially all the city's legal business produced and was structured by documents, from sales and donations to legal cases over property rights. The validity of economic transactions depended on the production of a document made in a specific form and the conclusions of legal disputes were often recorded in writing, whether those disputes ended in a judicial sentence or in a formal agreement. Unlike elsewhere in southern Italy, where documents primarily took the form of records of transactions or disputes that had already happened, Salernitan documents were a necessary part of all legal business and the exclusive means by which it was formalized and legitimized. The pervasiveness of documents in Salernitan legal culture made possession of them essential to the defense of property; ecclesiastical institutions like the monastery of Cava and individual people both lay and clerical kept archives relating to their properties that they used in legal disputes. One cannot understand the legal culture of Salerno without analyzing how documents were made, used, and archived by the city's inhabitants.

The study of medieval diplomatic originated as a means of detecting forgeries to protect monastic and ecclesiastical properties. This was the central concern of Jean Mabillon (1632-1707), the father of medieval diplomatics, and his methods have remained the foundation of the diplomatic science. His framework of examining the exterior features of a document (its physical appearance), its internal features (language and formulae), and its means of authentication indeed structure this chapter.¹ While his methods are useful and detecting forgeries is important, that is

¹ Jean Mabillon, *De re diplomatica libri VI* (Paris, 1681); Olivier Guyotjeannin, Jacques Pycke, and Benoît-Michel Tock, *Diplomatique Médiévale*, 3. éd. rev. et corr, L'atelier du médiéviste 2 (Turnhout: Brepols, 2006), 18.

not the subject of this chapter.² Instead, I use the study of diplomatic (and its associated technical skills) to understand the legal culture of Salerno, primarily the processes of documentary creation, use, and archiving, and the dynamics of power and authority inherent in those processes. As Marina Rustow so succinctly put it, the “technical skills required to read documents...are a bridge to the past, a means of understanding the scribes who wrote them and the institutional practices those scribes established and perpetuated.”³ With Rustow, I understand Salernitan documents as more than just straightforward records of legal or economic information, but rather as evidence of a whole set of assumptions and institutional practices about law, legality, authority, performance, and social relationships. They are, in short, “records of the workings of power.”⁴

The textual content of the documents, what they purport to ‘tell’ their readers, is therefore not the only (and not always the most important) thing about them. Brigitte Bedos-Rezak points out that “charters may be best considered as written objects rather than as texts,” since, given the esoteric nature of their language and script, “as written texts, they existed outside the living

² Forgery is an important subject, particularly in the context of the archives of the abbey of Cava. It has not received the attention it deserves, as Graham Loud has pointed out in his chapter on the subject. It is however, beyond the scope of this chapter and dissertation: G. A. Loud, *The Social World of the Abbey of Cava, c. 1020-1300* (Woodbridge: Boydell Press, 2021), chap. 4; Also: Valerie Ramseyer, *The Transformation of a Religious Landscape: Medieval Southern Italy, 850-1150* (Ithaca: Cornell University Press, 2006), 169-72; the foremost authorities on Cava forgeries are Carmine Carlone and Maria Galante. Carlone in particular tends to take a “maximalist” approach to forgery, calling documents forged when there is any discrepancy in script or form. Loud argues that this is perhaps too rash, and scholars must be more careful to consider the context of a forgery before dismissing it out of hand: Carmine Carlone, *Falsificazione e falsari Cavensi e Verginiani del secolo XIII* (Altavilla Silentina: Edizioni studi storici meridionali, 1984); Maria Galante, “Un esempio di diplomatica signorile: i documenti di San Severino,” in *Civiltà del Mezzogiorno d’Italia: libro, scrittura, documento in età normanna-sveva: Atti di convegno dell’associazione italiana dei paleografi e diplomatisti, Naples-Badia di Cava Dei Tirreni, 14-18 October 1991*, ed. Filippo D’Oria (Salerno: Carlone Editore, 1994), 279-331.

³ Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton: Princeton University Press, 2020), 9.

⁴ Rustow, 9.

experience of the great majority of medieval people.”⁵ Charters, she argues, were *things* with material and visual qualities distinct from but still intertwined with the text on the page. The way documents looked, felt, and were experienced was as important to their legal authority as what was contained in the text. Salernitan documents, for example, have an immediately recognizable visual quality and deviations from that norm are conspicuous and suspicious, even to the untrained eye. If this is the case for the modern paleographer, who is not privy to the full complexity of the rituals and social contexts in which the documents were embedded, how much more would anomalies have caught the eye of a twelfth-century Salernitan, for whom the authenticity of a document was vastly more consequential? In the medieval context, where tradition and custom were fundamental aspects of legal legitimacy,⁶ it mattered a great deal that documents said the right legal things and looked the way people expected them to look.

Predictability and formality are essential documentary elements in a written legal culture like Salerno’s. In the Norman period (c. 1077-1189), people who did their legal business in the city already, to use Clanchy’s terms, ‘trusted’ writing.⁷ There were established and formalized rules about the constituent parts of a valid document, some of which were preserved in explicit city customs. All documents were dated according to a common system, followed established diplomatic protocols, had a specific layout, were written by individual notaries who signed with a unique *signum*, and were authenticated by a judicial signature. Documents that conformed to the established expectations were privileged as legal proof and were kept and preserved by

⁵ Brigitte Bedos-Rezak, *When Ego Was Imago: Signs of Identity in the Middle Ages*, Visualising the Middle Ages, v. 3 (Leiden: Brill, 2011), 22.

⁶ Ada Maria Kuskowski, “The Time of Custom and the Medieval Myth of Ancient Customary Law,” *Speculum* 99, no. 1 (January 1, 2024): 145; Andreas Thier, “Time, Law, and Legal History – Some Observations and Considerations,” *Rechtsgeschichte - Legal History* 2017, no. 25 (2017): 29–32.

⁷ M. T. Clanchy, *From Memory to Written Record, England 1066-1307*, 3rd ed. (Oxford: Blackwell, 2013), chap. 9.

people both lay and clerical as the primary evidence of their legal claims. In short, Salerno's legal culture was dominated by documents and those who created them.

This chapter is therefore about Salernitan documents: their unique diplomatic, how they were used, and the archival practices of both large ecclesiastical institutions and individual people. The goal of this chapter is to establish a model of Salernitan diplomatic and documentary institutions to trace in later chapters how that model spread across the Salernitano during the twelfth century.

The Archive and the Corpus

The evidence for the Salernitan model consists of the original single sheet parchments from Cava described in the Introduction. These are the monastery's records, and thus almost exclusively relate to its vast and varied property holdings. As is the case in most large monastic collections, the monastery is not a party in all the diplomas—the documentation of a property could include a backlog of paperwork produced by previous rights-holders both lay and clerical. When the monastery acquired such a property, they also acquired its associated documentation. These documentary backlogs are valuable as the ultimate source of most of the exclusively lay documentation in the archive. Surveying the collection for documents from eleventh- and twelfth-century Salerno uncovers a variety of document types: sales (*venditiones*), purchases (*emptiones*), donations (*donationes*), oblations (*oblaciones*), agreements (*conventiones*), testaments (*testamenta*), case records, confessions (*instrumenta manifestate*) and remissions of lawsuits (*remissiones actionum et calumpniorum*). But nearly all these documentary types are, in one way or another, about property and property law. The records which mention court cases (99

documents from 1077-1189) are also always related to a dispute over property. There are no records of criminal cases in my documentary corpus.⁸

The primary materials for the present chapter are the 137 documents (32.3% of my corpus) from Salerno itself in the Norman period (c. 1077-1189). The documents of the city during the Norman period, in contrast to those produced in its hinterlands, are remarkably homogenous. The multiple instances of political regime change that occurred inside Salerno and in southern Italy more broadly, first from Lombard Principality to Norman Duchy in 1077 and then from duchy to Norman Kingdom in 1130, did not have much of an effect on Salernitan diplomatic. The continuity and homogeneity of the diplomatic means that there are few internal changes to keep track of when defining a general model, which is the focus of this chapter.⁹

Salernitan Documents: A Family Portrait

Documents produced in Norman Salerno (c. 1077-1189) were formulaic and had an established diplomatic. Charters of sale, for example, had the same material, visual, and formulaic legal features as donation charters, case records, confessions, and every other type of document produced in the city. The following sections describe the common features of Salernitan documents, features which remained mostly unchanged across the Norman period, so that a Salernitan document from the late eleventh century looks much the same as one from the 1180s. Such diplomatic stability was a defining feature of Salernitan legal culture during the Norman

⁸ There are criminal cases at the royal court narrated in the *Liber de Regno Sicilie*, as discussed in Chapter Four. Carocci argues that the lack of evidence for court cases in which lords have the right to preside over criminal cases, coupled with other explicit grants of judicial authority that do not mention these rights of criminal justice, is evidence that the kings had an exclusive right over criminal justice in the Kingdom. See: Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, First edition (Roma: Viella, 2018), 196–99.

⁹ See the discussions of the *traditio morgengabe* (pp. 43-45) and the *beneventana documentaria* script (pp. 48-50) below.

period and it profoundly influenced the way legal change occurred in the city.¹⁰ Unlike in other parts of Europe during the twelfth century, legal change in Salerno did not manifest primarily as a quantitative increase in legal documents.¹¹ Instead, change involved the introduction or abandonment of documentary forms, changes in the roles of legal personnel, or changes in how documents were used in legal action. These changes did not fundamentally alter Salernitan diplomatic. When new kinds of documents were introduced or their use patterns changed, the physical, visual, and legal features remained consistent.

The Creation of Documents

Documentary production in Norman Salerno (c. 1077-1189), as described in the diplomatic, was the exclusive prerogative of the city's judges and notaries. Documents are narrated by judges in the third person perfect tense as events which happened "in front of" them (*ante me iudicem dedit*) at a discrete moment in time and entirely from the judge's perspective. At the conclusion of that narration, the judge orders the notary by name to write the document (*et taliter tibi notario scribere precepi*),¹² the notary signs it with their unique notarial *signum*, and finally the judge signs it with his much larger judicial signature. The judge's order consigned the notaries to the position of scribes without meaningful legal power since they could not authenticate or

¹⁰ The editors of the *Codex Diplomaticus Cavensis* suggest that the formulary and paleographic stability may have been the result of a sort of college formed by the notaries and judges, or at least that they were in contact with one another: Giovanni Vitolo and Simeone Leone, introduction to *Codex Diplomaticus Cavensis*, vol. IX (Cava dei Tirreni, 1984), XXIX–XXX.

¹¹ The total number of documents in the Cava archive from the eleventh versus the twelfth centuries (1500 vs 3550) suggests a broad increase in documentation. However, it is unclear what proportion of the documents from either century came from Salerno and my corpus is not complete enough to give an answer to this question. Of the 137 Salernitan documents in my corpus covering the period 1068 to 1189, 13 are from the eleventh century and 122 from the twelfth. M. T. Clanchy, *From Memory to Written Record, England 1066-1307*, 1.

¹² The naming of the notary, according to Enzensberger, was a Lombard practice, since it was not done in Normandy. It may also be a result of the adoption by Lombards of Roman notarial practices that did not survive or exist in Normandy: Horst Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," in *The Society of Norman Italy*, ed. G. A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 146.

legalize documents on their own. The parties to the case do not seem to have played a part in choosing the notary who wrote their document; this was the judge's job, or at least he gave the order. The diplomatic may obscure the extent of the notaries' involvement and expertise in the process of making legal documents, but it is clear that the judge was the source of legal legitimacy.¹³

The material evidence indicates that documents were made in at least two steps. There are multiple examples of documents in which the signature of the judge is written in a different color ink than the main body of text (Figure 1). The different colored inks suggest that notaries wrote out the main text of the document before it was brought to the judge to be authenticated by his autograph signature. When the difference is noticeable, the judicial signature is usually rendered in a dark black ink that makes it stand out against the lighter brown of the main body of text, further accentuating the judge's prominence.¹⁴ It is not clear whether the notaries acquired the judicial signature or the litigants. One example survives of a document lacking a judicial signature, though the space was made for one, which could mean that the notary neglected to get the document signed before handing it over to the litigants or that the litigants never bothered to get the signature.¹⁵ There is not enough evidence to determine one way or the other. How the

¹³ On the powers and formation of the Salernitan notaries as a group see: Huguette Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe Siècle): Pouvoir et société en Italie lombarde méridionale*, Collection de l'École française de Rome (Rome: École française de Rome, 1991), 547–62, 576–77; and the (scathing) response of Galante: Stefano Palmieri and Maria Galante, “Per una Storiografia che dialoghi: a proposito di un libro recente sul principato longobardo di Salerno,” *Rassegna storica salernitana: Nuove serie* XI, no. 1 (1994): 225–42. Galante essentially refutes Taviani-Carozzi's claim that the notaries ever had what Taviani-Carozzi called the *publica fides*, or the ability to confer legal legitimacy on a document. Galante points out that there is no evidence of any Salernitan notary self-consciously taking on that authority or indicating that they have it.

¹⁴ Arca xiv 30 (1085); Arca xxvii 49 (1149); Arca xxix 47 (1156); Arca xxxiii 100 (1171). The ink used for the main body text is usually a shade of brown, ranging from a lighter, rust colored ink to a dark brown that is almost black. In the cases in which the judicial signatures look different, the signature is rendered in a dark black ink. There is one example (Arca xxxiii 100) from 1170 in which the main body text is black and the signature is brown.

¹⁵ Arca xxxi 13 (1163).

notaries compiled the information that they needed to compose the documents is likewise unclear, since we have no evidence of notetaking on the dorsal side of the parchments or other kinds of preliminary drafting. Notaries sometimes noted, in the eschatacol before the judge's order to make the document, where they had made corrections or inserted interlinear words and what those corrections were, suggesting that notaries reviewed their work before completing it and having it signed by the judge.

According to the diplomatic, the judge was the central figure in the documentary creation process; his order initiated the process and only his signature could complete it. In other parts of the Salernitano and southern Italy, at least before the middle of the twelfth century, judges were not required. Documents could be requested by one of the parties to a transaction. In 1122, for example, a woman in Eboli, Grisa, sold some land to Cava for twenty *tari* and concluded the document by asking the notary and priest, Madius, to write it for her (*et taliter scribere rogabimus te Madium presbiterum et notarium*).¹⁶ In other cases, the notary stated that they wrote the document and were present during the transaction, but the document is narrated in the first person by one of the parties to the case. In a 1075 confirmation of boundaries from Avellino, the interested party, Petrus *filius* Salfrede (*memoratorium factu a me*), narrated the transaction in the first person until the final line, when Amatus, archsubdeacon and notary, broke in to note that he was there and wrote the document (*breve*) (*Ego Amatus archisubdiaconus et notarius hoc brebe scripsi et interfui in Avellino*).¹⁷

¹⁶ Arca xxi 74 (1122). It is unclear why the verb is in the plural. Grisa was a widow and was selling part of her *morgengabe* given to her by her late husband, but she did so without any other legal guardian present, at least according to the document.

¹⁷ Arca xiii 34 (1075).

The process of creation is the same for every kind of document produced in Salerno—sales, donations, case records, confessions—except the documents associated with making a marriage. Marriages in the Salernitano could produce two documents: 1) a promise of marriage (*promissio matrimonii*), which recorded the exchange of pledges and guarantors with the bride’s legal guardian and the groom’s promise to furnish the *morgengabe* before the wedding itself;¹⁸ and 2) a document recording the successful transfer of the *morgengabe* (*traditio morgengabe*) in front of witnesses after the marriage. Stand-alone *promissiones matrimonii* from the city took the standard documentary form of Salernitan documents (a single legal act occupying its own parchment) and were ordered and authenticated by a judge.¹⁹

Salernitan *traditiones morgengabe*, on the other hand, were not similarly standard. There are two extant examples from the city; both are “double documents,” in which the *promissio* is written above and the *traditio* below.²⁰ Outside the city, it was common for marriage agreements to be written this way. *Traditiones* were created at the request of the groom and either authenticated by witness signatures or, when they were part of a double document, not signed at all.²¹ However, the two Salernitan examples were signed by notaries rather than private

¹⁸ The *morgengabe* was the traditional fourth part of a husband’s goods which he gave to his wife on the morning after their wedding: Joanna Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194* (Ithaca: Cornell University Press, 2002), 65–66.

¹⁹ Arca xxii 107 (1130); Arca xxiii 4 (1131); Arca xxv 43 (1142); Arca xxxii 47 (1166); Arca xxxii 109 (1167).

²⁰ Arca xxxi 50 (1163); Arca xxxiv 28 (1172). It is possible that both documents were created on the same day. Dating clauses in the Salernitano record the month and the indiction, but not the day of the month. So, while we know, for example, that in many of these documents the *promissio* and the *traditio* were done in the same month, we do not know if it was the same day or a few days or weeks later. A separation of time would better conform with the Lombard law on the subject.

²¹ Witness signatures: Arca xi 62 (1060); Arca xxiii 72 (1134); Arca xxxiv 111 (1174) No witness signatures: Arca xxix 81 (1156); Arca xxx 55 (1160); Arca xxxii 109 (1168); Arca xxxiv 104 (1174). Double documents: Arca xxiii 72 (1134); Arca xxix 81 (1156); Arca xxx 55 (1160); Arca xxxii 109 (1168); Arca xxxiv 104 (1174). The use of witnesses conformed to the statutory Lombard law on the subject, which required that a document confirming the transfer of a *morgengabe* be drawn up for the security of the bride. A law of King Liutprand required that a written

witnesses. In the first case, Arca xxxi 50 from 1163, the same notary who wrote both documents on the parchment, Iohannes, also witnessed the *traditio morgengabe* and signed it alongside his colleague, Lucas *notarius*. In the second example, Arca xxxiv 28 from 1172, Alfano *notarius* wrote both the *promissio* and the *traditio* but did not sign the *traditio* alongside his colleague, Jacobus *notarius*, who is the only signature. In both cases, the *traditio* document was requested (*rogavi*) by the groom and not the judge. In fact, no judge is involved in the legal transaction of the *traditio morgengabe* at all. It is not clear if overseeing the *traditio morgengabe* was a new role for the notaries after 1163 or if they had had this power before. There are other extant *promissio* documents on their own parchment without a *traditio* below from 1166 and 1167, so for at least those four years, other traditions centering the judges appear to have endured in the city.²²

Despite their anomalous nature in the larger picture of Salernitan documents in the Norman period, the *traditiones* still conform to the logic of the law in Salerno. Private witnesses were not sufficient to make a document legitimate. The *traditiones* were authenticated by

document (*scriptam*) confirming the transfer be shown (*ostendat*) to the groom's family and friends (*ante parentes et amicos suos*) on another day separate from the wedding (*alia die*) so they could act as witnesses (*testibus roboratum*): Alfredus Boretius, ed. *Liber Leges Langobardorum Papiensis Dictus*, Vol. Leges IV, Monumenta Germaniae Historica, (Hannover: Monumenta Germaniae Historica, 1868), 407. "Si quis Longobardus morgincap coniugi suae dare voluerit, quando eam in sibi in coniugio sociaverit, ita decernimus, ut alia die ante parentes et amicos suos ostendat per scriptum a testibus roboratum..." The formula used in the *traditiones* echoes this language almost exactly: the groom states in the first person that on a day other than that of his wedding (*ac die que est nuptiarum nostrarum alia*), he showed (*ostendit*) the document (*scriptam*) of *morgengabe* to his family and friends (*ante parentes et amicos nostros*) and therefore had it strengthened by witnesses (*a testibus roboratum*): Arca xxxi 50 (1163): "et ydeo ac die que est nuptiarum nostrarum alia, ante parentes et amicos nostros ostendi hoc scriptum a testibus roboratum, et per illud od ac trado tibi predicte coniugi mee morgincap, quartam scilicet partem ex omnibus rebus meis stabilibus et mobilibus quas nunc habeo et qualiter modo habiturus sum;" Arca xxxiv 28 (1172): "Et ideo hac die que e(st) nupti(arum) n(ost)r(arum) ali(arum) ante paren(te)s et amicos n(ost)ris osten(dit) hoc script(um) a testib(us) roborata(tam) et p(er) ill(u)d do hac trado tibi predic(te) coniugi mee morgincap quar(tam) scilicet par(tem) ex om(n)ib(us) reb(us) meis stabi(li)b(us) et mobi(li)b(us) quas nunc habeo et quolibet mo(do) habi(tur)us sum."

²² Arca xxxii 47 (1166); Arca xxxii 109 (1167).

notaries, city legal officials, who replaced the private witnesses found in the *traditiones* of the rest of the Salernitano in much the same way that the judges replaced witnesses in every other kind of legal transaction. The notaries' signatures also clearly mimicked the large, elaborate signatures of their judicial colleagues, since this is what Salernitans would have expected a legitimate signature to look like. Judicial signatures were synonymous with authentication, so when the notaries took on this legal duty, they made themselves as much like judges as possible.

Material and Visual Features of Salernitan Documents

The material and visual aspects of Salernitan diplomatic were stable and consistent throughout the Norman period. Legal documents were uniformly written on parchment, usually of medium to high quality, mostly pale yellow or white and very infrequently darker brown. Generally, parchments are free of holes and major blemishes, though the vagaries of time and preservation have of course caused some to deteriorate. They range in size from relatively small (20x37 cm)²³ to very large (57x76 cm),²⁴ with most being of middling size (about 25x55 cm). Parchments appear to have received preparatory treatment before being written on to make them look broadly uniform. They are mostly rectangular, cut cleanly on three sides, with one irregular, often wavy side on the bottom edge. Most parchments are ruled both on the left margin and horizontally, usually with visible lines, so that the overall aspect of the document is very neat and legible. The ruling continued in the otherwise blank space at the foot of the document where the judicial signature was. The ink used ranged from a light rusty brown to a dark black. As noted above, the inks could be different in the body of the text and the signatures, but this was not always the case.

²³ Arca xxxi 34 (1163).

²⁴ Arma Magna G 48 (1145).

Seals were not used by the judges or notaries of the city to authenticate legal transactions. As will be discussed below, the unique and ostentatious judicial subscriptions were the primary means of authentication. However, the Dukes of Apulia, who resided in the city, did sometimes use seals to authenticate documents issuing from their chancery. Two large ducal donations to the abbey of Cava, one of the rights to the port of Vietri (modern Vietri sul Mare)²⁵ and the other to build a castle in Cilento (modern Castellabate),²⁶ both had pendant seals attached, though only the latter seal survives intact (Figures 2 and 3). There is also evidence of seals being affixed directly to the parchment of documents issued by the Norman Counts of the Principate in Eboli, just southeast of the city, which suggests that the use of seals was associated with lordship.²⁷

Salernitan documents' consistency of form throughout the Norman period indicates the strength of the city's institutional practices with regards to what documents could and should look like. Parchments from elsewhere in the Salernitano were often considerably lower in quality—darker, thicker, cut irregularly—and much more variable in terms of size and shape (Figure 4). Salernitan documents were uniformly made with good quality materials and obvious care. A document's recipient did not impact its quality since the parties to the case do not seem to have had any control over the document production process. Some documents were larger than others when there was a great deal of information to be included (Figure 5)²⁸ and the neatness of the script varied slightly among notaries, but these are ultimately minor differences.

²⁵ Arma Magna B 39 (1086). This is actually a copy, made in the 1160s, of the original document which is lost. The copy was authentic because it was cited verbatim in an 1182 dispute (Arma Magna I 37) with the king's *baiulus* over the rights to the port.

²⁶ Arma Magna F 24 (1123).

²⁷ Arca xxiii 44 (1132); xxiii 70 (1134); xxiii 115 (1136).

²⁸ Arca xxx 33 (1159).

There is no obvious or consistent difference in quality between, say, documents made for the wealthy abbey of Cava and those made for a modestly wealthy lay inhabitant of the city. Such uniformity strongly suggests that the process of document production was strongly institutionalized and that there was not much input from the consumer side.

Visually, Salernitan documents are professional and functional. The layout is clear, neat, and organized, with little ornamentation. The focus seems to be on legibility and the information of the document more than its decorative or display elements. Figure 6 below, from 1156, is a good example of what a typical Salernitan document looks like, and as Figures 7 and 8 show (from 1089 and 1189, respectively), the layout remained unchanged for the entirety of the Norman period. In the top-left corner, there is a small and sparse *chrismon* in the form of a cross with a diagonal line going up from right to left, larger than the main text, but not extending above or below its line. After this is an initial ‘I,’ the first letter of the invocation, similar in size and shape to the *chrismon*. Then follows the main body of text, always aligned to a left margin, sat neatly on the horizontal ruling, and given ample space between lines for potential interlinear corrections. After the judge’s order for the notary to make the document comes the notary’s small unique *signum*. Finally, one or more judicial signatures are written below the main body of text, composed of a large *signum crucis* and an ostentatiously large, elaborate, and unique rendering of the phrase “Ego qui super...iudex.”

This layout is simple but functional. The clear organization of the text, the neatness of the ruling, and the ample space between lines makes it easy to navigate the document and find relevant information. The simple, clear layout would have been useful for notaries when multiple documents had to be listed as part of the property handed over in a transaction and copied into a

charter. In these cases, only the dating clause, notary, and subscribing judge were listed.²⁹ The prominence of the notarial *signum* and the judicial signature would have made this information very easy to find on the page. In some cases, such as the document in Figure 6, the scribe even uses capital letters to denote some of the transitional points in the narration of the transaction.³⁰ The functionality of the documents and the professionalism of their execution contribute to their authority and legitimacy: whoever made the documents knew what they were doing and had done it many times before.

Professionalism and clarity also characterize the script of Salernitan documents. The notaries of the city used the *beneventana documentaria*, a cursive miniscule that developed out of Beneventan book hand. It was the dominant script in the documents of the city and its hinterlands into the thirteenth century, though it changed slightly over the course of this period, taking on more and more features of Caroline miniscule.³¹ The broader shift away from Beneventan in favor of Caroline miniscule and then proto-Gothic has, according to E.A. Lowe, traditionally been attributed to the movement of monks from north to south, the arrival of the

²⁹ In 1149, for example, when a man named Constantinus gave to a certain Goffridus some land in a place called Sepi as part of an agreement, he also gave him thirteen other documents related to the property stretching back to the tenth century. Only the dating clause, notary, and subscribing judge were recorded in the 1149 case record. Documents ten and eleven of Constantinus' archive, for example, were recorded as: *Decima scripta per Petrum notarium in anno suprascripte incarnatione millesimo centesimo decimo. Temporibus domini Rogerii ducis mense februario quarta indictione in qua suprascriptus Romualdus Iudex subscriptus est. Undeci scripta per Petrum notarium et aduocatam anno suprascripte incarnatione millesimo centesimo sextadecimo Temporibus suprascripti domini Guilielmi ducis mense martio nona indictione in qua Iohannes subscriptus est. Arca xxvii 32 (1149).*

³⁰ There is a large capital 'U,' for example, which begins the phrase "Unde sicut ipsi Iohancio congruum fuit..." which signals the end of the description of the property and the beginning of the legal action. The majuscule letter makes it much easier to find this section of the text when looking at the whole document, or to scan over the boundary description that precedes it if it is not relevant. Arca xxix 47 (1156).

³¹ The foundational article remains Galante's study of the Salerno necrology: Maria Galante, "Un necrologio e le sue scritture: Salerno, sec. XI-XVI," *Scrittura e Civiltà* 13, no. 13 (1989): 71–79; Francesco Magistrale, "Il documento notarile nell'Italia meridionale longobarda," in *Scrittura e produzione documentaria nel Mezzogiorno*, 1991, 257–72; See the useful discussion in: Maureen C. Miller, "Abbot Balsamon's Book: The Origins of Administrative Registers at Cava Dei Tirreni," *The Catholic Historical Review* 108, no. 1 (January 2022): 26–29.

Normans, and their employment of scribes from north of the Alps.³² More recent scholarship, especially that of Galante and Tristano, has eschewed this narrative of progressive scriptural replacement by pointing out that Beneventan and Caroline in fact coexisted in southern Italy from the eleventh century into the thirteenth.³³ During this period, hybrids developed that incorporated aspects of both scripts to create a sort of ‘*koiné grafica*.’³⁴

The notaries of Salerno were not immune to these developments, though they did resist the wholesale adoption of Caroline miniscule much longer than their counterparts elsewhere.³⁵ We can see the influence of Caroline in the hand of Ademarius *notarius et aduocatus*, in Figure 6: the use of the uncial ‘a’ alongside the continued use of the characteristic Beneventan ‘t,’ the use of uppercase letters, and the slenderness of the ascenders, all features adopted from Caroline and chancery scripts.³⁶ The fact that the Salernitan notaries as a group exclusively used the *beneventana documentaria* throughout the twelfth century is further evidence of the institutionalized nature of document production in the city. The script is remarkably uniform,

³² There is clear evidence that the Norman Dukes of Apulia employed notaries trained in Caroline rather than the *beneventana*. See: Arma Magna F 24 (1123).

³³ E. A. Lowe, *The Beneventan Script: A History of the South Italian Minuscule* (Oxford: Clarendon Press, 1914), 41–46; Lowe’s hypothesis that the Beneventan script gave way to Caroline miniscule as a result of the movement of monks from north to south is still influential, but has been challenged by many, most prominently: Caterina Tristano, “Scrittura beneventana e scrittura carolina in manoscritti dell’Italia meridionale,” *Scrittura e Civiltà* 3, no. 3 (1979): 89–150. Tristano suggests, based on the evidence of the two scripts being used side by side, that they coexisted in the south after about the tenth century or so. See also: Caterina Tristano, “Fenomenologia grafica di un dialogo culturale: i normanni in Italia meridionale,” in *Le migrazioni nell’alto medioevo*, vol. 2, Settimane di studio del Centro italiano di studi sull’alto medioevo 66 (Spoleto: Centro italiano di studi sull’alto medioevo, 2019); Giovanni Vitolo, “Gli studi di paleografia e diplomatica nel contesto della storiografia sul mezzogiorno longobardo,” in *Scrittura e produzione documentaria nel mezzogiorno longobardo: Atti del convegno Internazionale di studio (Badia di Cava, 3-5 Ottobre 1990)* (Badia di Cava: Badia di Cava, 1991); Giovanni Vitolo, “Tra Cava e Salerno: Cultura e scrittura in età normanno-sveva,” *Rassegna storica salernitana: Nuove serie* IX, no. 2 (1992): 7–24.

³⁴ Tristano, “Fenomenologia grafica di un dialogo culturale: i normanni in Italia meridionale,” 929.

³⁵ Galante, “Un necrologio e le sue scritture: Salerno, Sec. XI-XVI,” 76.

³⁶ Miller, “Abbot Balsamon’s Book: The Origins of Administrative Registers at Cava Dei Tirreni,” 27–28.

suggesting that notaries were either trained in a school or by families who knew and perpetuated a traditional script. The use of the Salernitan *beneventana documentaria* may have been an essential element of a document's authenticity. There is precedent for this in earlier Lombard documents, though Lombard law does not mention scriptural examination as a means of determining the authenticity of a charter, and I have not found examples in the documents of script being scrutinized to determine a documents' authenticity.³⁷

The most conspicuous visual features of Salernitan documents were the unique signs of the notaries and judges. The notarial *signa* did not have any authenticating power, but rather were intended to make the documents unique and irreproducible. When it first appears in the late eighth century, the notarial *signum* is little more than a mark intended to fill the space at the end of a line to prevent information from being added later. Starting in 1087 with a notary named Grimoald, the *signum* seems to have become a unique marker of a notary's identity and thus a further safeguard against forgery. It could never authenticate a document on its own.³⁸ In the two instances when notaries *did* authenticate documents on their own (the two *traditiones morgengabe* discussed above), they signed with large signatures that mimicked judicial ones, indicating that their notarial *signum* was insufficient for legalization.

The judicial signature is by far the most conspicuous visual feature of Salernitan documents. They dominate the space at the foot of the document, usually using long ascenders and descenders to fill it and prevent the addition of more text later (much like the notarial signs). In addition to being much larger than the rest of the script (usually three to four times as large),

³⁷ Nicholas Everett, *Literacy in Lombard Italy, c. 568-774*, Cambridge Studies in Medieval Life and Thought, 4th ser., 53 (Cambridge: Cambridge University Press, 2003), 213.

³⁸ Simeone Leone, "La genesi e lo sviluppo del 'signum' dei notai salernitani dal 799 al 1231," in *Minime Cavensia*, ed. Simeone Leone and Giovanni Vitolo (Salerno: Pietro Laveglia Editore, 1983).

the signatures were also written in thicker, darker letters and feature elaborate designs unique to the judge. The signatures are autographs, written by the judges themselves rather than by the notaries, and are often rendered in a more bookish Beneventan script than the main text, with thicker, shorter, and more laterally crowded letters (Figure 9). There are minor changes in some judicial signatures in later documents; the signature of Iohannes *iudex* from 1189 (Figure 8), for example, looks much thinner and more flowy than those of his earlier colleagues, but remains the most conspicuous visual element on the page. Another judge active in the 1160s and 1170s, Guaferius *iudex*, had a considerably smaller signature than any of his colleagues, though he was alone in this.³⁹

The number of judicial signatures on a document varied, but there does not appear to have been a legal meaning behind the number. Most documents have only one judicial signature since this was all that was necessary for the legal legitimacy of a document, but it was possible for more judges to sign. It was not uncommon for two judges to sign a document,⁴⁰ and there could be as many as six subscriptions on one document.⁴¹ Usually, documents with multiple judicial signatures arrange the signatures horizontally end to end (Figure 10).⁴²

³⁹ Arca xxxi 107 (1166); xxxi 117 (1165); Arca xxxii 5 (1165); xxxii 58 (1167); Arca xxxiv 55 (1173); xxxiv 58 (1173).

⁴⁰ Arca xxv 115 (1145): Iohannes *iudex*, Iohannes *iudex*; xxv 117 (1146): Iohannes *iudex*, Iohannes *iudex*; Arca xxvi 78 (1147): Iohannes *iudex*, Iohannes *iudex*; Arca xxvii 64 (1150): Petrus *iudex*, Iohannes *iudex*; Arca xxx 63 (1160): Petrus *protoiudex*, Salernus *iudex*; Arca xxxi 118 (1165): Guaferius *iudex*, Iohannes *iudex*; Arca xxxv 37 (1175): Guaferius *iudex*, Matheus *iudex*; xxxv 43 (1175): Guaferius *iudex*, Iohannes *iudex*; xxxv 66 (1176): Guaferius *iudex*, Iohannes *iudex*. Elsewhere in the Salernitano, and especially in Cilento, it was more common for at least two judges to sign a document: Arca xxiv 10 (1136); Arca xxv 13 (1141); xxv 50 (1142); Arca xxxi 45 (1163); xxxi 99 (1165); Arca xxxiv 11 (1172); xxxiv 78 (1173).

⁴¹ Arca xiv 118 (1089): Sico *iudex*, Iohannes *iudex*, Ademarius *iudex*, Grimaoldus *iudex*; Arca xxx 31 (1159): Petrus *protoiudex*, Petrus *iudex*, Salernus *iudex*, Matheus *iudex*, Iohannes *iudex*, Guaferius *iudex*; Arca xxxiii 100 (1171): Guaferius *iudex*, Romoaldus *iudex*, Iohannes *iudex*, Matheus *iudex*, Romualdus *iudex*; Arma Magna I 8 (1175): Guaferius *iudex*, Iohannes *iudex*, Matheus *iudex*; Arma Magna I 37 (1182): Truppoaldus *iudex*, Romualdus *iudex*, Alfano *iudex*, Romualdus *iudex*, Matheus *iudex*, Matheus *iudex*.

⁴² Arca xxx 31 (1159); Arca xxxiii 100 (1171); Arma Magna I 8 (1175); Arma Magna I 37 (1182).

The arrangement of the signatures does not clearly indicate a hierarchy among the judges, but they seem to have believed that their legal authority superseded that of non-judicial figures. This is clearly the case in other southern Italian contexts, where judges and other legal officials are usually first in witness lists.⁴³ I found only one Salernitan document which has both judicial and non-judicial signatures. The 1089 charter is signed by Duke Roger Borsa, Alfano, the Archbishop of Salerno, and four judges—Sico, Iohannes, Ademarius, and Grimoaldus. The duke's and archbishop's signatures are small and thin, while the judges' are considerably larger (Figure 9).⁴⁴ Sico's and Iohannes' signatures are above those of Ademarius and Grimoaldus, but since they are all of equal size, it is not clear whether this should be read hierarchically. Only one Salernitan document, Arca xxx 31 from 1159, has any indication of hierarchy. One judge, Petrus, calls himself *protoiudex* and lists himself first, but his title does not survive him, and it is unclear where the title came from.⁴⁵

The visual prominence and exclusivity of the judicial signature both expresses and reinforces the legal authority of the judges in Salernitan legal culture. It is the only part of Salernitan documents that is not plain and unadorned. It is elaborate, ostentatious, even beautiful. Whereas the names of the dukes, kings, archbishops, notaries, or other parties to transactions fade into the main block of text, the judge's name leaps off the parchment because of its size and separation. Such visual prominence reflected the legal importance of the signature; a document

⁴³ The judges of Sant'Agata di Puglia, for example, are always listed first in their documents: Arca xxvi 4 (1145); Arca xxxi 18 (1163); Arca xxvii 69 (1153).

⁴⁴ Arca xiv 118 (1089).

⁴⁵ For more on Petrus the *protoiudex*, including his wealth and family connections, see Ch. 2, fn 52-56.

was not legalized until it had the judge's signature, according to one of the city's notarial formulae.⁴⁶

Signing and authenticating documents was the exclusive right of the judges. There are only five instances in my Salerno corpus when someone other than a judge subscribed a document. The first is the document discussed above in which the duke and archbishop's signatures are dwarfed by the judges' signatures.⁴⁷ The second is an 1149 agreement in which the judge's signature is accompanied by three clerical signatures—Goffridus *abbas*, Constantinus *presbiter*, and Urso *presbiter*. The document is an agreement about sharing some land made between Goffridus and Constantinus, but it is not clear why the clerics signed.⁴⁸ The third is another anomalous case from Vietri, just outside the city, in which two notaries signed a document alongside the judge because, so the document says, they were witnesses of an earlier document related to the case.⁴⁹ The final two are the *traditiones morgengabe* signed by a notary in the style of a judge.⁵⁰ In all cases, the judges, or at least the aura of their authority, remain central, either because of the greater size of their signature or because of the notaries' obvious imitation of them. Beyond these exceptions, all Salernitan documents from the Norman period were exclusively signed by a judge or judges. If one wanted to do most anything at law in Norman Salerno, it had to be done through them.

⁴⁶ The formula as it appears in Arca xv 20 from 1090, quoted here in full, lacks certain features present in other instances of its use, but what is quoted here is common to all the other instances: a sale should be made...*per firmam cartulam cum gadia et ydoneo fideiussore et ab omnibus hominibus defensione et pena obligationis sicut lex et consuetudo istius est civitatis, in que iudex subscribatur*. See fn. 52-61 below.

⁴⁷ Arca xiv 118 (1089).

⁴⁸ Arca xxvii 32 (1149).

⁴⁹ The notaries' signatures look very much like judicial signatures. Arca xv 11 (1090): *verumtamen memorari facio quoniam in suprascripta cartula ego ut superius subscriptus sum legitur et in ea Romoaldus et Griimoaldus notarii testati sunt*.

⁵⁰ Arca xxxi 50 (1163); Arca xxxiv 28 (1172).

Diplomatic

It is becoming something of a chorus: the diplomatic of Salernitan documents was consistent for the entire Norman period, without any major disturbances or variations.⁵¹ The diplomatic structure of a Salernitan *chartulam* was enshrined in an explicit *lex et consuetudinem* (law and custom) of the city already by at least 1086.⁵² The evidence for this formula comes from documents of practice⁵³ rather than a formulary and it varies in small but important ways in each of the four instances that it appears (Appendix 1). Nonetheless, the core elements, and therefore the requirements for a legitimate charter of sale, remain consistent. The formula as it appears in Arca xv 20 from 1090 tells the parties that a sale should be made “...*per firmam cartulam cum guadia et ydoneo fideiussore et ab omnibus hominibus defensione et pena obligationis sicut lex et consuetudo istius est civitatis, in que iudex subscribatur.*”⁵⁴ Deciphering the legalese, a document needed to be a charter (*cartulam*) which contained a pledge (*guadia*), a suitable guarantor (*ydoneo fideiussore*), a defense clause (*ab omnibus hominibus defensione*), a penalty obligation (*pena obligationis*)—in practice almost always a composition payment—and a judicial signature (*in quo iudex subscribatur*). It is worth noting that all other versions (in documents of 1086, 1105 and 1175) add the requirement that a document be made by a “public

⁵¹ The model for this description of the diplomatic will be the same document from Figure 5: Arca xxix 47 (1156).

⁵² Between 1086 and 1189, there are four documents that include an explicit customary law (*lex et consuetudinem*) of Salerno detailing the required elements of a charter of sale (*cartam venditionis*): Arca xiv 65 (1086); Arca xv 20 (1090); Arca xviii 15 (1105); Arca xxxv 28 (1175).

⁵³ In 1105, for example, one instance of the formulary appears in an agreement (*conventio*) between Cava and a woman named Sichelgayta in which the monks agreed to give her 100 *tari* on the condition that she make a *cartam venditionis* selling the monks some land inside the city with a house on it: Arca xviii 15 (1105). Fortunately, the Cava archive preserves not only the document requiring the production of a *cartam venditionis*, it contains the completed *cartam venditionis* itself, Arca xviii 16, which Sichelgayta went before a judge and had made as she had agreed in the *convention*: Arca xviii 16 (1105).

⁵⁴ Arca xv 20 (1090).

notary (*publico notario*)," but all extant documents, even before 1090, already include the name of the notary, so it is possible that document has a careless omission, rather than reading a new legal requirement. And while all instances of the formula refer to it specifically as a document of sale (*carta venditionis*), these same features are present and stable through the end of the period in all the different kinds of documents in which judges were subscribed, whether donations, oblations, testaments, case records, confessions, or remissions of cases.

The formula is simple and concise, reflecting the diplomatic structure of the documents (Table 1). All documents begin with a chrismon and an invocation (*invocatio*) of “the name of the Lord God everlasting and our savior Jesus Christ (*In nomine domini dei eterni et saluatoris nostri Ihesu Xristi*).” Then comes the dating clause (*datatio*), calculated according to the incarnation (*ab incarnatione*) and the regnal year first of the Norman dukes and then the Norman kings (*anno regni domini nostri...*). The dukes were referred to as “most glorious dukes (*gloriosus dux*).⁵⁵ In Salerno and its surrounding regions, the kings were referred to as *Sicilie et Ytalie rex*, King of Sicily and Italy, often with an added superlative like *gloriosissimi*, rather than their threefold title—King of Sicily, Duke of Apulia, and Prince of Capua (*Rex Sicilie, ducatus Apulie et principatus Capue*)—as was the practice of the royal chancery.⁵⁶ The reason why is not certain; it was Byzantine practice to refer to the southern part of the peninsula as *Italia*, so the Salernitan notaries may have been imitating imperial practice. Salernitans may also have been reluctant to highlight the princely or ducal tradition of cities and regions other than their own. Salerno was traditionally the monarchy’s mainland capital, so referring to them as

⁵⁵ Arca xiv 65 (1086).

⁵⁶ See the concise and clear discussion in: Enzensberger, “Chanceries, Charters, and Administration in Norman Italy,” 134–41.

Kings of Sicily and Italy highlighted the city as one of the two nodes of royal power, alongside Palermo in Sicily. After the regnal date comes the month (*mense*) and finally the indiction,⁵⁷ which began on 1 September in the Byzantine style.⁵⁸

After the dating clause, the narration (*narratio*) begins with the phrase *ante me...iudicem*, specifying that the legal action happened in front of one or more named judges. Then the parties to the transaction or case are specified, usually by their first name, their father's name and rarely a toponymic surname. If other important figures were presiding or present at court, they are listed as well. At this point, documents describing a transfer of property and those describing a dispute or court case begin to diverge. In property transfers, the parties to the case are followed by a description of the property in question. Property descriptions are usually quite long and detailed, describing the boundaries on every side with reference to major landmarks, public roads (*uia publica*) and the property of others. In dispute records, on the other hand, this section narrates the case: what was in dispute, the evidence brought by the accuser, the response or counter evidence of the accused, and the judge's decision or the terms of the agreement reached. Sometimes, this involved the showing of charters in court (the *ostensio cartae*), which were sometimes copied into the new document in their entirety. In some cases, the narration included

⁵⁷ The indiction was a Roman dating scheme based on taxation cycles. From the year 313, the indiction ran in 15 year cycles. So when a document is dated to the 15th indiction, that means it is the final year of the indiction. See: Guyotjeannin, Pycke, and Tock, *Diplomatique médiévale*, 51–52.

⁵⁸ The year 1077, the first year of our period, saw a change in the dating scheme of Salerno. From 1070-1077, the year had begun on 25 March, but beginning in 1077, it was decided that the year would begin on 1 March. This means that 1078 lasted 24 months (1 March 1077-February 1079). After 1079, from March to December of any given year, the year on a Salernitan document corresponds to our modern dating scheme, but January and February belong to the following year of our modern scheme. For example, a document marked January 1081 on the document is actually January 1082 by our reckoning, since the Salernitan year changed 1 March. This also means that 1079 had abnormal indictions. There were three indictions in 1079: the 15th, from March to August of 1077, the 1st from September to August 1078, and then the 2nd from September 1078 to February 1079. Mercifully, the scheme was set just at the start of the Norman period, and the dating remains consistent for the duration of the period. Many thanks to the editors of the *Codex Diplomaticus Cavensis* who figured this all out: Giovanni Vitolo and Simeone Leone, eds., *Codex Diplomaticus Cavensis*, vol. IX (Cava dei Tirreni, 1984), XXXII–XXXIV.

details about courtroom action and procedure, though this was usually limited to noting that litigants consulted with friends, family, or legal help. With the relevant details laid out, the document moves from description to legal action.

The transition to the dispositive (*dispositio*) is signaled by a formulaic phrase of consent and agreement followed by a verb in the third person perfect indicative that defines the legal action: *vendidit* (sale), *donavit* (donation), *tradidit* (lease), *remissit* (dropping of cases), *convenit* (agreement), *manifestavit* (confession) etc. The formula states that the parties did the transaction “freely, through agreement, through this charter (*sponte, per convenientiam, per hanc cartulam...*).” Consent, which was essential to the legitimacy of a legal act and the document that effected it, was a prominent aspect of Lombard law generally, but the legislation of the Lombard kings was especially clear about it in the context of charters and legal agreements. A law of King Liutprand from 727 states that charters should be drawn up according to either Lombard or Roman law, but “if men wish to go outside of the law and make pacts (*pactiones*) or agreements (*conventiones*) among themselves, and both parties consent (*ambae partes consenserint*), this shall not be regarded as contrary to law since both parties have done it voluntarily (*voluntarie*),” and, crucially, “those who write such charters shall not be found liable to blame.”⁵⁹ The “agreement (*convenientia*)” described in the Salernitan formula seems to refer primarily to this

⁵⁹ Liutprand 91. Katherine Fischer Drew, trans., *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973), 183-184; Alfredus Boretius, ed., *Liber Leges Langobardorum Papiensis Dictus*, 446–47. *Et si quiscumque de legel sua subdescendere voluerit et pactiones atque conventiones inter se fecerint et ambae partes consenserint istud non imputetur contra legem quia ambae aprtes voluntarie faciunt et illu qui tales cartulas scribent culpabiles non invenientur esse.*

sense of mutual consent, rather than to a type of document, as was the case in early medieval Catalonia, for example.⁶⁰

The insistence that the legal act is done “through this charter (*per hanc cartulam*)” indicates that Salernitan documents were dispositive rather than probative. The creation of the document was constitutive of the legal act, which could not be fully legal unless the document was created. Agreements were also formalized by the creation of a document, as were judicial decisions. This was not always the case in Norman southern Italy. In Apulia, land transactions were often done *per fustem*,⁶¹ which involved handing over a physical token (*fustem* means stick or staff but there is no reason to think it *had* to be a stick) symbolizing the property.⁶² Once the token was exchanged, the property formally changed hands. The *per fustem* ritual is recorded in the documents as something done in the ‘real world’ at a discrete moment in time outside of the documentary context, indicating that, in those cases, the creation of a document was not sufficient to effect the legal act. In Salerno, on the other hand, the phrase *per hanc cartulam*, which resembles and replaces the *per fustem* phrase, indicates that the creation of the document constituted the complete transaction.

⁶⁰ Kosto points out that the meaning of the term *convenientia* as the element of mutual agreement was proposed by Francesco Calasso based entirely on Italian documents from the eleventh through thirteenth centuries. In other words, documents just like those in my corpus. So while Kosto’s argument about the semantic range of the term and its origins in early medieval legal vocabulary are convincing, I agree with Calasso that in the context of Italian documents of the Central Middle Ages, the term refers primarily to an abstract element of consent rather than a specific kind of agreement, transaction, or document: Adam J. Kosto, “The *Convenientia* in the Early Middle Ages,” *Mediaeval Studies* 60 (January 1, 1998): 40–419; Francesco Calasso, *La “convenientia”: contributo alla storia del contratto in Italia durante l’alto medio evo*, Biblioteca della Rivista di storia del diritto italiano ; n. 9 (Bologna: N. Zanichelli, 1932); Adam J. Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200*, Cambridge Studies in Medieval Life and Thought, 4th ser (Cambridge: Cambridge University Press, 2001).

⁶¹ Avellino: Arca xxiv 42 (1138); Melfi: Arca xxviii 13 (1158); Sant’Agata di Puglia: Arca xxxi 38 (1163).

⁶² Jean-Marie Martin, *La Pouille du Vie au XIIe siècle*, Collection de l’école française de Rome 179 (Rome: Ecole française de Rome, 1993), 51; Guyotjeannin, Pycke, and Tock, *Diplomatique médiévale*, 86–87.

The completion and permanence of the legal act was contingent on several factors detailed in the rest of the document. A formulaic phrase—*ea ratione ut* (on the condition that)—usually introduces this section, which includes the rights handed over to the recipient of the property, the price (if it is a sale), and the penalty clause (*sanctio*). The penalty clause always consisted of the exchange of pledges (*guadia*) and guarantors (*fideiussores*) and the imposition of a fine (*compositio*). Religious sanctions are never used, even if the parties were clerics. By the pledges and guarantors, one or both sides agreed to defend the transaction from all men (*omnibus hominibus*). If they did not, they paid a fine (*compositio*) in the local currency to the beneficiary.⁶³ There is no mention of any part of the fine going to the court or to the sovereign, as could be the case elsewhere in southern Italy.⁶⁴

After the fines are detailed, the eschatocol of the document begins. Here, notaries might note if there are any interlinear words that they had to add, or places where the parchment has been scratched or “disturbed (*disturbatus est*)” because of corrections. They then specify, in both cases, what words were added to prevent later changes to the document and to increase faith in its authenticity.⁶⁵ After any corrections comes the corroboration clause (*corroboratio*), in which

⁶³ This currency was almost always the *tari*, the small gold coin derived from the Arabic quarter-dinar. It circulated all over southern Italy. The *tari* being a small coin, amounts in documents are often reckoned in larger units of account. Under the dukes, this was usually the *solidus constantinus*, equivalent to a Byzantine *nomisma*. Under the Norman Kings, who issued their own currency, the unit of account was renamed the *solidus regalis*. In both cases, one *solidus* was equal to four *tari*. If the amounts were very large, they might reckon things in *uncia*, one of which was thirty *tari*. For a short discussion of this, see: Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, XVI–XVIII; For the definitive, longer treatment, see: Lucia Travaini, *La monetazione nell’Italia normanna: con una appendice sui ritrovamenti 1995 - 2014*, ed. Giuseppe Sarcinelli, 2nd ed. (Zürich: Numismatica Ars Classica, NAC, 2016).

⁶⁴ Sant’Agata di Puglia: Arca xxviii 76 (1154): half of composition goes to the king; Eboli: Arca xxiii 115 (1136): half of composition goes to the court of the Count of the Principate; Arca xxiii 70 (1134): half of composition goes to the king.

⁶⁵ The document shown in Figure 5, Arca xxix 47 (1156), has two instances of words being scratched out and rewritten. It appears that the composition amount changed, since, as the notary says, he has scratched out the original and written “centum” in both places.

the judge orders the creation of the document in the first person perfect (*taliter tibi notario scribere precepi*). The notary signs his *signum* and the judge authenticates the document with his signature. And with that, the document, and the legal act that it effected, was complete.

Table 1: Diplomatic Elements of Typical Salernitan Document, c. 1077-1189

Diplomatic Element	Documentary Expression
Chrismon	cross with a diagonal line going up from right to left
Invocation (invocatio)	<i>In nomine domini dei eterni et saluatoris nostri Ihesu Xristi</i>
Dating Clause (datatio)	<i>Anno ab incarnatione... anno regni domini nostri...</i>
Narration (narratio)	<i>Ante me iudicem...</i>
Dispositive (dispositio)	<i>sponte, per convenientiam, per hanc cartulam...</i> third-person perfect verb
Penalty (sanctio)	<i>Guadium; fideiussores; compositione</i>
Corroboration (corroboratio)	<i>Taliter tibi...notario scribere precepi;</i> notarial <i>signum</i>
Means of authentication	judicial signature (+

	<i>Ego qui super...iudex)</i>
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Documentary Practices

Documents, once created, were not inert. They were stored, archived, displayed, brandished in court, examined as proof, copied, moved, even destroyed. In fact, how it was used and interacted with after the moment of its creation constituted most of a document's existence. In Salerno, documents were used in essentially two ways: to effect legal action and as proof in court.

Chartule and Memoratoria

The way that Salernitans used documents and their ubiquity in the city's legal culture was distinct in southern Italy, due mainly to the fact that Salernitan documents were uniform in their basic legal nature. Historians of southern Italian law, particularly of the Lombard period (pre-1077), have identified two broad categories of documents that circulated in the Salernitano: *memoratoria* and *chartule*.⁶⁶ *Memoratoria* were records of legal acts (whether transactions or agreements) created for and narrated by a private party, usually one of the parties to the act. Their diplomatics were variable, and they could bear a variety of notarial, judicial, or witness signatures. They usually but not always included notes on the exchange of pledge and guarantors (*guadium* and *fideiussores*). Such *memoratoria* documents were probative in nature, meaning they preserved a record of a legally conducted act, and could be used as proof. During the Norman period (1077-1189), the Cava archive includes hundreds of *memoratoria*, but not one of

⁶⁶ This schema is helpfully outlined by: Vitaliana Curigliano, "Procedure e forme documentarie nei contenziosi cavensi tra XI e XII secolo," in *Riforma della chiesa, esperienze monastiche e poteri locali. La Badia di Cava nei secoli XI-XII*, ed. Maria Galante, Giovanni Vitolo, and Giuseppa Z. Zanichelli (Firenze: Sismel edizioni del Galluzzo, 2014), 189–97; See also Galante's comments in: Palmieri and Galante, "Per una Storiografia che dialoghi: a proposito di un libro recente sul principato longobardo di Salerno," 235–36; Magistrale, "Il documento notarile nell'Italia meridionale longobarda."

them comes from the city of Salerno. Salernitan parchments exclusively took the form of *chartule*. As has been described above, *chartule* had a more defined diplomatic and appear to have been dispositive, meaning the document was both a record of a legal act and constitutive of the legal act itself.

When and why Salerno became the domain of the judge-authored *chartule* is unknown; the Salernitan-style narration presumes an eternal regime of law and legal procedure. The centrality of the judges was unusual. In most of the peninsula before the middle of the twelfth century, including much of the Salernitano and especially Apulia, documentary practices were Lombard in the sense that documents were authenticated by the presence and signature of at least two witnesses. A judge might be one of these witnesses, perhaps even the preeminent witness with his name listed first, but he did not stand alone. In the documents of S. Giacomo di Barletta during the 1160s, for example, a prominent judge named Maralditius *iudex* witnessed most transactions and signed most documents originating from the church, but he was always accompanied by two or more witnesses.⁶⁷ The same is true in the documents of Conversano.⁶⁸ The documents created in these contexts were therefore primarily *memoratoria*; the witnesses' signatures signified, in theory, their promise to attest to the validity of a document if it was called into question, but the legal act was not done by means of those signatures.

The distinction between *chartule* and *memoratoria* is significant because it determined how documents were used in legal action and in court. Legal transactions in Salerno happened in the presence of and only with the explicit sanction of the city's judges. Central to these legal acts

⁶⁷ Francesco Nitti di Vito, ed., *Le pergamene di Barletta: Archivio capitolare (897-1285)*, vol. 8, Codice Diplomatico Barese (Bari: Società di storia patria per la Puglia, 1914), 127–57.

⁶⁸ Domenico Morea, ed., *Il chartularium del monastero di S. Benedetto di Conversano*, vol. 1 (Montecassino, 1892).

was the creation of the physical, individual, authenticated parchment *chartule* that by the judge's signature became both the record and reality of a legal transaction. In Salerno, people did not use witnesses to effect legal transactions outside the presence of a judge, which meant that all legal acts (that we know about) used and created documents; the act and the document creation happened at the same moment. It had to be so, because a Salernitan judge's signature did not represent his promise to attest to the validity of a transaction that had happened in the past if it was disputed. Instead, it was the symbol that the legal transaction narrated in the *chartule* had happened at a discrete moment in time when it was approved and authenticated by the judge.

In an Italian legal sense, we might say the judges monopolized the public trust, *publica fides*, that was elsewhere vested in various combinations of witnesses, judges, and notaries,⁶⁹ and the judge's signature was the physical sign of this public trust. The people of Salerno had collectively empowered him, as a judge, to elevate a piece of parchment into a legal act *and* agreed that this was the only acceptable way to do such an act. The use and language of the *chartule* thus reinforced the legal reality of Salerno: it was the city in which only a judge could turn a piece of parchment into a legal document; a city in which every legal document was dispositive. *Memoratoria* do not require the presence or involvement of a judge, so the

⁶⁹ Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*; Magistrale, "Il documento notarile nell'Italia meridionale longobarda"; Nicholas Everett, "Literacy and the Law in Lombard Government," *Early Medieval Europe* 9, no. 1 (2000): 93–127; N. Everett, "Scribes and Charters in Lombard Italy," *Studi Medievali* 41, no. 1 (2000): 39–83; Gian Giacomo Fissore, "Alle origini del documento comunale: i rapporti fra i notai e l'istituzione." In *Le scritture del comune. amministrazione e memoria nelle città dei secoli XII e XIII*, I florilegi 12 (Turin: Scriptorium, 1989), 99–128; Mark W. Steinhoff, "Origins and Development of the Notariate at Ravenna (Sixth through Thirteenth Centuries).," *Dissertation Abstracts International - A: The Humanities and Social Sciences* 38, no. 2 (1977): 946; Giorgio Tamba, "Civic Institutions (12th-Early 15th Centuries)," in *A Companion to Medieval and Renaissance Bologna*, ed. Sarah R. Blanshei (Brill, 2018); M.E. Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430–1501," *Papers of the British School at Rome* 86 (October 2018): 183–205; Christopher R. Cheney, "Notaries Public in Italy and England in the Late Middle Ages.," in *The English Church and Its Laws 12th-14th Centuries: Essays by Christopher R. Cheney* (London: Variorum Reprints, 1982), Essay XV:173–188.

preference and even legal requirement for *chartule* underscores the judges' effective monopoly over the power to legitimize legal acts in the city.

Using Documents in Court

The use of written proof in court also implied a certain degree of trust in the city's legal institutions and their ability to reliably produce legally valid documents. I have not found an instance in the archive of a Salernitan document's authenticity being questioned. As Chris Wickham has pointed out in the context of early-medieval Italian *placiti*, the "idea of the supremacy of the charter meant that it was accepted that the wording of a legally valid text did not, in practice, have to be backed up by oaths."⁷⁰ In other words, courts and disputants agreed that charters which looked and sounded a certain way were legitimate. In Salerno specifically, this meant a *chartula* drawn up according to the city's explicit documentary customs. A legitimate document, at the least, needed to contain the date of its creation, the notary who wrote it, and the name of the authenticating judge. Documents were identified by these three features when they were read in court and recorded in case records as part of the *ostensio chartae*. In an 1149 agreement between Constantinus Ioncata and a priest named Ioffridus, for example, Constantinus handed over 13 documents as part of the transaction. Each one was identified as some variation of "*septimo scripta per Iohannem notarium anno predicto incarnatione millesimo centesimo secondo temporibus domino Rogerii ducis mense februario undecimo indictione in qua Iohannes iudex subscriptus est.*"⁷¹ The rest of the information contained in the document

⁷⁰ Chris J. Wickham, "Land Disputes and Their Social Framework," in *Land and Power: Studies in Italian and European Social History, 400 - 1200* (London: British School at Rome, 1994), 245.

⁷¹ Arca xxvii 32 (1149).

might be important in specific circumstances, but the date, notary, and subscribing judge defined the validity of a document in a general sense.

Dispositive *chartule* were not the only documents accepted in Salernitan courts, even if they were the most common. Especially in the case of older documents (from before the Norman period, c. 1077) brought as proof of long possession or use, there are many instances of *memoratoria* being shown and accepted in court. An 1106 dispute over the correct terms of an agreement outlined in an earlier 1104 charter, for instance, references eight other documents from as far back as 994.⁷² That 994 document was authenticated by a judge, Petrus, the Archbishop Grimoaldus and multiple other witnesses. It was accepted by the court as probative and relevant to the dispute, even though it did not adhere to the twelfth-century diplomatic norms of the city.⁷³

Other forms of proof like witness testimony and oaths were also very important in Salernitan courts; testimony could fill in the gaps of what the documents left out or attest to the truth of a litigant's claims about possession or use. Oaths also occasionally ended intractable cases, as was the case in the 1106 dispute mentioned above. In that case, a certain Iohannes *filius* Guamarii *comitis* was accused by Iohannes *monachus* of Cava of breaking an agreement they had made to divide some land. Iohannes f. Guamarii responded that he had done no such thing

⁷² Arca xviii 43 (1106); xviii 43 (1106). Iohannes, *monachus* of Cava, was brought together with Iohannes *filius* Guamarii *comitis* in the sacred palace (*sacro palatio*) of Salerno to end a dispute about a mill on the Irno River just outside the city. Iohannes the monk claimed that the other Iohannes was not abiding by an agreement they had made in August of 1104 to split some lands. The 1106 document narrates how Iohannes the monk first showed the court the record of the earlier court session between them from July of 1104, which itself contained reference to six other documents from as early as 1058, and then also showed the charter detailing their August 1104 agreement, which referenced yet another charter. These documents having been shown, the judge, Petrus *iudex*, decided that Iohannes the monk (or someone on his behalf) and Iohannes f. Guamarii must each swear oaths regarding their position in a later court. That later document is also extant (Arca xviii 43), and Iohannes f. Guamarii loses the case and his portion of the lands because he was shown to have been in breach of the terms of the 1104 agreement.

⁷³ Arca xviii 42 (1106).

(*respondit se talia non fecisse*). The judge determined that the only way to resolve this problem was for Iohannes to swear an oath on the Gospels that he had not done what he was accused of.⁷⁴

When both parties to a dispute could bring legitimate documents to court, their temporality often determined which took precedence. In 1138, for example, Ligorius, a monk of Cava, was in a dispute with Urso *filius* Iohannes de Mauro over some land in Felling outside the city. Ligorius showed a testament from 1137 in which Guaymarius, the lord of Capudaquensis, gave this land to Cava. Urso contested that this land should belong to him because the lords of Capudaquensis had been required to surrender it to him for defaulting on a debt. As evidence, he showed a judgement made by the *stratigotus* of the city, Sergius Caputus, and a certain Iohannes *iudex*. It was determined, though, that this charter of judgement was made later (*que tamen cartula posterior erat*) than the 1137 document shown by Cava. The later date of Urso's judgement rendered it invalid, since the judges had been unaware that the land in question should already have been given to Cava.⁷⁵ The specific temporal details of the document, which were accepted as valid without witness testimony, determined the case.

Archival Practices and Power

The importance of temporality and its impact on precedence underscores the practical advantages of having one's documents organized, or at the very least in one's possession. Documents were not only "records of the workings of power," as Rustow put it, but indeed instruments of power.⁷⁶ As dispositive documents, they were powerful in the strict sense that they did

⁷⁴ Arca xviii 42 (1106): *et ipse Iohannes filius Guaimarii secundum legem per sacramentum ad ipsa avangelia [sic] iuret eis ut illud de quo ut supra legitur ipse Iohannes monachus appellavit non fecisset.*

⁷⁵ Arca xxiv 60 (1138).

⁷⁶ Rustow, *The Lost Archive*, 9.

something legal, i.e. completed a sale, donation, or lease. But they were also powerful because they often ended disputes on their own, especially when only one party had them. This occurred in the *placiti* of early-medieval Northern Italy as well, so much so that it led to a procedure known as the *ostensio cartae*, the showing of the charter, in which a charter was read out in court and the opposing party accepted it so that the case ends. It has been suggested that some of these cases were fictitious, fit into a procedural pattern to formalize an outcome even if the parties had not actually disputed in court.⁷⁷ While fictive cases are not common in the Salernitan context, they serve as a reminder that the formality of legal proceedings was only one way of settling a dispute and usually one that privileged those with the means to argue their case effectively. In Salerno, arguing effectively meant, more than anything, having access to documents.

From my archival point of view, the power of documents as proof can best be seen when the monks of Cava were able to brandish them in court against others who did not have them. This did not happen often in Salerno, perhaps because litigants more often had documentary proof of their claims, given their need to acquire them as part of a transaction. The monks of Cava had more success against the rural inhabitants of their properties outside the city. An excellent example comes from the Cilento peninsula. In 1141, the monastery's *advocatus* Aimo accused four different family groups of illegally holding and occupying the monastery's land near Persecito. The groups denied the charges, but Aimo had documents in each case claiming the land was sold to the monastery. In the first case against Urso de Frosinum and his relatives, the charter Aimo produced was from 1079, sixty-two years earlier. After hearing the evidence, the court stated that it wished to make a judgement in favor of the monastery. But before this

⁷⁷ Wickham, "Land Disputes and Their Social Framework," 245–46.

could happen, Urso and his relatives decided to surrender the land to the monastery if they did not have to pay the fines laid out in the 1079 charter. The monks agreed to this and Urso and his relatives gave pledges and guarantors guaranteeing that they would not bother the monastery or its lands any longer. The same process (accusation, document shown to court by monastery, surrendering of property to not pay fines) was then repeated three more times with the three other families.⁷⁸

Understanding the power that the documents represented, the monks of Cava were careful to manage and preserve the documents in their archive. There are multiple instances of Cavese monks and others bringing damaged documents or ones they needed a copy of to a judge and having them copied and re-authenticated by the court. In 1146, for example, Petrus, monk and *prepositus* of Cava, brought a document from 1121 to court on behalf of Cava's dependency S. Maria de Domno in Salerno and showed it to the court (*ostendit unam cartulam*). The full charter from 1121 was copied into the 1146 document, including, crucially, the judge's signature from the earlier document. In the document being re-copied, the signature was simply written in the charter as part of the narration, rather than in the large and elaborate style characteristic of a judicial signature. What matters, though, is that there *was* a judicial subscription on the original document and that the copy records that fact, now guaranteed by the fresh judicial signatures of 1146. The precise role of judges as holders of public trust, as perfect witnesses, is here demonstrated: There could be confidence in the authenticity of the earlier charter because the present document, from 1146, indicated that the judge had examined and approved the legitimacy of the earlier document. The judge signed the document at the monk's request (*cuius*

⁷⁸ Arca xxv 36 (1141). This case is also discussed briefly in: Carocci, *Lordships of Southern Italy*, 89–90.

ego precibus annuens) after ordering the notary, Ademarius, to make the copy (*te Ademarium notarium exemplari iussi*).⁷⁹ There is no indication of exactly why the *prepositus* had this copy made and authenticated. It does not appear that judicial signatures expired, whether with the judges' death or otherwise. He may have wanted a copy for the monastery's archives, since the only original was in S. Maria de Domno, or there may have been some danger that the earlier document would decay or be damaged, and therefore he needed to ensure the monastery had an authentic copy; the monks may also have been uncertain whether the document they possessed contained the signature of a true Salernitan judge.

Copying documents which were in danger of becoming unusable was the motivation in two other instances in which documents were copied and authenticated by a judge of Salerno. In the first, from March 1165, Centurio brought two documents to Salerno to be authenticated, two orders (*precepta*) of different Lombard princes, Guiamar IV (r. 1018-1042) and Gisulf II (r. 1042-1077), each with a wax seal (*duo precepta cereis bullis*). The *precepta*, which contained grants to the monastery, were becoming difficult to read because some of the letters were smudged and the wax seals were distorting the script.⁸⁰ Then early the next year, in January 1166, a monk of Cava, Centurio, came to Salerno with a document which had begun to be eaten by maggots (*tineis corrosa*) and asked for another copy, just in case the old one became illegible and compromised their claims to the property.⁸¹ Just as in the earlier document from March 1165, Centurio asked the judge to authenticate what was in the earlier documents and the judge

⁷⁹ Arca xxvi 41 (1146).

⁸⁰ Arca xxxi 107 (1165): *Que quidem precepta temporum vetustate tam in ipsis litteris lituram ut iam difficulter legi possent quam in cereis bullis ipsarum inpressarum figurarum deformationem paterentur.*

⁸¹ Arca xxxi 100 (1166).

ordered the notary to publicly declare everything was in order (*totam ipsam cartulam in hac cartula per ordinem te Alfenum notarium declarare iussi*).⁸²

The monks' desire for authenticated copies of older documents indicates their understanding that their documents represented considerable legal power. They took care to manage and preserve their documents because it was tantamount to preserving their rights. Moreover, their concern shows their understanding that Salernitan *chartule* were used dispositively, even if they may not have used that term, and that judicial signatures had a specific legal power. Without parchments signed by a Salernitan judge, the monastery had no valid proof of its property rights in the city or its hinterlands. Indeed, the requirement of judicial authentication and the dispositive nature of the documents may well explain why the monks of Cava preserved record of their property rights as single-sheet parchments rather than in a cartulary. Copying Salernitan documents into a cartulary would have been a useful way of organizing and recording what was in the monastic archive, but a cartulary could never substitute for an original parchment. Operating within Salerno's legal orbit, the monks did not make cartularies of its mass of non-Salernitan parchments either, regardless of whether these parchments had an inherent authority as a physical object.

The monks of Cava were not the only ones with an awareness of the legal power of an archive. There are multiple examples of private persons, including laymen, possessing large numbers of documents. In 1149, a priest named Constantinus Ioncata handed over a total of 14 documents (the earliest being from 994) relating to a single property in Passiano when he gave that land to Ioffridus, abbot of S. Trofimenia.⁸³ In 1150, Cava made an agreement with a different

⁸² Arca xxxi 100 (1166).

⁸³ Arca xxvii 32 (1149).

Constantinus (*filius* Pandulfi Siculi), a layman,⁸⁴ about using two documents that he kept in his possession relating to land they held in common: one from 1086, in which he bought a certain plot of land in Transboneia, and another from 1146, in which he split the land in half with his brother Leo and sold his half to Cava. The agreement between Constantinus and Cava was that Constantinus should keep the documents, but if Cava asked for them, having a legitimate reason to do so, Constantinus and his heirs had to give them to the monks within ten days. The exchange had to be done before a judge of Salerno and Cava had to give a pledge and a suitable *fideiussorem* to Constantinus or his heirs. Cava could then keep and use the documents for a period of one hundred days at which point the monks had to return the charters.⁸⁵

The agreement underscores once again how important legal documents were for the defense of one's claims in court. Cava had to make this agreement, however inconvenient, because they needed access to Constantinus' document to defend their claim if it came into dispute. It is not clear why Cava did not make a copy (which we have seen was possible), but Constantinus may have feared that they would somehow change the terms of the agreement and wanted his proof to be safeguarded. Whatever his reasons, it was important for the security of Cava's patrimony that they had access to his documents. The monks of Cava made a similar agreement in 1112, when they bought some land from Petrus *filius* Iohannis de Falco, another layman, and made an agreement about using the six documents (three *chartule* and three *brevi*)

⁸⁴ The charter says that his father "later became a monk (*qui postea monachus fuit*)," but there is no evidence that Constantinus was a monk or cleric.

⁸⁵ Arca xxvii 92 (1150). Moreover, they agreed that if something happened to the documents, such as they were burned in a fire or taken by public violence, by no fault of the possessing party, neither should be culpable. If some controversy did arise between the parties concerning the documents, the matter would be settled by oaths on the Gospels, as was the custom of the city, exceptions being made for the monks who did not need to swear, by law, but could have someone else do that for them.

relating to the property that he had.⁸⁶ These instances of laymen holding on to their documents in the face of Cavese pressure suggests a wider archival consciousness among the Salernitan population. Salernitans were certainly comfortable using documents for legal purposes, and while Cava had a unique archival capacity and held thousands of documents, smaller lay archives may have existed all over the city.

Conclusion

The consistency of the material, visual, and diplomatic features of Salernitan documents in the Norman period (c. 1077-1189), as well as the way they were used and stored by both monks and laymen, strongly suggest two things. First, documentary production was firmly institutionalized. The role of the judges and notaries in the creation of the documents is clearly articulated in the diplomatic, formalized in city customs, and consistent throughout the period. The consistent material and visual features of the documents—parchment size and quality, layout, ruling, script—also suggest that documents were created by professionals, or at least experts, with a particular and common aesthetic in mind. The dispositive nature of the documents and the importance of the judicial signature to that dispositivity also strongly suggest that document production was the exclusive prerogative of a limited group of legal experts.

Second, documents were very common in Salerno, in the sense that their use was not limited to monastic, ecclesiastical, or high-status lay contexts. Instead, documents were quotidian and part of the fabric of life in Salerno during the Norman period. Every legal transaction required and created a document, from sales and donations to wills and property disputes. Salerno's legal culture was suffused with writing and documentation, and therefore subject to all

⁸⁶ Arca xix 54 (1112). In this case, the documents could be used for sixty days.

the attendant assumptions that characterize a written legal culture. Documents were privileged as legal proof over memory, so people kept and stored their documents carefully and for long periods of time. In this context, only legitimate documents were useful, so the rules for what was legitimate were either explicitly formulated (as in the case of *cartam venditionis* formula) or implicit in the commonly adopted features of layout and diplomatic (dating clauses, named notaries, judicial signatures). It was also essential that documents were authenticated by the city's legal experts, the judges, who represented a common authority invested with public trust. The predictable form of documents and their authentication by recognized legal experts facilitated trust in the written word as legal proof. The Norman period was not a period of change in this regard; by the late eleventh century and into the twelfth, Salernitans already appear to have 'trusted' writing.

The documentary culture of the city is only one side of the coin. To fully understand the Salernitan legal culture and the way that it influenced how the law worked in the regions surrounding it, it is necessary to understand not only its products (the documents), but also its producers: the judges. It is to them that I now turn.

Images

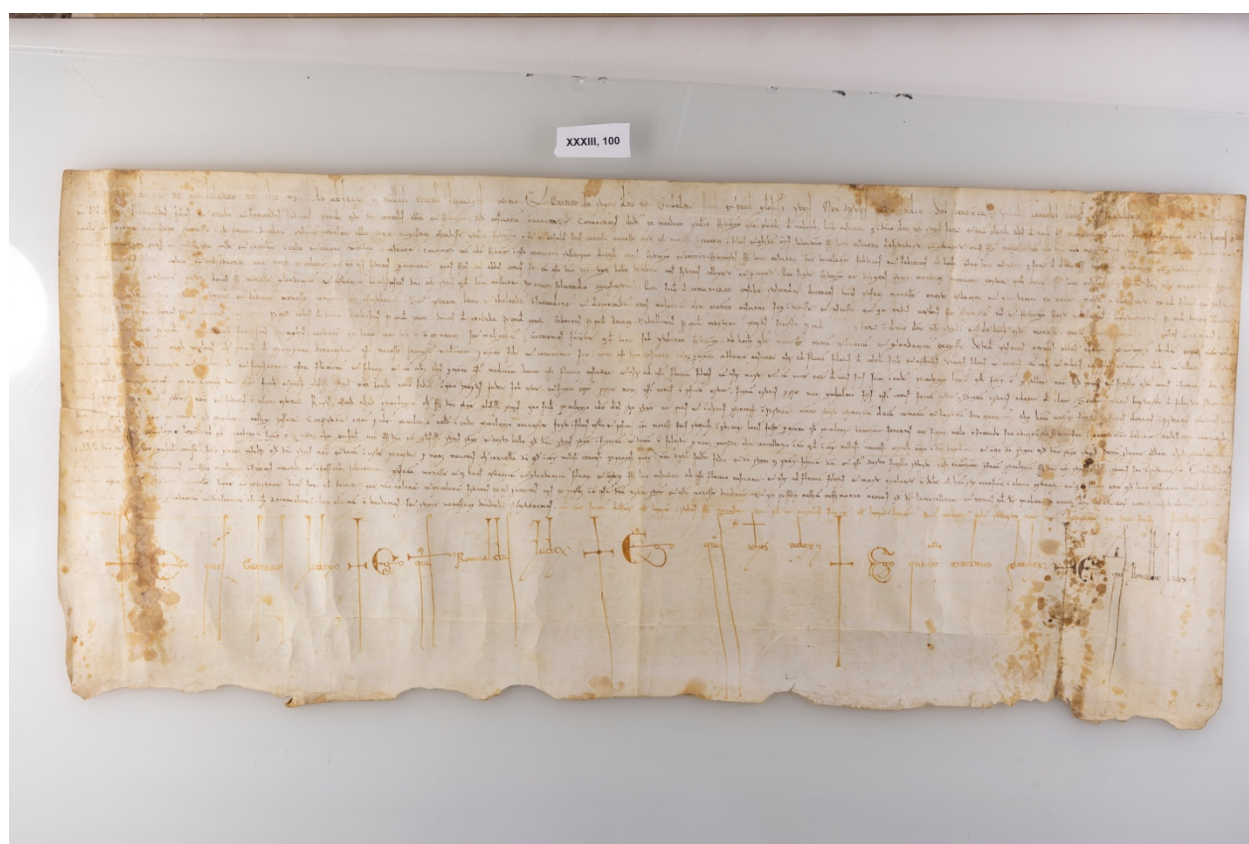


Figure 1: Arca xxxiii 100 (1171)



Figure 2: Lead pendant seal, obv. Bust of Saint Matthew. Arma Magna F 24 (1123)



Figure 3: Lead pendant seal, rev. Ducal inscription: +G. DUX/CAL. ITAL/SIN L. Arma Magna F 24 (1123)

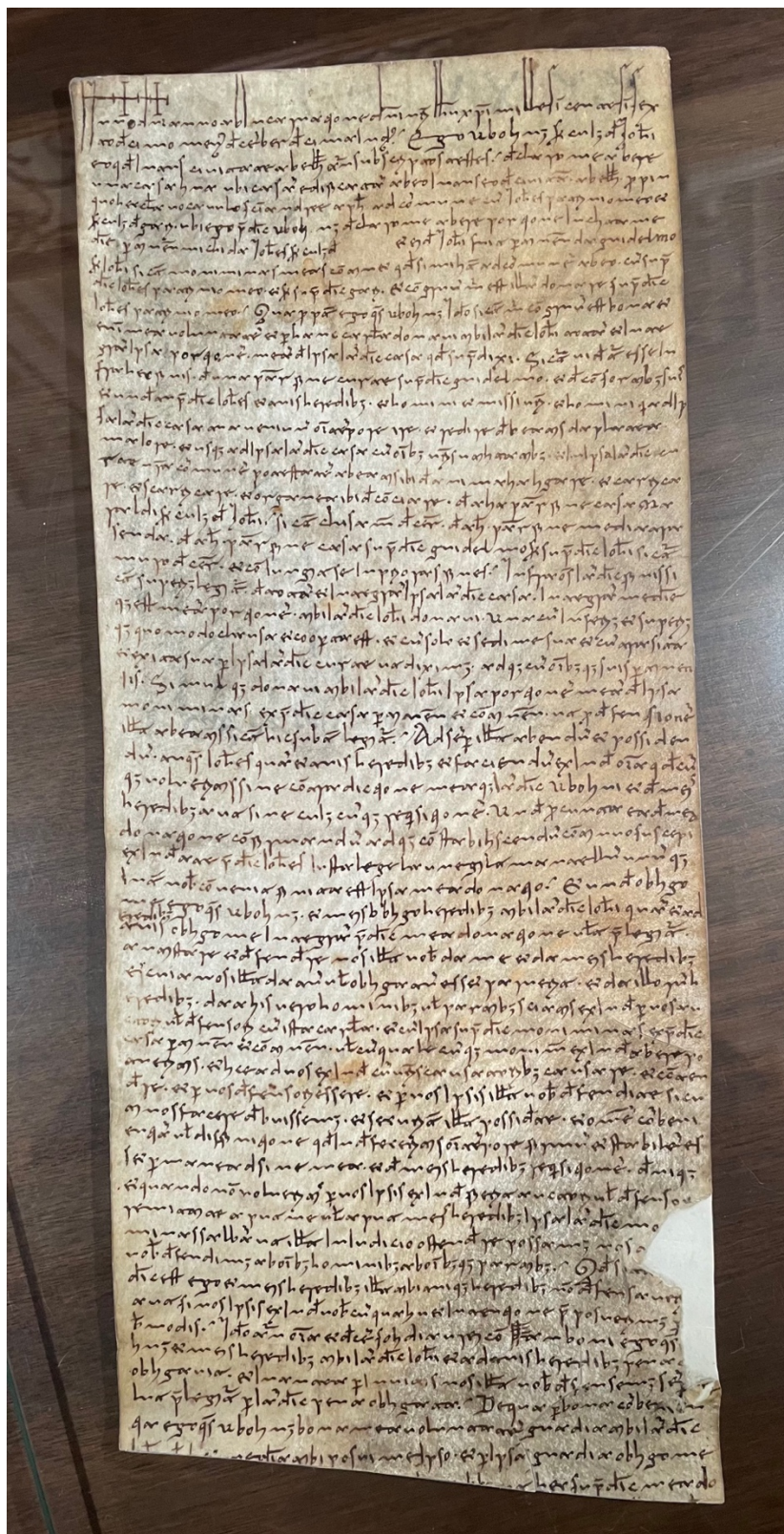


Figure 4: Donation from Avellino. Arca xx 57 (1116)

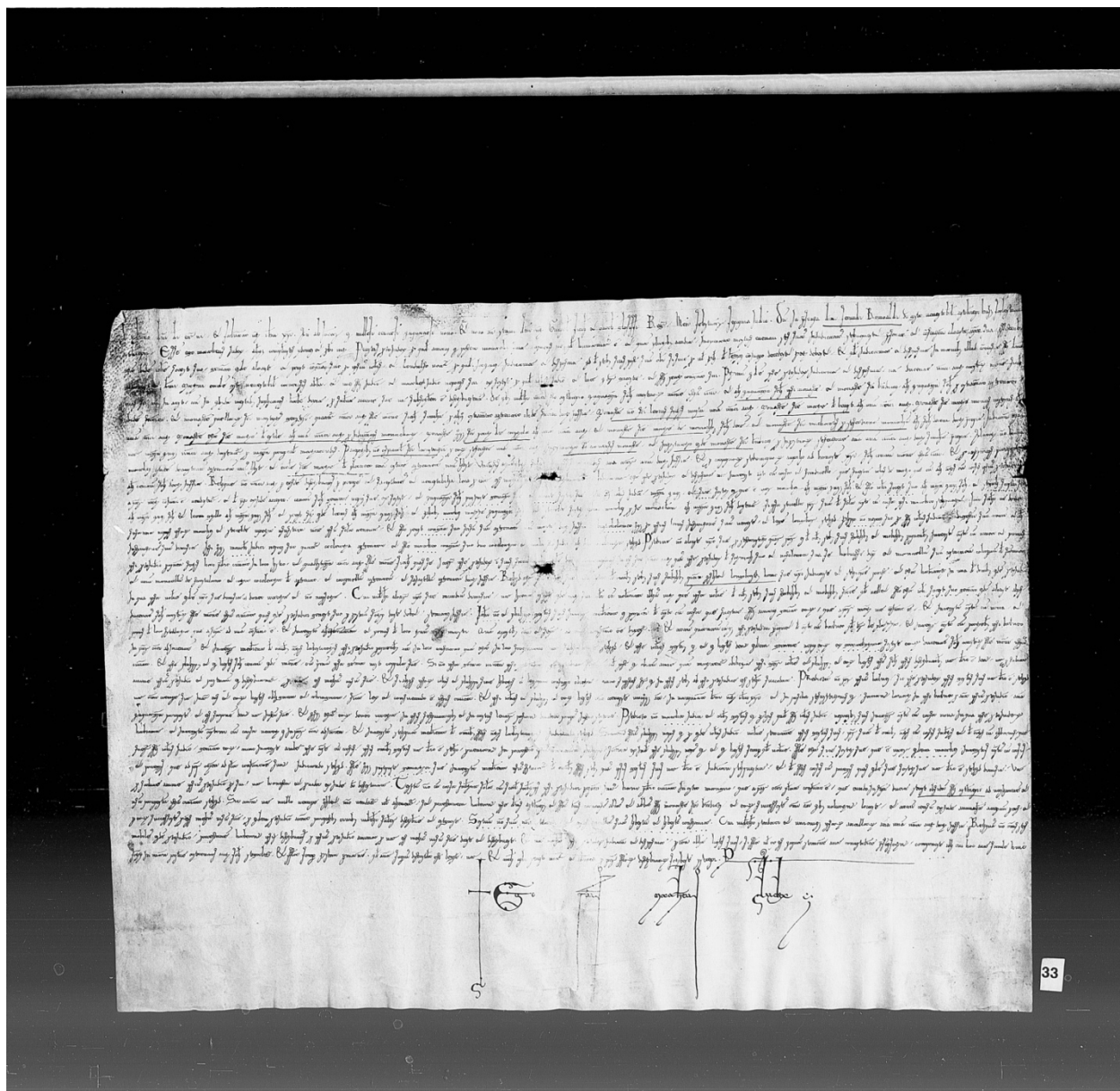


Figure 5: Arca xxx 33 (1159)

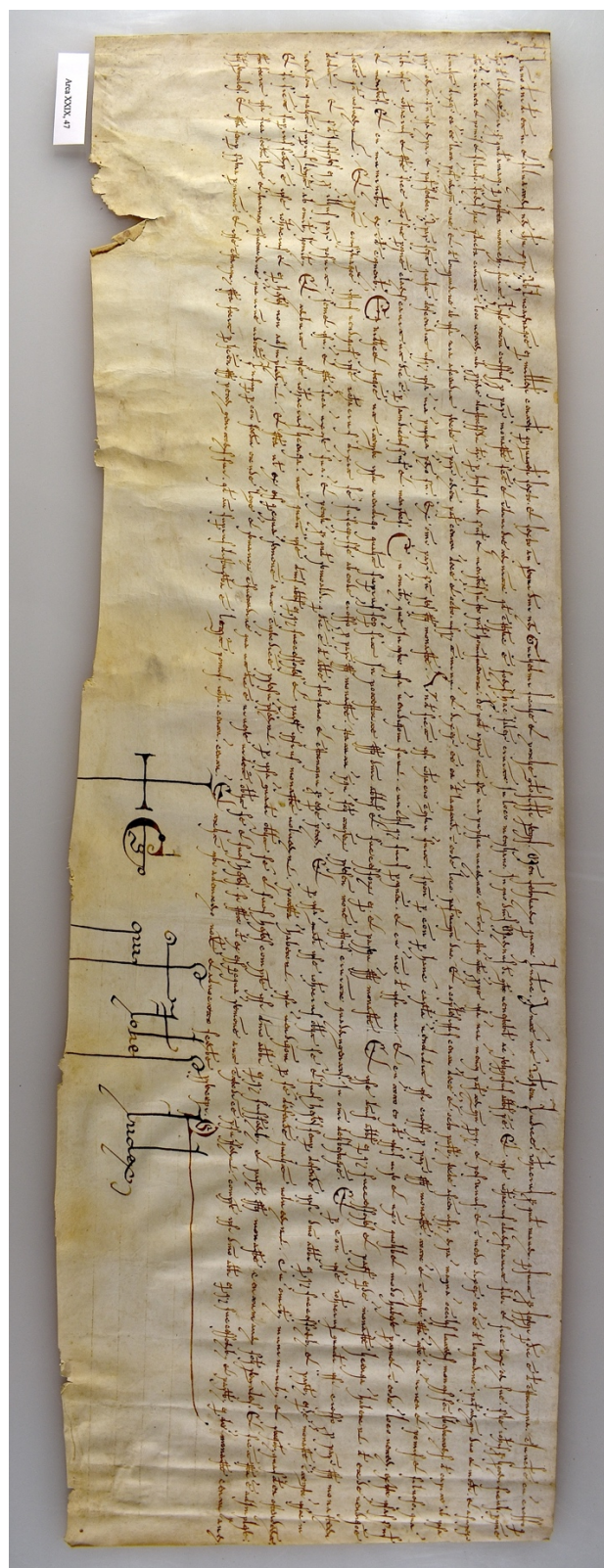


Figure 6: Arca xxix 47 (1156)

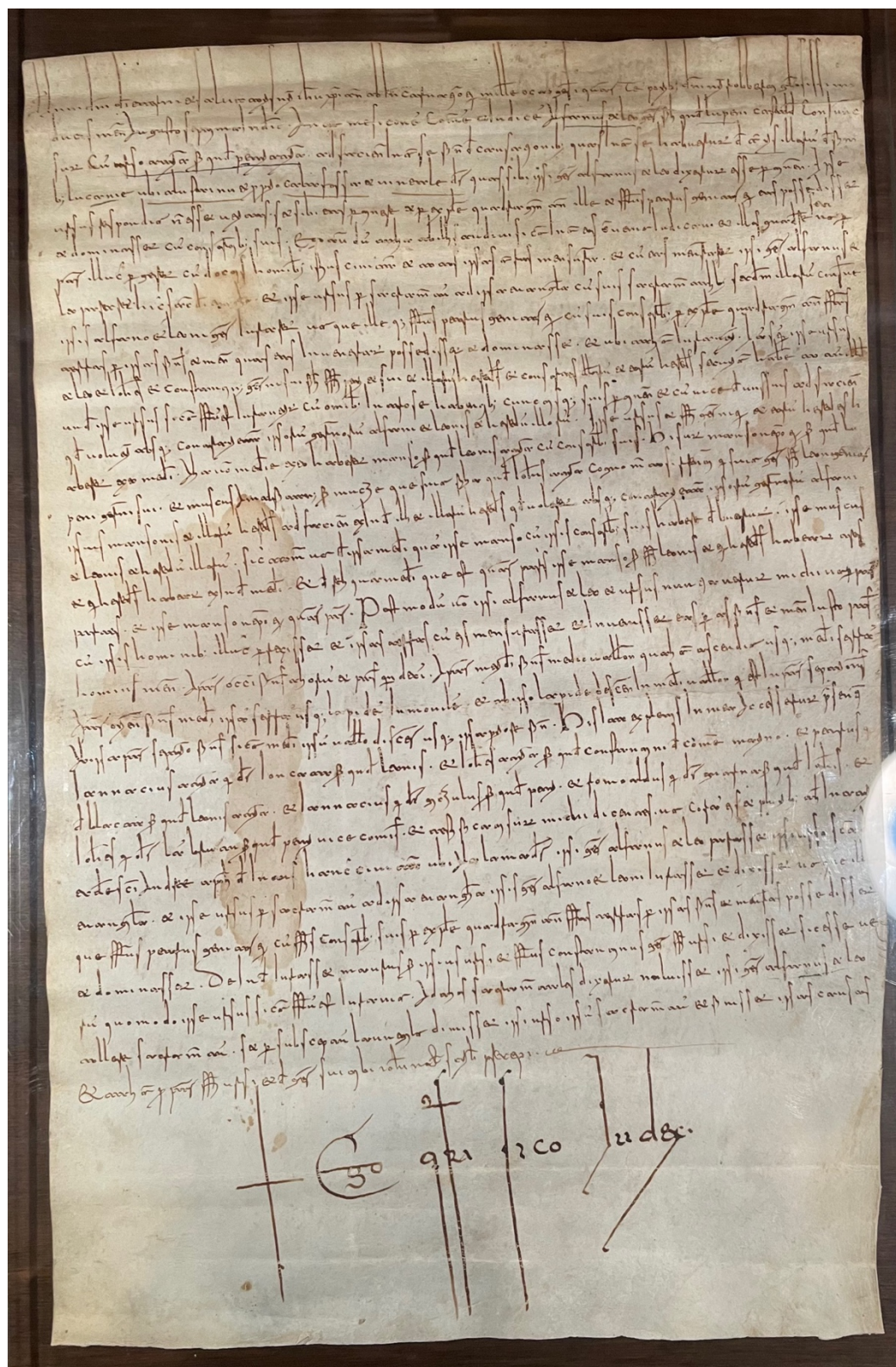


Figure 7: Arca xiv 21 (1089)

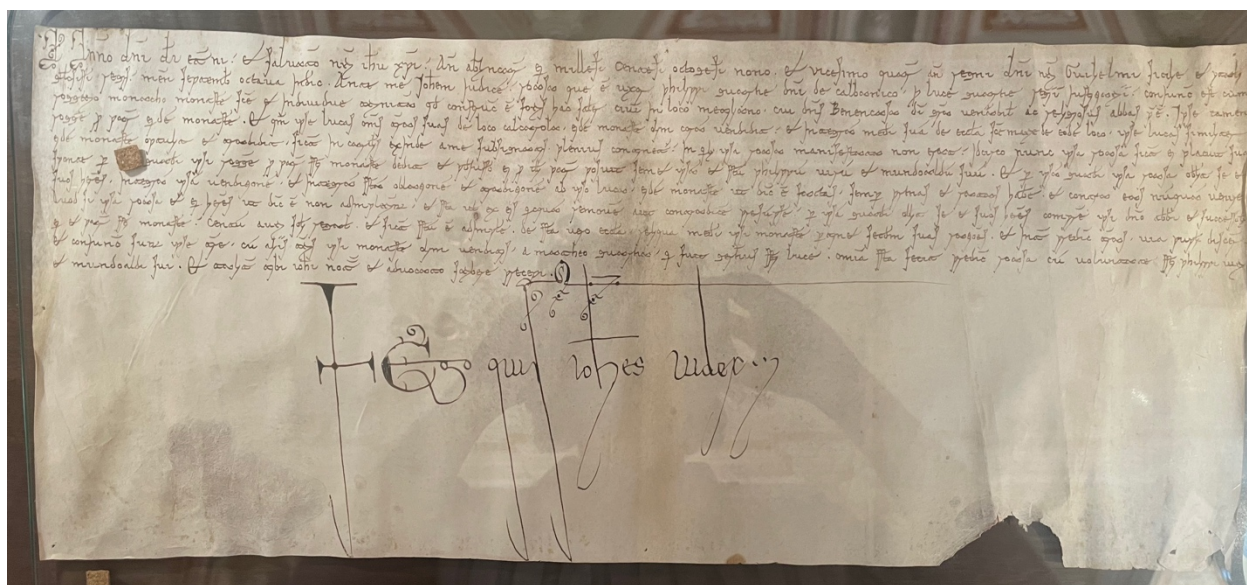


Figure 8: Arca xliii 43 (1189)

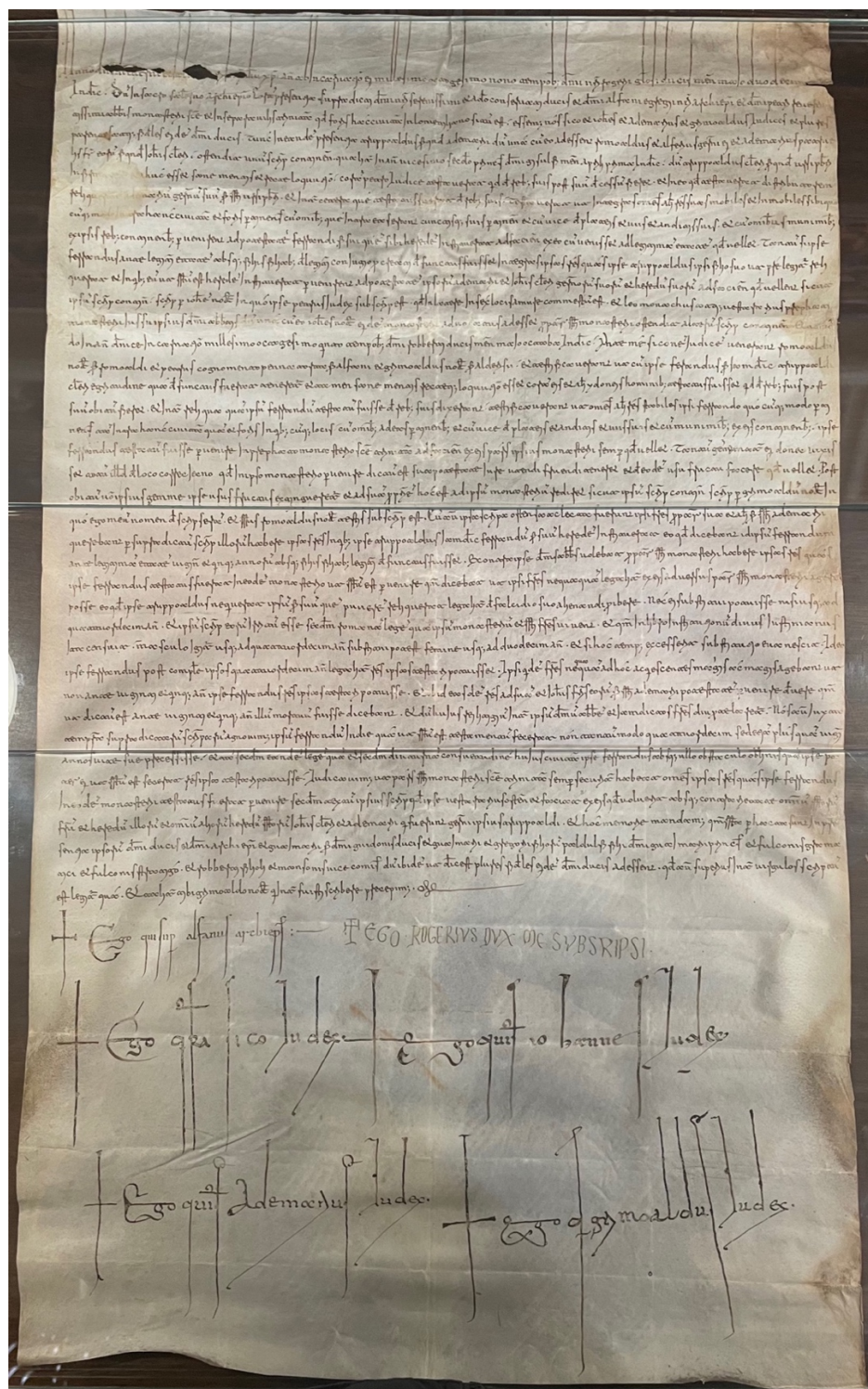


Figure 9: Arca xiv 118 (1089)

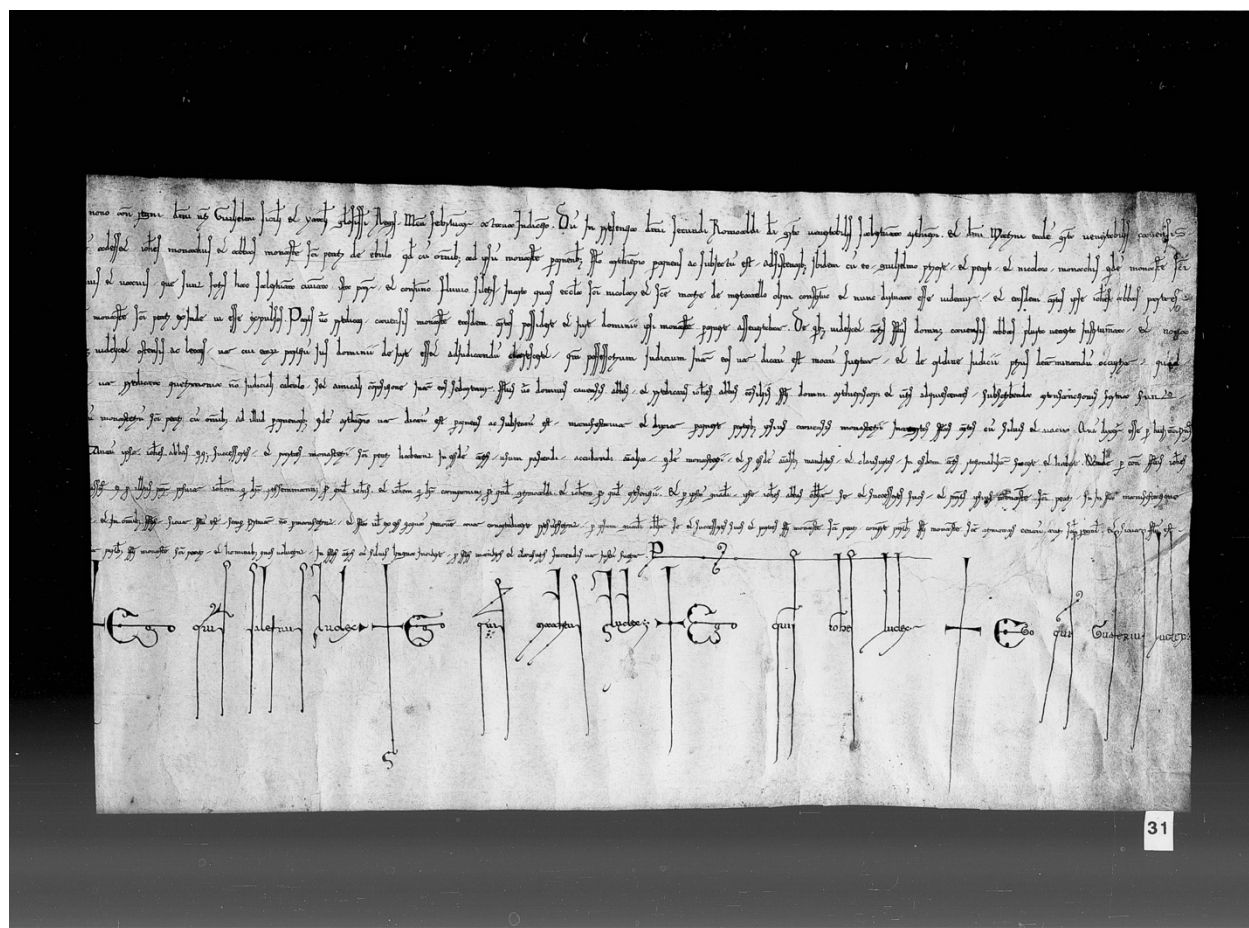


Figure 10: Arca xxx 31 (1159). This is only half of the document. The image provided to me by the archive does not capture the full size.

Appendix 1: Four versions of the document of sale (*carta venditionis*) formula

Document number	Date	Formula
Arca xiv 65	1086	...cartulam venditionis per publicum scriba secundum legem et Romanorum consuetudinem cum guadia et ydoneo fideiussores peneque obligationis in qua etiam iudex subscribatur.
Arca xv 20	1090	...per firmam cartulam cum guadia et ydoneo fideiussore et ab omnibus hominibus defensione et pena obligationis sicut lex et consuetudo istius est civitatis, in que iudex subscribatur.
Arca xviii 15	1105	...coram iudice huius ciuitatis et per firmam cartulam, secundum legem a puplico notario scripta, cum guadia et ydoneo fidiussore et ab omnibus hominibus defensione et penam obligationis sicut lex et consuetudino istius est ciuitatis, in qua iudex subscribatur
Arca xxxv 28	1175	...cartulam a puplico notario istius ciuitatis scriptum cum guadium e ydoneo fideiussores et pena obligatio in quam ipse Iudex subscribatur

Chapter Two: The Nature of Judgeship in Norman Salerno

Introduction

In documents from the Norman kingdom of Sicily, a Salernitan judge is hard to miss. There is his signature, dominating the page. Read more closely, and his signature is only the final thing: he's also the author, the first-person narrator of whatever legal act the document contains. He gives orders to witnesses to testify and to notaries to write documents. As a legal expert, he could be called upon to represent even the most powerful monastery in his region in legal disputes with other cities. Even when the Duke of Apulia, the ruler of the city, and the Archbishop of Salerno presided on the bench next to him and signed the document alongside him, his and his colleagues' signatures dwarfed theirs (Figure 1). The place of the judges of Salerno in the legal culture of their city—the powers they held, the legal authority they possessed, the social circles they belonged to—merited such self-confidence in the face of political authority; the judges were important people.

Judgeship was Salerno's central legal institution during the Norman period (1077-1189) and the characteristic feature of the city's legal culture. Nearly everything that a Salernitan knew about the law—how to use it, what it was for, the source of its authority—involved the judges in one way or another. Their centrality to the workings of the law in their city was distinctive in twelfth-century southern Italy; at least until the middle of the century, there were few other places in southern Italy where judges had comparable powers, and none were exactly like Salerno. Therefore, to understand the local legal culture of Salerno and how it changed during the twelfth century, it is necessary to understand the nature of judgeship in the city, the ways it was distinctive, and the role Salernitan judges played in the law of their city.

In the early medieval Mediterranean, the meaning of the term *iudex* (pl. *iudices*) varied considerably depending on the context of its usage. The inheritances of Roman law included the definition of the Late Republic (367-27 BCE), in which a *iudex* was a private individual appointed by the litigants to issue a judgement in a specific trial.¹ Beginning in the Principate and definitionally by the time of the compilation of the *Corpus iuris civilis* (534), *iudex* referred specifically to a magistrate, an official of the empire who possessed jurisdiction of any kind.² In the texts of the Italian Lombard law (643-755), words proliferate: The chief magistrate of an administrative district might be called a *iudex*, but he could also have the title of *gastaldus*; his subordinate was called the *sculdahis*.³ Justinianic and Lombard law agree, however, on the idea that the judge was an official of the state empowered by the emperor or king to issue legal judgements.⁴

¹ Adolf Berger, “*iudex*,” in *Encyclopedic Dictionary of Roman Law* (American Philosophical Society, 1968); O. E. Tellegen-Couperus, *A Short History of Roman Law* (London: Routledge, 1993), 53–57.

² Tellegen-Couperus, *A Short History of Roman Law*, 90–93; Inst. 4.17; C. 1.45; 1.48. The relevance of the Justinianic definition of *iudex* (and of Roman law more generally) to the reality of legal practice in the early Middle Ages is a topic of considerable debate, especially in an Italian context. See Ennio Cortese, “Il processo longobardo tra romanità e germanismo,” in *La giustizia nell’alto medioevo (secoli V-VIII)*, vol. I (Spoleto: Centro italiano di studi sull’alto medioevo, 1995), 621–648; Antonella Ghignoli and Francois Bougard, “Elementi romani nei documenti longobardi?,” in *L’héritage byzantin en Italie (VIIIe-XIIe siècle)*, ed. Jean-Marie Martin, Annick Peters-Custot, and Vivien Prigent, vol. I, Collection de l’école française de Rome (Rome: École française de Rome, 2011), 241–301.

³ The laws of the Lombard kings were issued by multiple different kings between the years 643 and 755. The first and largest part of the law, the Edictum Rothari, was issued in 643, followed by the Leges Grimoaldi in 668, and the Leges Liutprandi between 713 and 735. Further additions were made by King Ratchis in 745 and 746 and King Aistulf in 750 and 755. After the Carolingian conquest, Frankish capitularies relevant to the Kingdom of Italy were also included in texts of Lombard law. See Katherine Fischer Drew, *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973), translator’s introduction, 21–22. On the *sculdahis*: *The Lombard Laws*, 155–58; *Liber Leges Langobardorum Papiensius Dictus*, ed. Alfredus Boretius, vol. Leges IV, Monumenta Germaniae Historica (Hannover: Monumenta Germaniae Historica, 1868), 419–21, Leges Liutprandi 25–28.

⁴ The relationship is scarcely accidental, as the Lombard laws were written in explicit opposition to Roman law, and were thus in constant conversation with Roman legal ideas. Caroline Humfress, “Law and Legal Practice in the Age of Justinian,” in *The Cambridge Companion to the Age of Justinian*, ed. Michael Maas (Cambridge: Cambridge University Press, 2005); Nicholas Everett, “Literacy and the Law in Lombard Government,” *Early Medieval Europe* 9, no. 1 (2000): 93–127.

The idealized schemes of late antique legal texts may have borne some relation to legal practice; scholars examining Late antique legal documents in the centuries around the millennium find new and varied meanings of the term *iudex* in the Mediterranean. In northern Iberia before 1000, *iudex* was not a term that specified a legal functionary of the state. Instead, a group of *iudices* could be composed of anyone who judged (*qui iudicavit*), whether that was a king, bishop, priest, or local aristocrat. "Being called a *iudex*," Wendy Davies explains, "was a marker of status...to do the judging you did not need to be a *iudex*, although you might be; in other words, the label *iudex* and the act of judging are separable."⁵ The separation of the term *iudex* from the act of judging, she argues, was a result of the breakdown of the kind of centralized judicial administration the texts of Lombard or Roman law take for granted. In other contexts without a strong central authority to determine who could and could not be called *iudex*, scholars argue similarly that the term lost its association with a government office. In eleventh- and twelfth-century communal Italy, for example, Maire Vigueur argues the term denoted a "quality and not a function," and was not reserved for any specific magistrate or communal official; while Wickham argues for Tuscany in particular that it "denoted status in the secular literate hierarchy," rather than any "specific courtroom responsibility." *Iudices* might mean those with some knowledge of the law, but it is unclear what kind of knowledge, its source, or the specific functions that knowledge served in the courtroom.⁶

⁵ Wendy Davies, "Judges and Judging: Truth and Justice in Northern Iberia on the Eve of the Millennium," *Journal of Medieval History* 36, no. 3 (2010): 200.

⁶ Jean-Claude Maire Vigueur, "Gli 'iudices' nelle città comunali: identità culturale ed esperienze politiche," in *Federico II e le città italiane*, ed. Pierre Toubert and Agostino Paravicini Bagliani (Palermo: Sellerio, 1994), 161–63. Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford: Oxford University Press, 2003), 21, fn. 11; Ennio Cortese, "Intorno agli antichi iudices toscani e ai caratteri di un ceto medievale," in *Scritti in memoria di Domenico Barillaro* (Milan: Centro italiano di studi sull'alto medioevo, 1982), 5–38.

In these arguments, the changed meaning of the word *iudex* are signs of a changed world of state power: a disappearance of the late antique Roman state, followed by the deterioration of a more limited Carolingian one. How useful are they when brought to Southern Italy, with its overlapping Byzantine and Lombard princely regimes little influenced by Carolingian schemes of authority? How much did Norman lordship change the nature of judgeship and the meaning of the word *iudex* even before the establishment of the Norman kingdom?

In this chapter, I examine the nature of judgeship in Salerno during the Norman period, from the conquest of Salerno by Robert Guiscard in 1077 to the death of the last Norman King of Sicily, William II, in 1189. The documentary record allows some comparison to the last years of the Principality of Salerno (851-1077),⁷ but the heart of my study is the early and central years of the Norman monarchy, between 1130 and 1170. This period coincides with the establishment of the kingdom in 1130, the politically tumultuous reigns of Roger II (r. 1130-1154) and William I (r. 1154-1166), and the minority of William II (r. 1166-1189). As I will discuss below, the literature on the administration of the Norman kings (whether the contemporary chronicles or modern scholarship) often focuses on the ambitious goals of Roger II, and thus a focus on these years allows me to examine how the legal and administrative changes that accompanied the establishment of the kingdom affected the nature of judgeship in Salerno and its surrounding regions. At the same time, the records of this period for Salernitan judgeship are largely terra

⁷ Overviews of the judges for the preceding Lombard period: Huguette Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle): Pouvoir et société en Italie lombarde méridionale* Collection de l'Ecole française de Rome (Rome: École française de Rome, 1991), 562–88; Paolo Delogu, “La giustizia nell’Italia meridionale longobarda,” in *La giustizia nell’alto medioevo* (Spoleto: Centro italiano di studi sull’alto Medioevo, 1997), 257–312; important response to claims made about judges and notaries in Taviani-Carozzi’s book: Stefano Palmieri and Maria Galante, “Per una storiografia che dialoghi: a proposito di un libro recente sul principato longobardo di Salerno,” *Rassegna storica salernitana: Nuove serie* XI, no. 1 (1994): 225–42.

incognita: virtually none of the extant parchments have been edited, and scholarly study of them essentially ends around 1130.⁸

The best sources of information about the nature of judgeship in the Salernitano are the legal documents that the judges themselves, the *iudices Salerni*, had a hand in producing. These legal documents, preserved in Cava's archive, mostly concern property and were of many types: sales (*venditiones*), purchases (*emptiones*), donations (*donationes*), oblations (*oblaciones*), agreements (*conventiones*), testaments (*testamenta*), case records, confessions (*instrumenta manifestate*) and remissions of lawsuits (*remissiones actionum et calumpniorum*).⁹ The court cases recorded in the documents (99 documents from 1077-1189) are also all about property. There are no records of criminal cases in my documentary corpus.¹⁰

These sources can provide only a narrow window from which to view judgeship in the city and region. They provide a necessarily skewed sample of the activities of judges in the city, though a substantial one: as the biggest single property owner in the region the monastery, its administrative personnel and its abbot, though not of the city, were some of the most prominent actors in it.¹¹ They were repeat customers for the city's legal documents; as their properties and property-rights were deeply entangled with most prominent city families. And the abbots at least (as will be seen below) were part of the judicial fabric of the city, joining other notables alongside judges in hearing important cases.

⁸ Maria Galante's pioneering work on the judges of Salerno, discussed below, focuses on the Norman period before the monarchy (1077-1130).

⁹ See Ch. 1, fn. 8.

¹⁰ There are criminal cases at the royal court narrated in the *Liber de Regno Sicilie* that will be discussed in Chapter Four. Carocci argues that the general lack of evidence for court cases in which lords have the right to preside over criminal cases whether in Cava or other archives, coupled with other explicit grants of judicial authority that do not mention these rights of criminal justice, is evidence that the kings had an exclusive right over criminal justice in the Regno. See: Carocci, *Lordships of Southern Italy*, 196–99.

¹¹ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 2.

There are also limitations to the sources per se. Twelfth-century Salernitan documents are very formulaic and contain little narrative or prosopographic detail. Documents follow a standard formula: invocation, dating clause, identification of litigants, narration of the case or transaction rendered in formulaic language, exchange of pledges and guarantors, penalty clause, judge's order for the notary to make the document, and finally the judge's signature. Litigants and legal personnel are usually identified only by personal name and father's name (Iohannes, son of Urso). *Cognomina*, familial last names like Butronile or Guarna, are rare, as are identifiers by place, like Atrianensis (of Atrani). Some clerical and monastic officials are referred to by their professional title, such as *praepositus*, or *aduocatus*, but this is not common. Such sparse details about the people involved with the law, either as litigants or legal personnel, makes it difficult to learn much about social position, social or familial relationships, or evolution of groups.

The most significant methodological limitation in using documentary sources is that they present a curated view of the nature of Salernitan judgeship. What we know about the identity of the judges of Salerno and their various legal roles comes almost entirely from documents authored by them—the local diplomatic norms, as discussed below, required their first-person voice. Judges in Salerno were the only persons authorized to make a legal record of what happened in court, and their records invariably show them as the most important legal personnel in the city. Despite these limitations, the corpus still contains documents relating to judicial wealth, family judicial traditions, and the social status of the judges that, when analyzed carefully, can reveal a great deal about the nature of judgeship in twelfth-century Salerno.

The chapter proceeds in three parts: first, a background section places the Salernitan judges in their regional context. I then look at the judges of Salerno as a professional group, examining their lay status, family connections, professional development, wealth and

connections to local elites and institutions. The bulk of the chapter is then devoted to the judges' unique combination of legal roles: their monopoly on the production of legal documents (and the legal character of the documents they produced), their role in guiding legal procedure, and their evolving role as holders of 'public faith.'

Background

In southern Italy, there is not a great deal of extant archival evidence from before the arrival of the Normans in the early eleventh century (c. 1017), so sketches of the legal and administrative landscape are necessarily vague and over-broad, and evidence for *iudices* fleeting. Between the mid-eighth and eleventh centuries, southern Italy was divided between Lombard principalities centered in Capua, Benevento, and Salerno, and the Byzantine themes that claimed regional authority over *Longobardia* (northern and central Apulia) and *Sicilia* (Calabria and eastern Sicily). Effective boundaries between these entities varied over time, as did the ability of centers to hold sway over peripheries.¹² The administration of Byzantine *Sicilia* (effectively Calabria), where most people spoke Greek, was based on the *thema*, in which military and civil judicial administration were united under the *strategos*, or military governor, who was Greek—he was assisted by judicial officials called *krites*, who were judges, but their exact remit is unclear.¹³ In *Longobardia*, on the other hand, only high-level officers like the *strategos* were Greek, and most of the local judicial functionaries were Italian-speaking Lombards who administered Lombard

¹² G. A. Loud, *The Age of Robert Guiscard: Southern Italy and the Northern Conquest*, 1st edition (London: Routledge, 2000), 29–34; Federico Marazzi, “Byzantines and Lombards,” in *A Companion to Byzantine Italy*, ed. Salvatore Cosentino (Leiden: Brill, 2021), 169–199.

¹³ Loud, *The Age of Robert Guiscard*, 33–34; Annick Peters-Custot, *Les grecs de l'Italie méridionale post-Byzantine (IXe-XIVe siècle): une acculturation en douceur*, Collection de l'École française de Rome 420 (Rome: École française de Rome, 2009), 111, 119–21; Vivien Prigent, “Byzantine Administration and the Army,” in *A Companion to Byzantine Italy*, ed. Salvatore Cosentino (Leiden: Brill, 2021), 152–54; Rosemary Morris, “Dispute Settlement in the Byzantine Provinces in the Tenth Century,” in *The Settlement of Disputes in Early Medieval Europe* (Cambridge: Cambridge University Press, 1986).

law. Extant documents of practice from the eighth and ninth centuries in *Longobardia* reveal *iudex* referred both to officials of the state (like the Lombard *gastaldus* or *sculdahis*) and people associated with the functioning of the law without any specific office.¹⁴

This lack of specificity regarding the title of *iudex* in Southern Italy generally persisted into the Norman period (1077-1189). Sandro Carocci argues that in the eleventh and twelfth centuries, *iudex* could describe both anyone with "specific but rather vague technical and cultural skills" in the highest ranks of the local elite and those who "actually dispensed justice."¹⁵ My research provides evidence of two meanings in some parts of the Salernitano (though not, importantly, in Salerno itself). In Agropoli, for example, in 1144, two local *iudices*, Raynaldus and Guido, presided over a court alongside Bishop Iohannes of Paestum and Abbot Falco of Cava. Raynaldus and Guido each signed the document and identified themselves as *iudex*, but there were many other *iudices* listed among the *adstantes* who did not sign the document.¹⁶ In another case from 1132 in Dianus, modern Teggiano, a Iohannes *iudex* presided over a case and subscribed the document, but there were many other *iudices* present at the court who did not play a role in the court's procedure distinct from other *adstantes*.¹⁷ The *iudices* in the crowd in

¹⁴ Tommaso Indelli, *La giustizia nella Langobardia meridionale tra norma e prassi*, Ricerche / Centro Studi Longobardi 4 (Milano: Centro studi longobardi, 2020), 180.

¹⁵ Carocci, *Lordships of Southern Italy*, 376.

¹⁶ Arca xxv 56 (1144). The group of *adstantes* includes: Cosma, Abbot of S. Maria de Pantano; Ursus *iudex* de Castello Noue; Gloriosus *iudex*; Landolfus *iudex* de Cilento; Rogerius of Cammarota, Lord of Corbella; Iohannes of Laurino, *stratigotus* of Caput Aqua (maybe now Capaccio?); Iohannes, archpriest of Cilento; Guilielmus and Enricus Cappellani; Abbot Lando of Saint Nicolay; Goffridus Matarellus; Robbertus son of Falco Gentecore; Landulfus Cannarei; Nobellone *vicecomes* of Castello Noue; Petrus *miles* de Laureiano; Dauferius de Fenoclitio; Goffus *miles* de Cleastro; Iohannes de Contrata; Petrus and Robbertus, notaries of the bishop; *ydonei homines*.

¹⁷ Arca xxiii 45 (1132): *Quadam die dum essem ego Iohannes iudex intus in curia Sancte Marie plebis Dianense et una mecum adescens Griso iudex et Iohannes iudex qurino et Iohannes fili Cioffo et Dianese miles et fili Ciuri Iohannes et Gisilfo miles et Iohannes iudex et Mari germani et filiis meis et aliis bonis hominibus...* The subscriptions are: + Ego Iohannes *iudes* [sic]; + Ego Landolfus *presbitero et abbate*. The presence of the *miles* acting in a legal capacity is an interesting aspect of the legal culture of the Cilento peninsula after the 1140s. There are many instances of judges signing documents as *miles et iudex*: Arca xxv 13 (1141); Arca xxx 39 (1159); Arca xxxi 58 (1165); 60 (1165); 65 (1165).

Agropoli or Dianus were *iudices* even if they were not presiding over the case, and their sheer numbers suggest the word inhered in the person and denoted a social status rather than a legal role, much as has been argued for the contemporary communal North.

Beginning in the early eleventh century, with the arrival of the Normans, the title of *iudex* also began to be associated with lordship. Norman mercenaries established banal lordships; that is, they claimed the power to appoint judges and imbue them with legal authority. According to Carocci, the exact methods used to choose the judges remain opaque, but "in the explicit *consuetudines* on the subject, the lord is always the person who holds the right of appointment."¹⁸ The documentary evidence for this practice is sparse for the eleventh century, Carocci notes, but multiplies in the twelfth.¹⁹ Documents from the Cava archive provide echoes of this transformation: in Eboli, for example, a judge Robbertus was called "our judge of the lands of Eboli (*nostro Evuli terre iudice*)" in a comital document from 1136.²⁰ In Troia, in Apulia, three judges signed a document as *iudices ducalis*, judges of the duke, in 1130.²¹ The lord of Montoro, a castle north of Salerno on the road to Avellino, referred to "my judges (*meis iudicibus*)" in an 1131 document.²²

The word *iudex* has thus amassed a variety of meanings in southern Italy by the beginning of the Norman period. It could denote an official of a state—whether the Byzantine Empire or one of the Lombard principalities; an agent of lordly power; someone with knowledge

¹⁸ Carocci, *Lordships of Southern Italy*, 376–77.

¹⁹ Carocci, *Lordships of Southern Italy*, 383–85.

²⁰ Arca xxiii 115 (1136).

²¹ Arca xxii 112 (1130). The duke in question here is Roger II, future king of Sicily. One of the judges, Secundinus, is found later in 1164 calling himself a *iudex regalis*, so he must have retained his judgeship under the new king (Arca xxxi 74 (1164)).

²² Arca xxii 120 (1131).

of the law; a literate person with a certain social status; or one imbued with legal authority by their community.

Most of these meanings are distinguished based on the source of judicial authority. There have not been many studies of who the judges of southern Italy were or what they did in a legal sense. Such studies require documents of practice, which are relatively few and far between before the mid-eleventh century. Even where they exist, they do not usually contain much explanation about the legal personnel involved in legal action. So, in the absence of solid evidence about judges' identities or roles, models from elsewhere in Europe have been imported to southern Italy. The model of judges as legal officials in a state structure and thus elite representatives of public authority comes from Carolingian Italy and the *placiti*.²³ There is no comparable study of judges in the southern Lombard principalities to determine whether the same assumptions apply. Likewise, Carocci's argument about judges being associated with lordship is based on *consuetudines* documents, which record the rights that a lord granted to a given community. They do not provide any information about the actual workings of law in a community or the judges' role in it. Carocci admits that "there is a complete lack of studies of southern Italian *iudices*, and of their function in various courts," and that such a study is beyond the scope of his book.²⁴

It is against this background that the Salernitan judge leaps out as a term with a welcome specificity, indicating a small group of professionals whose central legal roles remained largely unchanged throughout the period. Serious scholarship on the Salernitan judges was jump-started

²³ The best account of the *placiti* remains: Chris Wickham, "Land Disputes and Their Social Framework in Lombard-Carolingian Italy, 700-900," in *Land and Power: Studies in Italian and European Social History, 400 - 1200* (London: British School at Rome, 1994).

²⁴ Carocci, *Lordships of Southern Italy*, 377.

at a 1999 conference on the medieval history of Salerno. There, Chris Wickham addressed the historiographic issues discussed above and suggested investigations into “what sort of people local *iudices* and *stratigoti* were in the twelfth century, who they were the clients of, how they fitted into the élite strata of Salernitan society, and how their ancestors and descendants did too”²⁵ as a possible way forward. At that same conference, fortuitously, Maria Galante began to answer such questions in a paper on the judges of Salerno in the pre-regnal Norman period (1077-1130), in which she identified the essential aspects of their social and legal profile. She characterized them as a small, exclusive group of well-educated urban laymen, coming from both new and old aristocratic families with a judicial or notarial tradition,²⁶ who gathered Salerno's judicial administration in their hands over the course of the eleventh century.²⁷ My research in this chapter both responds to Wickham's call and builds upon Galante's foundational work, at the same time as it reveals that Wickham may have been too optimistic about what we can learn about the judges as people, given the reticence of the documentary material and the lack of narrative evidence. Moreover, while Galante's work was pathbreaking, it was in many ways a sketch of a much larger project, in that it made large claims about the nature of judgeship and legal change but did not always follow up those claims with evidence. My goal in this

²⁵ Chris Wickham, “City Society in Twelfth-Century Italy and the Example of Salerno,” in *Salerno nell' XII secolo. Istituzioni, società, cultura* (Salerno: Centro studi salernitani “Raffaele Guariglia,” 2004), 23.

²⁶ Notary, in the Salernitan context, refers to the scribes of legal documents. As will be discussed below, Salernitan notaries did not have the power to authenticate and legalize documents. Nonetheless, they had a distinct tradition and set of practices that indicates some sort of formal training. See: Maria Galante, “Il notaio e il documento notarile a Salerno in epoca longobarda,” in *Per una storia del notariato meridionale*, Studi storici sul notariato italiano, VI (Rome: Consiglio nazionale del notariato, 1982), 71–94; Francesco Magistrale, “Il documento notarile nell' Italia meridionale longobarda,” in *Scrittura e produzione documentaria nel Mezzogiorno*, 1991, 257–72; Simeone Leone, “La genesi e lo sviluppo del ‘signum’ dei notai salernitani dal 799 al 1231,” in *Minime cavensia*, ed. Simeone Leone and Giovanni Vitolo (Salerno: Pietro Laveglia Editore, 1983).

²⁷ Maria Galante, “Il giudice a Salerno in età normanna,” in *Salerno nel XII secolo: Istituzioni, società, cultura*, ed. Paolo Delogu and Paolo Peduto (Salerno: Centro studi salernitani “Raffaele Guariglia,” 2004), 53–54.

chapter is to be as clear as possible about what we know about the judges and their roles based on the documentary evidence available.

Salerno's Judges: A Group Portrait

For the entirety of the Norman period, the image of a Salernitan judge remains consistent. He was always a layman; generally, a member of a family with a tradition of working with the law. He had probably worked as a notary (scribe) or *aduocatus* (lawyer) in the city before joining the ranks of the judges. He was very much a local, with origins, wealth, and social connections within the city of Salerno itself. To the limited extent that his social and economic status outside his professional rank can be examined, he was a member of the local elite.

The judges of Salerno were a small group of laymen; lay status was likely a legacy of Lombard administration that continued throughout the Norman period.²⁸ The evidence for this fact emerges both from naming practices in the documents and my prosopographic analysis of the judges. Salernitan judges' large and distinctive signatures usually contain only their name and their title: Iohannes *iudex*, for example. There is but one instance of another title being paired with that of *iudex*, when a judge Sico signed a document as "*Sico comes et iudex*."²⁹ Outside the city, in the Cilento peninsula, beginning in the 1140s, some judges appear who sign documents as *miles et iudex*.³⁰ As *milites*, these judges were certainly laymen as well. Clerics

²⁸ Judicial officials such as the *gastaldus* or *sculdahis* were always laymen in the Lombard Kingdom of Italy and the southern principalities of Benevento, Capua, and Salerno from the seventh century through the fall of the Principality of Salerno in 1077. Valerie Ramseyer, *The Transformation of a Religious Landscape: Medieval Southern Italy, 850–1150* (Ithaca: Cornell University Press, 2006), 94; Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*, 580. Elsewhere in Europe, such as in northern Iberia before 1000, for example, clerics seemed to have been capable of being called *iudices*, even outside of an ecclesiastical court context. Davies, "Judges and Judging," 200.

²⁹ Arca xii 1 (1064).

³⁰ Arca xxv 13 (1141); xxv 36 (1141); xxv 50 (1142); xxv 79 (1143); Arca xxx 39 (1159); Arca xxxi 45 (1163); xxxi 58 (1165); xxxi 60 (1165); xxxi 65 (1165); xxxi 99 (1165). This combination of titles is unique in the Salernitano, and the documents do not provide a clear indication of why they appear during these years. Galante suggests that

were often parties to legal action, and in those cases, their clerical status was always noted in the body of the document, whether they were called *clericus* (cleric) of the archbishop, a *presbiter* (priest), or a *monachus* (monk). Clerical offices did not ever overlap with the judicial office in Salerno; no Salernitan notary or *aduocatus* is ever identified as a cleric, nor is any judge. The ecclesiastical and judicial hierarchies were separate.

The number of these distinctive signatures, and thus the number of judges, was limited. The table below shows only thirty judges active in Salerno for the 120 years of the Norman era. Given the lack of family names or other identifiers in judicial signatures, it is difficult to know for certain that none of the judges ever became clerics. There are a few instances of documents dealing with judges outside of their judicial capacity which mention their family names, such as Butronile or Coppula, and in these instances, the judges in question never show up as clerics.³¹

Table 1: Judicial Tenures in the Norman Period, c. 1077-1189. This table represents judicial tenures as calculated using my corpus of documents. The nature of extant records means this list must be considered partial as to personnel, and it is of course impossible to determine exact tenures.

Name of Judge	Tenure in Office (1060-1189)
Sico comes et iudex	1064-1090
Iohannes I iudex	1077-1110
Ademarius iudex	1086-1089
Grimoaldus iudex	1087-1111
Petrus I iudex	1105-1131
Iohannes II iudex	1114
Iohannes III iudex	1130-1150
Oto iudex	1131
Petrus II iudex	1131-1159
Romualdus iudex	1137-1138
Alfanus iudex	1139-1148
Iohannes IV iudex	1141-1159

perhaps it has something to do with the establishment of the Norman Kingdom of Sicily, but admits this is only conjecture: Galante, “Il giudice a Salerno in età normanna,” 53.

³¹ Arca xxxv 81 (1176) mentions a judge Matheus Butronile who has a daughter and was thus unlikely to be a cleric, though it was not uncommon for clerics in Salerno to have families. Another Matheus, Matheus Coppula, is mentioned as the representative of Cava in a court case (Arca xxxiv 15 (1172)), but he is only called *iudex*.

Landolfus <i>iudex</i>	1141
Grimoaldus <i>iudex</i>	1141
Ambrosius <i>iudex</i>	1141
Gottifredus <i>iudex</i>	1145
Lapidus <i>iudex</i>	1148
Oto II <i>iudex</i>	1151
Salernus <i>iudex</i>	1154-1172
Petrus <i>protoiudex</i>	1156-1159
Gisulfus <i>iudex</i>	1158-
Truppoaldus <i>iudex</i>	1159-1182
Matheus <i>iudex</i>	1159-1182
Guaferius <i>iudex</i>	1159-1176
Iohannes V <i>iudex</i>	1165-1189
Landulfus II <i>iudex</i>	1168
Petrus III <i>iudex</i>	1168
Romualdus I <i>iudex</i>	1171-1182
Romualdus II <i>iudex</i>	1171-1182
Alfanus II <i>iudex</i>	1182

Between 1060 and 1189, my corpus further indicates that there were never more than seven judges working at any one time. Records of five high-profile cases at which multiple judges were present and signed the case record provide some of the best evidence for composition of the bench at any one time.³² The highest number of judges signing occurred in 1159 and 1182 when six distinct judges signed the documents, though in both instances one active judge was missing.³³ The composition of the judicial bench does not appear to follow any pattern; the number of judges at these major cases varies; judges appear or fall away in an ad hoc

³² Arca xiv 118 (1089): Sico *iudex*, Iohannes *iudex*, Ademarius *iudex*, Grimaoldus *iudex*; Arca xxx 31 (1159): Petrus *protoiudex*, Petrus *iudex*, Salernus *iudex*, Matheus *iudex*, Iohannes *iudex*, Guaferius *iudex*; Arca xxxiii 100 (1171): Guaferius *iudex*, Romoaldus *iudex*, Iohannes *iudex*, Matheus *iudex*, Romualdus *iudex*; Arma Magna I 8 (1175): Guaferius *iudex*, Iohannes *iudex*, Matheus *iudex*; Arma Magna I 37 (1182): Truppoaldus *iudex*, Romualdus *iudex*, Alfanus *iudex*, Romualdus *iudex*, Matheus *iudex*, Matheus *iudex*.

³³ Arca xxx 30 (1159); Arca xxx 30 (1159). In 1159 the judge not present was Truppoaldus *iudex*, and in 1182 it was a judge named Iohannes. Why these judges were not present alongside their colleagues is difficult to know. Truppoaldus is first attested as *iudex* in January 1159—one month before the trial he was not present at alongside his colleagues—so perhaps he was considered too junior at that point to sit on such an important case or he had not been a judge when the case began. He was present for the 1182 case and by then he had been working for over twenty years, so his name is first on the list of judges signing the record.

fashion; there is no indication that either the city itself, or particular kinds of cases, required a specific number of judges.

There is also no explicit evidence about whether judges were appointed for life or had a limited tenure, but the fact that there are many judicial tenures around 20-25 years (the longest being a certain Petrus *iudex* who is attested in documents from 1131 to 1159), the lack of a standard length of term, and the variable number of active judges in any year all suggest that once a Salernitan became a judge, he was a judge for life.³⁴ The number of judges working at any one time therefore seems to have been limited, but access to the group seems to have been controlled by family inheritance or a nomination process which privileged certain traditional families .

Prosopographic analysis of the *iudices Salerni* indicates that they cultivated family traditions of judicial training and office holding that perhaps helped limit their membership.³⁵ There are multiple examples of fathers and sons working in the judicial profession. One notable example is the family of the prolific Salernitan notary and *aduocatus* Ademarius. His father, Musco, was a judge by the time his son appears as a notary in the late 1130s. In an earlier document from 1104 Musco was, in turn, identified as a notary, son of Ademarius the judge.³⁶ This Ademarius, father of Musco, signed a document in 1089 as Ademarius *iudex*, and may have himself been the Ademarius *notarius* identified as the scribe of a document of 1064.³⁷ That

³⁴ Arca xxiii 17 (1131); Arca xxiii 103 (1135); Arca xxvii 64 (1150); Arca xxx 31 (1159).

³⁵ It should be noted that clerics could and did have families in southern Italy through the twelfth century: Ramseyer, *The Transformation of a Religious Landscape*, 94–95, 153–54.

³⁶ Maria Galante, “Il giudice a Salerno in età normanna,” 54; Arca xxv 9 (1141); Arca xvii 95 (1104).

³⁷ Arca xiv 118 (1089); Arca xii 1 (1064).

would make three generations of notaries, at least two of whom became judges, in one family.³⁸ There was also a Matheus *iudex*, who is identified in the 1159 testament of Petrus *protoiudex* as his *nepos*.³⁹ Outside the city in the Cilento Peninsula, the *notarius* Marcus, son of Iohannes *notarius*, is the notary of an 1167 document, and then later shows up as Marcus *iudex* in the same region in 1169 and 1178.⁴⁰ The son of Rao Monachus *iudex* from Eboli is also called Iohannes *iudex* in an 1182 charter after his father's death.⁴¹ There may well be more instances of Salernitan judges with a family tradition, but, as I noted above, the diplomatics of naming in the documents makes tracing such connections extremely difficult. Ademarius' and Matheus' family connections are known only because the relationships were mentioned in the narrative section of the documents cited above.⁴² Not every judge can be placed in a family legal tradition. Nonetheless, the evidence of Ademarius' multi-generational judicial lineage and Matheus' relationship with the *protoiudex* confirms that family judicial traditions were possible and accepted. The existence of families with judicial traditions elsewhere in the Salernitano reinforces the localism of judgeship. In every instance in which a son follows a father into the judicial office, he does so in the same locality.⁴³

³⁸ Ademarius, son of Musco, does not appear as a judge in my corpus, but he was an *advocatus*: Arca xxviii 70 (1153).

³⁹ Arca xxx 33 (1159).

⁴⁰ Arca xxxii 71 (1167): Marcus is the notary of this document. He is then called Marcus *filius Ioannis notarii* in two documents, one from 1169: Arca xxxiii 38; and another from 1178: Arca xxxvi 10. He signs his name with a distinctive *M*, which looks like two columned Romanesque arches, both in his notarial signature and his judicial signature.

⁴¹ Arca xxxviii 47 (1182).

⁴² Musco is called "*Musco notarius filius quondam Ademarii iudices*." Arca xvii 95 (1104). Matheus is referred to as "*Mathei iudices nepotis sui*." Arca xxx 33 (1159).

⁴³ Musco and his son Ademarius were both Salernitans, as were Petrus and his *nepos* Matheus, Marcus *notarius* and his father Iohannes *notarius* were both from the Cilento, around S. Michaelis Archangelis, in Perdifumo, and Rao and Iohannes were Ebolitani.

Becoming a judge in Salerno may have been a multi-step process. Musco and his father Ademarius both appear to have worked as notaries before becoming judges. Marcus *notarius* from the Cilento also followed his father, Iohannes *notarius*, into the judicial profession and worked as a notary in the early 1160s before becoming a judge sometime before 1169.⁴⁴ Back in Salerno, a Truppoaldus *notarius* appeared in 1154 and was a judge by 1159.⁴⁵ There was also a Salernus *notarius et aduocatus* (notary and lawyer) working in Salerno in the 1130s and 1140s,⁴⁶ and in 1154, a judge Salernus appeared that is most likely the same person.⁴⁷ Salernus' double title of *notarius et aduocatus* is common among Salernitan notaries in the twelfth century, though the titles also appear separately.⁴⁸ As will be discussed below, the rather circumscribed role of a Salernitan notary is quite clear: he is the scribe who writes legal documents at the behest of the judge and places his individual compositor's mark on them, readying them for the judge's activating signature. The nature of the *advocatus* in twelfth-century Salerno is less clear, but it does appear to indicate some legal expertise.⁴⁹ The prosopographic evidence at least shows that

⁴⁴ Marcus as notary: Arca xxxi 58 (1165); xxxi 60 (1165); xxxi 70 (1165); xxxi 99 (1165); Arca xxxii 71 (1167). Marcus as judge: Arca xxxiv 11 (1172).

⁴⁵ Arca xxviii (104) 1154; Arca xxx 30 (1159); Arca xxx 36 (1160).

⁴⁶ The first time I came across the name as a notary was in 1135, Arca xxii 96 (1135), but this document is suspicious and may be a forgery. He is attested again in 1146 (Arca xxv 117) and 1147, Arca xxvi 78 (1147).

⁴⁷ Arca xxviii 104 (1154); He is present again the next year, 1155: Arca xxix 27 (1155); Salernus can be seen in judgement on an important case in 1159, alongside Petrus *protoiudex* and four other judges: Arca xxx 31 (1159).

⁴⁸ Others are: Iohannes: Arca xx 7 (1114); xx 97 (1118); Arca xxiii 8 (1131); xxiii 19 (1132); xxiii 103 (1135); xxiii 38 (1132); xxiii 39 (1132). Petrus: (Arca xxiv 6 (1136); xxiv 31 (1137). Petrus II: Arca xxx 31 (1159); xxx 33 (1159); Petrus III: Arca xxxiii 120 (1171); Arca xxxiv 58 (1173); Arca xxxv 37 (1175); xxxv 43 (1175); xxxv 66 (1176); xxxv 81 (1176); Arca xxxvi 22 (1178); xxxvi 68 (1179); Arca xxxvii 20 (1180). Ademarius: (Arca xxv 45 (1142); xxv 53 (1142); xxv 118 (1145); Arca xxvii 23 (1148); xxvii 43 (1149); xxvii 92 (1150); Arca xxviii 70 (1153); Arca xxix 70 (1156); Arca xxx 12 (1158). Landulfus: Arca xxx 116 (1162); Arca xxxi 118 (1165). Robbertus: Arca xxxiii 100 (1171). Matheus: Arca xxxv 26 (1175). Iohannes II: Arca xxxvii 107 (1181); Arca xlii 35 (1189); xlii 37 (1189); xlii 43 (1189).

⁴⁹ In 1134, Iohannes *notarius et aduocatus* represented Abbot Simeon of Cava in a dispute in Dianus, modern Teggiano in the Val di Diano south of the city. He had a letter with the abbot's seal (*epistolam suo sigillo sigillatam*) giving him permission (*licentiam*) to argue on his behalf: Arca xxiii 71 (1134). The *aduocatus* role could also be performed by a full *iudex Salerni*. In 1172, Matheus Coppula, *iudex Salerni*, represented Cava in a dispute with Lord

some aspiring judges went to work as notaries and sometimes lawyers to learn the basics of documentary production and legal procedure.

The lay identity of the judges and notaries, and the existence a professional ladder, help show the existence of a lay literate culture.⁵⁰ The most distinctive product of that culture are the legal documents: they have a unique diplomatic that remained stable over a long period of time. Documents in southern Italy, for instance, traditionally used the *beneventana documentaria*, a script developed out of Beneventan book hand. But over the course of the twelfth century, the script used in Salerno began to take on some features of the proto gothic being used elsewhere in southern Italy while still retaining its distinctly Beneventan character.⁵¹

There is not a great deal of evidence for the wealth of the judges or for the economics of judicial administration in Salerno more generally. Unlike the notarial cartularies of the later Middle Ages, the judicial parchments do not include any indication of the charges for legal services. The only evidence I found for the material wealth of a member of the judicial class in Salerno is the testament of a judge named Petrus *protoiudex*, son of Amatus. But its specifics, worth examining in some detail, shows that this judge at least belonged firmly among Salerno's wealthy elite. At the same time, his circle of connections was geographically narrow—essentially limited to the city. In 1159, Petrus made his testament in the presence of Archbishop Romuald II Guarna and Abbot Marinus of Cava—two of the most prominent ecclesiastics in the Kingdom of

Ugo of Apitina about a mill on the Tenagro river and he is not called an *aduocatus*: Arca xxxiv 15 (1172). See also: James A. Brundage, "The Medieval Advocate's Profession," *Law and History Review* 6, no. 2 (1988): 444–45.

⁵⁰ Galante, "Il giudice a Salerno in età normanna," 54.

⁵¹ It is possible that the reason for the stability of this diplomatic style was that it was taught either within individual families, with fathers teaching sons the accepted Salernitan scripts, or within a small group of families who had monopolized the profession. Other unique aspects of the documents are discussed in more detail in Chapter One; some features are explored below. On the Salernitan hand, see Maureen C. Miller, "Abbot Balsamon's Book: The Origins of Administrative Registers at Cava Dei Tirreni," *The Catholic Historical Review* 108, no. 1 (January 2022): 27–29.

Sicily—and multiple other judges and prominent men of the city. In it, Petrus parceled out a fortune consisting of at least two hundred ounces (*uncias*) of gold *tari* of Sicily—some of which he had in gold and some of which was tied up in merchant undertakings (*quas se tum in aurorum tum in quibusdam mercibus implicatis*)—as well as numerous pieces of land.⁵² He gave two hundred *tari* each to the archbishop, the abbot of Cava, and the monastery of S. Benedictus in Salerno, as well as smaller amounts to other local churches.⁵³ The picture this testament paints is of a very wealthy and well-connected man who operated in the highest echelons of urban social society and engaged in considerable non-legal business.⁵⁴

Petrus' three largest pious donations are to the most prominent ecclesiastical institutions in Salerno: the Abbey of Cava just outside the city,⁵⁵ the archbishopric of Salerno, and the Abbey of S. Benedictus inside the city walls. His smaller donations are also concentrated in the city. He gave four ounces of gold for the ornamentation in silver (*pro aliquo ornamento argento*) of the women's monastery of S. Georgius, an ounce of gold for the poor (*pauperibus*) of the hospital of S. Laurentius, and still another ounce of gold specifically for the sick being cared for in the monastery of S. Benedictus. He spread a bit of his religious bequests further afield (to the abbey of Montevergine, just outside the city of Avellino, and to other monasteries in other parts of southern Italy), but the focus of his donations was in or close to the city of Salerno.⁵⁶ Petrus was

⁵² There were four *tari* in one *solidus* and thirty *tari* in one *uncia*. This makes the total value of his monetary assets six thousand *tari*. See: Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, XVI–XVII.

⁵³ Arca xxx 33 (1159).

⁵⁴ The city had built a port and a fleet in the eleventh century that rivalled those of Amalfi and Gaeta: Paolo Delogu, *Mito di una città meridionale* (Naples: Liguori Editore, 1977), 152–53; We know that the Salernitan merchants were engaged in business at least as far away as Alexandria, since they were exempted from the usual taxes on such commerce by Roger II in 1137: Carlrichard Brühl, ed., *Rogarii II. regis diplomata Latina*, vol. II, *Codex diplomaticus regni Siciliae 1* (Cologne: Bohlau, 1987), 131 no. 46; Paul Oldfield, *City and Community in Norman Italy* (Cambridge: Cambridge University Press, 2009), 75.

⁵⁵ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, chap. 11.

⁵⁶ Arca xxx 33 (1159).

therefore quite a wealthy man with a diversified wealth portfolio. Much of his wealth was in land, but he was also invested in trade and had a considerable amount of cash to donate to churches.

Though a systematic examination of the economy through bequests is beyond this dissertation, the evidence of other testaments in my corpus of documents places Petrus clearly among the wealthiest testators. Cava preserves testaments of donors whose total bequests are an order of magnitude of two below those of Petrus.⁵⁷ The testament of Romuald son of Iohannes, a deacon and doctor of the archbishop (*diaconus et medicus huius ciuitatis archiepiscopi*), provides some evidence of the wealth of a person who may have participated in the same social circle as the judge. Romuald was also in the retinue of the archbishop and must have had some education (he may have even studied at the city's medical school). His testament distributes a total of 600 *solidi* of *tari* of Salerno (2400 *tari*), 24 *uncias* (720 *tari*) of Sicilian money, and two pieces of land outside the city.⁵⁸ This is a total of 3120 *tari*, a little more than half of Petrus' 6000 *tari* of cash and business interests. Unfortunately, in the absence of more evidence, it is hard to say if Petrus is economically typical of his profession.⁵⁹

But Petrus's will shows social connectivity in other ways: two of the people whom he chose as executors of his will—Marinus, abbot of Cava, and Romuald II Guarna, Archbishop of

⁵⁷ The 1142 testament of a woman named Gaita (Arca xxv 49), who lived according to Roman law and could thus do her legal business without a *munduald* has her giving a total of 90 *solidi* and one piece of land outside the city to beneficiaries. The testament of Iohannes Serviens from 1157 (Arca xxix 44) is even more modest; he gives a total of 20 *tari* to various churches, as well as one plot of land and a garden outside the city to his *nepos* Petrus *presbiter*. On the *munduald*, see Joanna Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194* (Ithaca: Cornell University Press, 2002), 66–67.

⁵⁸ Arca xxviii 104 (1154).

⁵⁹ There is in fact a modicum of negative evidence. Petrus bore a unique title, *protoiudex*, that he used in all his signatures. Yet he had no identifiably different judicial role in the documents he signed, so it is possible that the title was a courtesy of his social or economic rank. Arca xxix 70 (1156); Arca xxx 12 (1158); Arca xxx 31 (1159); xxx 33 (1159); xxx 63 (1160).

Salerno— were the most prominent ecclesiastics in the city and indeed among the most important men in the kingdom.⁶⁰ Other executors were similarly prominent Salernitan citizens, like Luca Guarna (a scion of the Guarna family and future royal justiciar). And the presence his fellow judges Matheus and Matheus *iudices* (one of whom is identified as his *nepos*) among their number helps point to a general position of judges among the urban elite.

Other evidence confirms this social status. The Butroniles are one prominent family that shows up often in the documents in various roles. An 1176 *remissio actionum* records that Brunecta, the daughter of the Salernitan judge Matheus Butronile, was the widow of a man named Grimoaldus, son of a former *comes* Iohannis. She was being represented in court by her brother,⁶¹ Petrus Butronile, who was a cleric of the archbishop (*clericus huius Salernitani archiepiscopi*).⁶² Thus we know that judge Matheus Butronile had married his daughter to a member of the city's aristocracy (the son of a *comes*)⁶³ and had a son in the clerical retinue of the archbishop. The Butroniles are mentioned in the *Catalogus Baronum* (the royal register of the military obligations of the king's subjects) which records that Iohannes Butronile owned enough property in and around Salerno that he was obligated to provide two knights to the kingdom's

⁶⁰ Archbishop Romuald was part of the Sicilian delegation which negotiated the Treaty of Venice with Frederick Barbarossa in 1176. Donald Matthew, *The Norman Kingdom of Sicily* (Cambridge: Cambridge University Press, 1992), 273–74.

⁶¹ Probably as her *munduald*.

⁶² Arca xxxv 81 (1176).

⁶³ The term *comes* is a difficult one to interpret for the Salernitano after the arrival of the Normans. In pre-Norman Salerno, the title was an honorific and did not necessarily carry any connotations of territorial lordship. After the Norman conquest, and especially after the fall of the Lombard Principality of Salerno in 1077, the term becomes associated with lordship. In the case of Grimoaldus, son of Iohannes *comes* here, his Lombard name (Grimoaldus) and the fact that his father was a *comes* but he was not suggests that he was a member of the Lombard aristocracy who had been given the title as an honorific. At the very least, Grimoaldus was a member of the aristocracy, even if it is not clear exactly what his status was. See: Joanna Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194* (Ithaca: Cornell University Press, 2002), 38–45; Huguette. Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle): Pouvoir et société en Italie lombarde méridionale* Collection de l'École Française de Rome (Rome: École française de Rome, 1991), 725–72.

army.⁶⁴ Another member of the Butronile family, Guilielmus, was called priest and abbot of the church of S. Crucis in Montoro north of Salerno in an 1181 case record.⁶⁵ The following year, another Guilielmus Butronile is referred to as the royal chamberlain (*regius camerarius*) in a case from Sarno (a town some 25km northwest of Salerno).⁶⁶ The Butroniles show the way an elite family placed its members: city judgeship was one possibility, alongside membership in the archbishop's retinue, a nearby abbacy, marriage into the old Lombard aristocracy, and royal office (though local, rather than at the court in Palermo). The *Catalogus Baronum* also lists a certain Ademarius *iudex* from Monte Corbino, modern Montecorvino Rovella just south of the city, who owed one knight to the army.⁶⁷

Salerno judgeship was a very local kind of belonging. There is no evidence that any non-Salernitan held the post. The evidence presented so far all shows judges integrated into local contexts, with long histories of residence and work in the city. The examples of family traditions of legal work as notaries and judges, such as Ademarius and Musco, or Petrus *protoiudex* and his *nepos* Matheus, indicate that these families had lived in the city for generations. Their opportunities for legal work were evidently in the city, not elsewhere. I noted that Petrus' bequests primarily reinforced connections to ecclesiastical institutions, large and small, in or just outside Salerno. The Butronile family was related by marriage to old Lombard comital families of the city and had members within the archbishop's retinue.

⁶⁴ Evelyn Jamison, ed., *Catalogus Baronum*, vol. 101, *Fonti per la storia d'Italia* (Roma: Istituto storico italiano per il Medio Evo, 1972), para. 514.

⁶⁵ Arca xxxviii 5 (1181).

⁶⁶ Arca xxxviii 34 (1182). These Guilielmi may be the same person, but I was unable to determine this from the evidence I had.

⁶⁷ It is tempting to suggest that this Ademarius was a *iudex Salerni*, but I have no record in my corpus of an Ademarius *iudex* working in the years around 1150, when the *Catalogus* was first compiled, or in 1167 when it was updated. *Catalogus Baronum*, vol. 101, para. 535. No other Salernitan judges are mentioned in the *Catalogus Baronum*.

In sum, the *iudices Salerni* were a small group of Salernitan laymen, connected to the city's elite and perhaps members of it. Some families had traditions of judicial office; they may have been responsible for legal education, but there was certainly a professional training that produced a consistent Salernitan diplomatic style and script, as well as consistent legal norms. At least some of judges were wealthy, but this wealth too was largely Salernitan, and bequests cycled money back to city institutions.

The judges had frequent contact with the highest levels of the political elite, both in Salerno and in the wider political landscapes of the Salernitano and kingdom. Judges met that political elite as peers in the courts, sometimes sitting alongside them in judgement and sometimes in judgement over them. After the establishment of the kingdom in 1130, judgeship could also be a vehicle for upward social mobility and a means of accessing the royal court and royal politics,⁶⁸ but the main base of their power remained the city of Salerno.

The Legal Roles of the Judges of Salerno

Judges and document production

Every legal document created in Salerno during the Norman period (1077-1189) has three characteristics: it was narrated by a judge in the first person, it was written by a notary at the judge's order, and it was signed by one or more judges using a large and distinctive signature. Of the 137 original documents which I examined in the archive and could securely be identified as

⁶⁸ Judge Salernus, mentioned above, can be seen standing trial in the royal court for murder. The *Liber de Regno Sicilie* records that he was apparently swept up in court politics and poisoned one of Chancellor Stephen's men, Robert of Bellisina. Salernus was imprisoned in Palermo for his crimes and died there, sometime after 1166: G.A. Loud and T. E. J. Wiedemann, eds., *A History of the Tyrants of Sicily By "Hugo Falcandus" 1153-69* (Manchester: Manchester University Press, 1998), 171–75; G.B. Siragusa, ed., *La historia o Liber de regno sicilie e la epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, *Fonti per La Storia d'Italia* (Roma: Istituto Storico Italiano, 1897), 121–29.

coming from Salerno, only two lack a judicial signature, and even these follow the other two rules.⁶⁹ This unicity of form is unique to the Salerno corpus.

Historians of southern Italian law, particularly of the Lombard period (pre-1077), have identified two broad categories of documents that circulated in the Salernitano: *memoratoria* and *chartule*.⁷⁰ *Memoratoria* were records of legal acts (whether transactions or agreements) created for and narrated by a private party, usually one of the parties. Their diplomatics were variable, and they could bear a variety of notarial, judicial, or witness signatures. They usually but not always included notes on the exchange of pledge and guarantors (*guadium* and *fideiussores*). Such *memoratoria* documents were probative in nature, meaning they preserved a record of a legally conducted act, and could be used as proof. *Chartule*, on the other hand, had a more defined diplomatic and appear to have been dispositive, meaning the document was both a record of a legal act and constitutive of the legal act itself. They were narrated in the first person by a judge and invariably began (after the dating clause) by stating in the first person that the parties to the case or transaction went before the judge (*ante me iudicem*) and did their legal business. Once the case was settled or the narration of the transaction was complete, the *chartule* always

⁶⁹ This is only a small portion of the thousands of eleventh- and twelfth-century documents in the archive. The first anomalous document, Arca xxxi 43 (1163), was cut at the bottom, so it may indeed have had a signature at some point that is now lost. The other, Arca xxxi 13 (1163), is a *remissio actionis*, a type of transaction in which one party gives up all cases they were pursuing against the other party; the document appears entirely typical besides its lack of a signature. The reasons why this may have occurred fall squarely in the realm of diplomatics. What likely happened in this case is that the notary prepared the document after the conclusion of the transaction and then never had it signed by the judge before handing it over to the concerned party. It may have been the practice for the litigants themselves to have the document authenticated by the judge once they were given it by the notary, but we cannot be sure of any such practice. It is very likely that the documents were drafted and signed at different times. Different colored ink was sometimes used for the body and signatures, which suggests these two steps happened at different times. These diplomatic features are discussed in Chapter One.

⁷⁰ This schema is helpfully outlined by: Vitaliana Curigliano, "Procedure e forme documentarie nei contenziosi cavensi tra XI e XII secolo," in *Riforma della chiesa, esperienze monastiche e poteri locali: la Badia di Cava nei secoli XI-XII*, ed. Maria Galante, Giovanni Vitolo, and Giuseppa Z. Zanichelli (Firenze: Sismel Edizioni del Galluzzo, 2014), 189–97; See also Galante's comments in: Palmieri and Galante, "Per una storiografia che dialoghi: a proposito di un libro recente sul principato longobardo di Salerno," 235–36; Magistrale, "Il documento notarile nell'Italia meridionale longobarda."

ended with the presiding judge's order that a notary make the document ("I therefore ordered you, notary, to write..."⁷¹) followed by the notary's personal sign and judge's much larger unique signature that included some (surely redundant) variation of the statement "I am the judge [referred to] above."⁷²

During the Norman period (1077-1189), the Cava archive includes hundreds of *memoratoria*, but not one of them comes from the city of Salerno. Salernitan parchments exclusively took the form of *chartule*. When and why Salerno became the domain of the judge-authored *chartule* is unknown; as discussed above, the Salernitan-style narration presumes an eternal regime of law and legal procedure. But, as discussed in Chapter One, between 1086 and 1189, my corpus contains four documents that include a formulary detailing the required elements of a charter of sale (*cartam venditionis*) in Salerno, each calling for this kind of *chartule* and naming this the explicit customary law (*lex et consuetudinem*) of Salerno.⁷³ The evidence for the law comes by way of legal activity, not the existence of a monastic formulary book. In 1105, for example, one instance of the formulary appears in an agreement (*conventio*) between Cava and a woman named Sichelgayta in which the monks agreed to give her 100 *tari* on the condition that she make a *cartam venditionis* selling the monks some land inside the city with a house on it.⁷⁴ It is thus within the *conventio* that we find the requirements of a valid Salernitan *cartam venditionis*, which vary slightly from other versions of the formula. In Arca xv 20 from 1090, the formula tells the parties that a sale should be made "...*per firmam cartulam cum gadia et ydoneo fideiussore et ab omnibus hominibus defensione et pena obligationis sicut*

⁷¹ *taliter tibi notario scribere precepi.*

⁷² *Ego qui super iudex.* Figure 2 is a very typical example of a what a twelfth-century Salernitan document looks like.

⁷³ Arca xiv 65 (1086); Arca xv 20 (1090); Arca xviii 15 (1105); Arca xxxv 28 (1175). See Ch. 1, fn. 54.

⁷⁴ Arca xviii 15 (1105).

lex et consuetudo istius est civitatis, in que iudex subscribatur."⁷⁵ So, a document needed to be a charter (*cartulam*) which contained a pledge (*guadia*), a suitable guarantor (*ydoneo fideiussore*), a defense clause (*ab omnibus hominibus defensione*), a penalty obligation (*pena obligationis*)—in practice almost always a composition payment—and a judicial signature (*in quo iudex subscribatur*).

All the other versions of this formula (in documents of 1086, 1105 and 1175) add the requirement that a document be made by a "public notary (*publico notario*)," but this was already standard before 1090, so it is likely that the 1090 version carelessly omitted this requirement, and was not asserting a new legal requirement.⁷⁶ And while all instances of the formula refer to it specifically as a document of sale (*carta venditionis*), these same features are present and stable in all the different kinds of documents listed above in which judges were subscribed, whether donations, oblations, testaments, case records, confessions, or remissions of cases.

Fortuitously, the Cava archive preserves not only the document requiring the production of a *cartam venditionis*, it contains the completed *cartam venditionis* itself, Arca xviii 16, which Sichelgayta went before a judge and had made as she had agreed in the *conventio*.⁷⁷ And this document, like all *chartule* written in the Salernitan diplomatic tradition, centered the judges further than the formulary required: as the first-person narrator, the document presents legal action from the judge's perspective and frames it as something that happened "in front of" him. *Chartule* also claim to have been created solely by the judge's initiative; the phrase "therefore I order you, notary, to write" relegates the notaries to the position of scribes without any legal power. But judges did not do the legal work of drafting the documents and assembling the

⁷⁵ Arca xv 20 (1090).

⁷⁶ See Ch. 1, Appendix 1 for the other versions of this formula.

⁷⁷ Arca xviii 16 (1105).

correct legal formulae. This was the work of the notary.⁷⁸ Notaries did use distinctive notarial marks as evidence of their presence, but these marks were not sufficient in themselves to give a document legal validity.⁷⁹

Judges are only mentioned at the end of the *cartam venditionis* formula when it requires that the document be one "a judge has subscribed (*in quo iudex subscribatur*)," that is, the judge's authentication. The ability to authenticate documents was exclusive to the judges in Salerno in this period, and unusual. In most of the peninsula before the middle of the twelfth century, including much of the Salernitano and especially Apulia, documentary practices were Lombard in the sense that documents were authenticated by the presence and signature of at least two witnesses. A judge might be one of these witnesses, perhaps even the preeminent witness with his name listed first, but he did not stand alone. In the documents of S. Giacomo di Barletta during the 1160s, for example, a prominent judge named Maralдитius *iudex* witnessed most transactions and signed most documents originating from the church, but he was always accompanied by two or more witnesses.⁸⁰ The same is true in the documents of Conversano.⁸¹ Judges were important in Apulia as guides of proceedings and legal experts, but did not have a special role in either the production or authentication of documents.

⁷⁸ Perhaps if there was a sort of professional ladder, as I have suggested, in which a candidate first worked as a notary before being appointed as a judge, the notaries accepted their subordinate status as a necessary rite of passage. Perhaps they were content with being scribes. Without narrative evidence to shed light on the process of judicial training, it remains unclear.

⁷⁹ For the many different marks, see: Leone, "La genesi e lo sviluppo del 'signum' dei notai salernitani dal 799 al 1231," 95-128. More than likely, the notarial mark was just one of many diplomatic aspects of Salernitan documents that made each one unique and thus more resistant to forgery. It is possible, though, that the diplomatics obscures a more robust notarial involvement in the creation of legal documents.

⁸⁰ Francesco Nitti di Vito, ed., *Le pergamene di Barletta: archivio capitolare (897-1285)*, vol. 8, Codice diplomatico barese (Bari: Societa di storia patria per la Puglia, 1914), 127-57.

⁸¹ Domenico Morea, ed., *Il chartularium del monastero di S. Benedetto di Conversano*, vol. 1 (Montecassino, 1892).

Elsewhere in Italy, the public trust, or *publica fides*, required to give a document legal legitimacy could be found in other figures like witnesses or notaries, but in Salerno it was vested exclusively in the judges, whose signature was the physical sign of this public trust.⁸² As previously discussed, the Cavese monks' practice of bringing documents to the judges for reauthentication underscores their possession of this trust and their role as perfect witnesses.⁸³ The authenticity of the earlier charters being examined, copied, and reauthenticated was assured by the judge's signature. The monks' desire for authenticated copies of older documents indicates their understanding that Salernitan *chartule* were used dispositively, even if they may not have used that term, and that judicial signatures had a specific legal power. A Salernitan judge's signature did not represent his promise to attest to the validity of a transaction that had happened in the past if it was disputed, as was theoretically the case with witness signatures on traditional Lombard documents. Instead, a judicial signature was the symbol that the legal transaction narrated in the *chartule* had happened at a discrete moment in time when it was approved and authenticated by the judge. The judge had this power to authenticate because he had the public trust: he was empowered, as a judge, to elevate a piece of parchment into a legal act. The individual authenticated parchments were thus both the record and reality of a legal

⁸² Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*, 525, 537; Everett, "Literacy and the Law in Lombard Government," 101; Gian Giacomo Fissore, "Alle origini del documento comunale: i rapporti fra i notai e l'istituzione.," *Atti della società ligure di storia patria* 29, no. 103:2 (1989): 99-100; Mark W. Steinhoff, "Origins and Development of the Notariate at Ravenna (Sixth through Thirteenth Centuries).," *Dissertation Abstracts International - A: The Humanities and Social Sciences* 38, no. 2 (1977): 946; Giorgio Tamba, "Civic Institutions (12th-Early 15th Centuries).," in *A Companion to Medieval and Renaissance Bologna*, ed. Sarah R. Blanshei (Leiden: Brill, 2018), 233; M.E. Bratchel, "City Notaries and the Administration of a Territory: Lucca, 1430–1501," *Papers of the British School at Rome* 86 (October 2018): 183–205; Christopher R. Cheney, "Notaries Public in Italy and England in the Late Middle Ages.," in *The English Church and Its Laws 12th-14th Centuries: Essays by Christopher R. Cheney* (London: Variorum Reprints, 1982), Essay XV:173-188.

⁸³ See Ch. 1, fn. 78-81.

transaction. As already mentioned, this is likely why Cava did not produce a cartulary: only the originals were useful as legal proof because they bore an original judicial signature.⁸⁴

The language of the *chartule* thus reinforced the legal reality of Salerno: it was the city in which only a judge could turn a piece of parchment into a legal document; a city in which every legal document was dispositive. *Memoratoria* do not require the presence or involvement of a judge, so the preference and even legal requirement for *chartule* underscores the judges' effective monopoly over the power to legitimize legal acts in the city. In Salerno, people did not use witnesses to effect legal transactions, as they did elsewhere in southern Italy. However it came about, at some point prior to 1086, when the first instance of the *cartam venditionis* formula appears, judges had successfully centralized control over documentary production.

Judges in court

In addition to the unusual role in controlling documentary production, the judges of Salerno played a more familiar role in the courts: they patrolled legal procedure. The evidence for their involvement in court cases is composed entirely of disputes about land or rights to land. Of the 99 documents which mention court cases in my documentary corpus, 41 are from Salerno.⁸⁵

In general, Salernitan judges during the Norman period played the role of expert procedural guides in legal cases, just as they had in the Lombard period. Salernitan legal procedure in the twelfth century was essentially Lombard procedure, and the judge's role was clear: they were present at and presided over the court session, guided the case through the

⁸⁴ See Ch. 1 fn. 82-83.

⁸⁵ Because there are so few case records in the Cava archive, I have also chosen to include in this number documents which mention court cases, even if they are not strictly case records. This includes documents called *remissiones actiones*, which are records of litigants coming to court to give up cases (20 of 99 records) and *manifestatii*, or confessions, which also represent the end of a case (10 of 99 records). The remaining 69 documents are either case records with a judgement (34 of 99) or records of an agreement made before a judgement was handed down (35 of 99).

proper procedural steps, examined documents, interrogated witnesses, and then pronounced a decision which was, ideally, only what was self-evident based on their guided definition of the legal issue at stake.⁸⁶ They could and did make judgements, but the goal was always for the outcome of a case to reveal itself through the procedure.

The best way to demonstrate this process and its narration is to examine a case record. This case is typical of twelfth-century documents in most ways, including the fact that it ended in a mutually beneficial agreement rather than a judgement. In 1159, the abbeys of Cava and S. Petrus de Eboli were locked in a dispute over some woods and empty lands south of Salerno near the Sele River.⁸⁷ Iohannes, abbot of S. Petrus, along with his prior Guilielmus and two other monks lodged a complaint with the *iudices Salerni* about Abbot Marinus of Cava and his men, who they said had unjustly expelled their animals and men from the lands near the Sele. Archbishop Romuald II Guarna, the Abbot of Cava, and six *iudices Salerni*, including Petrus *protoiudex*, presided over the court. The other judges were Petrus *iudex*, Salernus *iudex*, Matheus *iudex*, Iohannes *iudex*, and Guaferius *iudex*. Upon hearing Abbot Iohannes' accusation against him and his monastery's men, Abbot Marinus (who was, again, also presiding over the court) produced multiple documents, both old and new, to prove his monastery's title to the lands.⁸⁸ Not to be outdone, Abbot Iohannes produced his own document—this one even bearing a seal of unknown origin—as evidence of *his* monastery's claim.⁸⁹ The case record then narrates how

⁸⁶ Galante, “Il giudice a Salerno in età normanna,” 46–49; Curigliano, “Procedure e forme documentarie nei contenziosi cavensi tra XI e XII secolo,” 192–94.

⁸⁷ Arca xxx 31 (1159); This is an important document for understanding both Salernitan legal process and the composition of Cava's lands and accordingly, Graham Loud made an edition of it: G. A. Loud, “The Medieval Archives of the Abbey of S. Trinità, Cava,” in *People, Texts and Artefacts*, ed. David Bates, Edoardo D'Angelo, and Elisabeth van Houts (London: University of London Press, 2017), 149–52.

⁸⁸ Arca xxx 31 (1159): *plura vetera instrumenta et nova epmtionis [sic] titulum continentia ostendit...*

⁸⁹ Loud argues, based on Carlone, that most of the documents pertinent to this case were strategic forgeries: Loud, “The Medieval Archives of the Abbey of S. Trinità, Cava,” 143–44.

given this situation, in which there was directly conflicting documentation of title, it had earlier been decided by the archbishop and the judges that the only way to determine who had possession was through the swearing of oaths, but also that neither side would swear such oaths—it was considered unseemly (and, emergently, contrary to canon and royal law) for monks or clergy to do so.⁹⁰ At this juncture, the archbishop and the judges together suggested that the parties settle the case with a compromise rather than take it to judgement. The parties agreed to this strategy: Abbot Iohannes agreed to drop the cases so that Cava retained possession of this land, and in return, S. Petrus de Eboli was given license to graze animals on the land and burn wood there when necessary. The judges then ordered the notary and *aduocatus* Petrus to write everything down and each of the six judges signed the document with their unique signature (Figure 3).

Most of this case follows standard Lombard legal procedure. The parties both went before the judges and the plaintiffs lodged their complaint. Each party presented its evidence to the judges, here in the form of documents "shown and read (*ostensis et lectis*)" in the courtroom. If written evidence was not sufficient to end the case, the next step was to hear witness testimony—in other cases, litigants used both witnesses and documents. In most Salernitan cases, enough written evidence is presented by one side to end a case quickly: if the other party did not also have written evidence to support their claim, the judge declared the document holder the winner.⁹¹ In these cases, the legal issue at stake was not always explicitly stated, though the

⁹⁰ Arca xxx 31 (1159): *qua(m) possessorium iudicium inter eos ut dictum est motum fuerat. et de ordine iudicii prius det(er)minandum occurrit; quod alit(er) quam iure iurando probari non poterat*. Gratian discusses this problem in Causa 22 of the Decretum; Kenneth Pennington, "Feudal Oath of Fidelity and Homage," in *Law as Profession and Practice in Medieval Europe: Essays in Honor of James A. Brundage*, ed. Kenneth Pennington and Melodie Harris Eichbauer (London: Routledge, 2016). VL VIII, *De episcopum privilegio*. Royal law draws on Justinian's Codex I.3.6-7, which similarly prevents bishops from swearing oaths.

⁹¹ This may be a result of archival bias since most cases feature Cava as one of the litigants and the monks were particularly adept and careful with their documents.

issue is implicit in the telling: what constitutes evidence of possession. Next, the two sides exchanged pledges and guarantors (*guadium et fideiussores*) promising that they would abide by the judgement and declared a penalty should either side not abide. The judge then ordered the notary to write the document; and the judge signed it.

In this case, however, both litigants had written evidence. The next step was for the judges to refine the legal issue at stake; in this case, whose document attesting right of possession was legitimate. Up until this point, the judges' role had mostly been to observe and guide the proceedings; they had heard the accusation and answer, they had heard and seen the evidence, and they had defined the legal issue at stake.⁹² And a great many Salernitan cases end there. As the cases are laid out, many had only one possible outcome based on the evidence presented to the court, to the point that the reader is puzzled as to why the litigants had bothered to come to court at all.⁹³ Often, their narrative passivity makes the judges of Salerno look very much like the better-studied judges of the *placiti* in northern and central Italy during the eighth and ninth centuries, who were empowered to make judgements, but cases rarely required them to. The rules of evidence—what counted as proof and which kinds of proof were best—were usually enough to make the outcome clear. It is possible that in many cases, the official case record that survives is just the very last step in a much longer process of dispute processing

⁹² Galante, “Il giudice a Salerno in età normanna,” 48; Curigliano, “Procedure e forme documentarie nei contenziosi cavensi tra XI e XII secolo,” 188.

⁹³ Such cases are reminiscent of the rigidly formal *placita* that began to appear in the later ninth century in Northern Italy, which some have suggested were “fictive cases” meant only to give public sanction to transactions already decided. Michael W. Heil, “Justice and Legal Practice in Early Medieval Italy, Ca. 700–900,” *History Compass* 18, no. 12 (December 2020): 4.

which happened outside the courtroom and may or may not have involved the judges as mediators.⁹⁴

In the present case, however, the judges took a more active role in determining the legal outcome of the case. Procedure put the case at an impasse: procedure required oaths; clerics should not swear oaths.⁹⁵ It is at this point that the case takes a procedural turn that was novel in the Salerno of 1130 but became common a generation later: the judges themselves (along with other players) propose a compromise. Though settlements had long featured in dispute processing throughout the peninsula (their practical logic was the subject of important scholarly work in the last part of the twentieth century); previous procedure dictated that only litigants introduced them.⁹⁶ This case demonstrates a larger trend happening during the twelfth century. In this period, the judges' role in dispute settlement changed, but their centrality to the process did not.

⁹⁴ By the middle of the tenth century in northern and central Italy, written evidence was generally preferred over oral testimony, and this was true in southern Italy as well. Chris Wickham, "Land Disputes and Their Social Framework in Lombard-Carolingian Italy, 700-900," 114, 233-34; Indelli, *La Giustizia Nella Langobardia Meridionale Tra Norma e Prassi*, 114, 150-61. Sarah Whitten, "Quasi Ex Uno Ore: Legal Performance, Monastic Return, and Community in Medieval Southern Italy," *Viator* 44, no. 1 (January 2013): 56; For southern Italy, see: Curigliano, "Procedure e forme documentarie nei contenziosi cavensi tra XI e XII secolo," 185; For the late-Roman origins and development of the use of written documentation as legal proof in Lombard law, see: Ghignoli and Bougard, "Elementi romani nei documenti longobardi?"; Cortese, "Il processo longobardo tra romanità e germanismo," 642-47.

⁹⁵ The phrase *prius determinandum occurrit* suggests that the case was spread over multiple court sessions, though the case record does not make the timeline explicit.

⁹⁶ The mutually beneficial agreement was often an effective avenue of dispute settlement in medieval societies because it had the advantage of usually being less resource intensive to enforce. In a medieval context where any common authority's ability to enforce a judgement was weak, a compromise, especially one brokered in the public forum of a court, was an effective means of ensuring that both parties remained faithful to a legal outcome. Both parties usually left feeling compensated (if not completely satisfied) and were incentivized to adhere to the agreement because their neighbors or peers had witnessed the agreement and perhaps even had a hand in brokering it. This is the case with the 1159 case we are examining. The archbishop and the judges, powerful men in the city and region, had proposed the compromise, so it would have been difficult for either Abbot Marinus of Cava or Abbot Iohannes of S. Petrus de Eboli to break the agreement without political cost. Stephen D. White, "'Pactum... Legem Vincit et Amor Iudicium'--The Settlement of Disputes by Compromise in Eleventh-Century Western France," *The American Journal of Legal History* 22, no. 4 (1978): 301-7; Wendy Davies and Paul Fouracre, eds., *The Settlement of Disputes in Early Medieval Europe* (Cambridge: Cambridge University Press, 1986), 235-36; Wickham, *Courts and Conflict in Twelfth-Century Tuscany*, 102-4.

Judges began to favor dispute resolution outside of the adversarial framework of Lombard law.⁹⁷ A case from 1145 over water rights in Salerno was ended by compromise at the behest of the two judges, the *stratigotus*, *aduocatus* of the monastery and many other wise men.⁹⁸ In another case from 1149 a certain Constantinus son of Iohannes decided to settle his dispute with the abbot of the church of S. Trofimenia in Salerno on the advice (*colloquio et consilio*) of the archbishop of Salerno, the presiding judge, and other men both lay and clerical.⁹⁹ In all of these examples, the judge gives the advice to compromise alongside other prominent members of the city's elite, whether the archbishop, the *stratigotus* or other "wise men." The collective nature of the advice may indicate a new degree of community participation in litigation in Salerno, a feature of dispute settlement that had been more common elsewhere in the Salernitano, like the Cilento.¹⁰⁰ Whatever the cause, the change is stark in the documentary evidence as a whole. Between 1075 and 1130, I found only five examples of cases ending in compromise in the Cava archive, four from Salerno and one from Avellino.¹⁰¹ In the same period, there were a comparable number of cases ending in judgement, eight in total and five from Salerno.¹⁰² However, between 1130 and 1189, my corpus contains 27 Salernitan cases which ended in

⁹⁷ In her 1999 article, Maria Galante suggests that the 1130s represent a moment of change in which judges begin to favor more streamlined solutions to legal problems instead of insisting on the rigid application of procedure. Galante, "Il giudice a Salerno in età normanna," 49–50.

⁹⁸ Arca xv 115 (1145): *Nos et stratigotus istius ciuitatis cum aliis sapientibus uiris et aduocatis ipsorum monasterium utrique parti rogando subgessimus ut causationes ipsas amicali compositione spoirent.*

⁹⁹ Arca xxvii 32 (1149): *Set antequam mota de predictis rebus contrauersia suo marte discurreret et iudiciali sententia diffiniretur colloquio et consilio domini Guililelmi uiri ualde uenerabilis Salernitani archiepiscopi et me et quorundam sapientum uirorum tam laycorum quam clericorum lis ipsa amicali compositione sopita est.*

¹⁰⁰ Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, First edition, Viella History, Art, and Humanities Collection 5 (Roma: viella, 2018), 379–81.

¹⁰¹ Avellino: Arca xiii 34 (1075); Salerno: Arca xiv 21 (1084); xiv 59 (1086); xiv 77 (1087); Arca xx 7 (1114).

¹⁰² Salerno: Arca xiv 30 (1085); xiv 118 (1089); Arca xv 92 (1093); Arca xviii 42 (1106); xviii 43 (1106); Arma Magna E 33 (1114). Salernitano: Arca xvi 1 (1094); xxii 84 (1129).

compromise and only 4 cases which ended in judgements. A difference of this magnitude cannot reasonably be attributed to an accident of documentary survival. After 1130, the legal culture of the city was changing and people were beginning to prefer flexible compromises over the limited menu of possible judicial decisions. The judges then used their dispositive powers to turn these new, judge-sponsored compromises into legal acts of their own.

Compromises also produced new documentary forms. In 1138, a new type of document, the *remissiones actionum et calumpniorum*, suddenly appears in the Salernitan record. By 1160, it was also being used in nearby Eboli¹⁰³ and in the Cilento by 1173.¹⁰⁴ In these documents, a litigant went before a judge and renounced all cases they had or would have against another party. In an example from 1155, two priests of the archbishop, Ursus and Iohannes, went before a judge, Salernus *iudex*, with a woman named Lolegrima. She had some money (*solidos tarenorum monete istius ciuitatis et uncias auri tarenorum monete Sicilie*) in her possession which her brother, Romualdus *diaconus et medicus*, had said in his will should be distributed for the health of his soul. The two priests, Ursus and Iohannes, were responsible for the distribution. Lolegrima had evidently not given them the money, so they had initiated a case against her. Record of that case does not survive. The document then narrates that Lolegrima went before the judge with the priests and gave them the money. The priests then dropped all cases (*causationes*) they had or intended to have (*intentiones*) against her. Finally, they gave her pledge and guarantors that they would abide by this agreement and the document was signed by the judge, Salernus *iudex*.¹⁰⁵

¹⁰³ Arca xxx 56 (1160).

¹⁰⁴ Arca xxxiv 78 (1173).

¹⁰⁵ Arca xxix 27 (1155).

The significance of this case for understanding the nature of judgeship in Salerno lies in the fact that the agreement was clearly made before coming to court. Unlike the cases discussed above, the judge is not proposing a settlement. But if negotiation was extra-judicial, the parties still wanted to go before a judge and have a document created that formalized and authenticated their agreement. Even as methods of dispute settlement were changing in ways which decentered the judge and his expertise in procedure, the judges of Salerno maintained oversight of dispute settlement because they so completely controlled the creation of legal documents.

Given that the change occurred during the 1130s, when the new Kingdom of Sicily was being established, it is tempting to connect it to the advent of royal law and judicial administration. However, there is little in the royal legislation that would seem to directly endorse compromise over judgement. In fact, given that the purview of royal legislation is largely criminal law, judgement is a central theme of the *Assizes*. One law, VA XLIII *Si iudex litem suam fecerit*, threatens judges who take bribes with capital punishment and declares that a judge who "fraudulently and deceitfully hands down a sentence contrary to the laws" shall lose his position, be branded with infamy, and have his property confiscated. If he makes the mistake through ignorance of the law, he shall still be punished for his "simplicity of mind and be subject to our royal mercy and foresight."¹⁰⁶ Such a law might have had a cooling effect on judges issuing sentences, since they may have feared being accused of bribery or fraud under threat of death. This purely textual argument presumes that these royal laws had been issued by the 1130s and were known to Salernitan judges. As we will see in later chapters, the evidence for either

¹⁰⁶ Vaticano Latino 8782, XLIII *Si iudex litem suam fecerit: Iudex si accepta pecunia reum quem criminis et mortis fecerit, capitis periculo subiacebit. Si iudex fraudulenter atque dolose sententiam contra leges protulerit, auctoritate iudiciaria inrecuperabiliter cadat, notetur infamia, rebus eius omnibus publicatis. Quod si ignorantia a iuris sententia oberraverit, ferens iudicium pro simplicitate animi manifestam regie misericordie et providentie subiacebit.*

proposition is lacking. It is possible, however, that judges in Salerno were influenced by the powerful Roger's own example. In 1130, Roger II, while still Duke of Apulia, settled some cases brought before him in Troia by compromise. He may have preferred such outcomes and perhaps signaled this to judges and other officials as he traveled, but it is difficult to assign so much causality to this one instance of ducal justice.¹⁰⁷

The Judges' Place in Salernitan Legal Culture

By now it is clear that the judges were central legal figures in Salerno. They had a monopoly on the production of legal documents. They were also the central figures of legal procedure, responsible for guiding cases through the correct procedural steps, providing opportunities to end cases by agreement, and, by the 1130s, helping propose and legitimate novel compromise solutions to disputes. In the 1150s, Salernitan judges acquired yet another unique role, one that does not fit neatly into their documentary or procedural roles but is nonetheless entirely indicative of what it meant to be judge in the city—they began to take over the *mundia* of women without a suitable male relative, a responsibility that in traditional Lombard law was the prerogative of kings.

The legal institution of the *mundium* is a characteristic feature of Lombard law.¹⁰⁸ Women were not allowed, by statute, to represent themselves at law (*selpmundia*) and they needed a *munduald* to be their legal guardian.¹⁰⁹ A woman's *mundium* was essentially her legal competence, so whoever held it as her *munduald* was responsible for permitting and confirming

¹⁰⁷ Arca xxii 112 (1130).

¹⁰⁸ In Salerno, it was the main thing that distinguished women who lived *secundem legem et consuetudinem Langobardorum* and those who lived *secundem legem et consuetudinem Romanorum*. Roman-law women could conduct legal business at court on their own, without a male legal guardian.

¹⁰⁹ Edict of Rothari, 204. Drew, *The Lombard Laws*, 92; Boretius, *Liber Leges Langobardorum Papiensis Dictus*, Leges IV:346–47.

all her legal business at court.¹¹⁰ The Lombard legislation about who should inherit a woman's *mundium* if the male head of household died is complex; in the absence of an heir, the solution is simple: the woman's *mundium* went to the Lombard king.¹¹¹ Whether because the details of Lombard inheritance rules were difficult to parse, or because there was no Lombard king after 1077, a new legal strategy, together with a new legal document emerged in Salerno whereby a man could transfer a *mundium* he possessed to another man by going before a judge and having a document made recording the transfer. The new *munduald* was identified by name in the document but he was also identified by the phrase *cui ipsum scriptum in manum paruisset*, "he who has this document in hand."¹¹² The phrase and legal strategy first appear (as far as I can tell) in a document from 1139, not extant but mentioned in an 1165 document.¹¹³

Given the dispositive power of Salernitan legal documents, the next development is perhaps predictable: in 1153, a judge now held a woman's *mundium* by virtue of holding her *mundium* document (*scriptum mundii*) and thus gave his permission for her to make a sale as her *munduald*. The circumstances are these: a widow named Sica Cataole went before Iohannes *iudex* (*Ante me Iohannem iudicem*) and confessed (*manifestavit*) that she had sold some land to Cava. The judge then said that Sica did this with his permission (*cum mea voluntate*) because he had in his hand her document of *mundium* (*eo quod in mane mea paruerit unum scriptu mundii*). In this *scriptum mundii* (made in 1141 by Ademarius *notarius* and subscribed by Alfano *iudex*), Salernus, Sica's late husband, had transferred her *mundium* from himself to a man named

¹¹⁰ Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194*, 65–66.

¹¹¹ Edict of Rothari, 182. Drew, *The Lombard Laws*, 85; Boretius, *Liber Leges Langobardorum Papiensis Dictus*, Leges IV:332–33.

¹¹² Arca xxviii 70 (1153).

¹¹³ Arca xxxi 117 (1165).

Cioffus.¹¹⁴ By 1153, Cioffus appears to have also died and, without any other suitable male relatives, the document passed into the hands of the judge, Iohannes. Because he now held Sica's *scriptum mundii*, he became her *munduald*, by the terms of the document. In the 1165 document, a widow named Truda sold some property in Salerno with the permission of the *iudex* Guaferius. He stated that she did this with his permission, "I who have in my hand a document of *mundium* (*eo quod in manu mea paruerat unum scriptum mundii*)."¹¹⁵ That *scriptum mundii*, from 1139, was also made by Ademarius *notarius* and subscribed by Alfano *iudex*.

The judges, by holding these women's *mundia*, took on what was once a royal legal duty in Lombard law. The fact that the *iudices* were entrusted with this role when nobody else was available reinforces the notion that they possessed the public's trust. They were a common authority that people could rely on, the representatives of a traditional and longstanding legal order that had endured through considerable political change. The judges and most of the trappings of their power—where they met, the laws they were enforcing, the stratum of society that they came from—remained constant across the transition from Lombard to Norman rule and then again from ducal to royal rule.¹¹⁶ They represented continuity in legal practice and a common understanding of the law that was shared by the aristocratic class (the Norman dukes, kings, and their officials) and the rest of the city.

On the other hand, it is surprising that the practice first appears during the monarchy period in 1153, when there was in fact a king who might have claimed the prerogative to possess the *mundia* of these women. They may not have known about it; the *mundium* was an institution

¹¹⁴ Arca xxviii 70 (1153): *Ea ratione ut ab obitu eiusdem Salerni in antea integrum ipsum mundium semper esset in potestatem illius uiri (Cioffus) cui ipsum scriptum in manu paruisset...*

¹¹⁵ Arca xxxi 117 (1165).

¹¹⁶ The palace was the nerve-center of the Lombard principality and often coterminous with the prince himself. See: Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*, 215, 461–83.

of Lombard law, and they did not explicitly claim to inherit the authority of the Lombard kings.¹¹⁷ But it is also possible that the nature of the relationship between royal and local law in Salerno, specifically, precluded the possibility of the Kings of Sicily assuming responsibility for widows' *mundia*.

The establishment of the Norman Kingdom of Sicily in 1130 was accompanied by an effort to centralize its judicial and financial administration. The nature and scope of this centralization is a matter of debate, but narrative and legal evidence indicates the robust royal ambition of the first king, Roger II.¹¹⁸ The *Chronicon* of Romuald II Guarna states that Roger II, "instituted chamberlains and justiciars throughout the land, promulgated laws which he had newly drafted and removed evil customs from their midst."¹¹⁹ The author of the *Liber de Regno*

¹¹⁷ The narrative source of the early kingdom sympathetic to the king, the chronicle of Abbot Alexander of Telesse, located the origins of their kingship in a long-dormant tradition of rule based on the island of Sicily. See: Helene Wieruszowski, "Roger II of Sicily, Rex-Tyrannus, in twelfth-century Political Thought," *Speculum* 38, no. 1 (1963): 46–78; Eleni Tounta, "Terror and Territorium in Alexander of Telesse's *Ystoria Rogerii Regis*: Political Cultures in the Norman Kingdom of Sicily," *Journal of Medieval History* 40, no. 2 (April 3, 2014): 142–58; G. A. Loud, trans., "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 78.

¹¹⁸ The standard account of this process remains: Hiroshi Takayama, *The Administration of the Norman Kingdom of Sicily* (Leiden: Brill, 1993); Older, but still foundation studies are: Evelyn Jamison, "The Norman Administration of Apulia and Capua," *Papers of the British School at Rome* 6, no. 6 (1913); Evelyn Jamison, "The Administration of the County of Molise in the Twelfth and Thirteenth Centuries," *The English Historical Review* 44, no. 176 (1929): 529–59; Ferdinand Chalandon, *Histoire de La Domination Normande En Italie et En Sicilie* (Paris: Librairie A. Picard et fils, 1907); For a more critical perspective of the Norman Kingdom and its administrative structure, see: Matthew, *The Norman Kingdom of Sicily*; Hubert Houben, *Roger II of Sicily: A Ruler between East and West*, trans. G. A. Loud and Diane Milburn (Cambridge: Cambridge University Press, 2002), A clear and excellent account of the early period of the Norman Kingdom.; Joanna H. Drell, Paul Oldfield, and C. E. Beneš, *Rethinking Norman Italy: Studies in Honour of Graham A. Loud* (Manchester University Press, 2021); Horst Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," in *The Society of Norman Italy*, ed. G. A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 97–113; Kenneth Pennington, "The Normans in Palermo: King Roger II's Legislation," *Haskins Society Journal: Studies in Medieval History* 18 (2007): 140–67; Wieruszowski, "Roger II of Sicily, Rex-Tyrannus, In Twelfth-Century Political Thought."

¹¹⁹ G. A. Loud, trans., "Romuald of Salerno, *Chronicon Sive Annales*, 1125-54," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259.

Sicilie also thought highly of Roger II and his commitment to justice, saying he "made efforts to administer justice in its full rigour," and left his kingdom in peace and tranquility.¹²⁰

Of course, like any medieval western European monarch, Roger had to pay for the loyalty of his most important supporters in terms of exemptions, privileges, and immunities that limited his abilities to create such a centralized system. As noted in the introduction to the chapter, Salerno had played this game admirably: a loyal hub of royal administration, the city's collection of explicit and implicit freedoms meant it was nevertheless largely ruled by a native elite who ran the city by its own traditions.¹²¹ Perhaps as part of these privileges, the judges of Salerno also remained largely independent of royal authority: there is no evidence that the Kings of Sicily played a role in appointing or choosing them at any point between 1130 and 1189. A fifteenth-century document, in which the people of Salerno asked the Aragonese king Alfonso I to secure the rights granted to them by Roger II in 1127, does not explicitly make these judges independent, but shows one valued privilege was the right not to be tried in courts outside the city.¹²²

We have already seen a variety of evidence that among these judges 'outside the city,' there were judges who were appointed by and worked for Norman lords and monarchs.¹²³ In the case of the Norman Duchy of Apulia (1077-1127), there is little evidence for judicial

¹²⁰ Loud and Wiedemann, *A History of the Tyrants of Sicily By "Hugo Falcandus" 1153-69*, 58–59; Siragusa, *La historia o Liber de regno sicilie e la epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22:6–8.

¹²¹ Loud, "Romuald of Salerno, Chronicon Sive Annales, 1125-54," 251, 256–57; Donald Matthew, "Semper Fideles. The Citizens of Salerno in the Norman Kingdom," in *Salerno nell XII secolo. Istituzioni, società, cultura* (Salerno: Centro studi salernitani "Raffaele Guariglia," 2004). Brühl, *Rogarii II. Regis Diplomata Latina*, II:129–31, no. 46

¹²² This is of course a source fraught with problems of interpretation, but Matthew makes a convincing case that it faithfully represents the situation in 1127 without major interpolations. See, Matthew, "Semper Fideles. The Citizens of Salerno in the Norman Kingdom," 30–31.

¹²³ See the discussion and sources cited on pp 93-94, fn. 18-22 above.

appointments. A charter from 1086 provides a unique bit of evidence: in this document, Duke Roger Borsa promised the monks of Cava that they would not be bothered by "our judges (*nostris iudicibus*), counts, *gastalds*, nor by anyone who shall have the authority of the *res publica* in any time or place."¹²⁴ It may be that the duke considered at least some of the judges in the region part of his ducal administration; the reference is similar in form to seigneurial contexts around southern Italy in which judges appear to have been appointed by a lord. Carocci has shown that in the twelfth and thirteenth centuries, many judges throughout southern Italy were appointed by seigneurial lords and derived their legal authority from them, leading to what he calls the "plurality of courts."¹²⁵

The historical processes by which the judges of Salerno became independent of political authority are not entirely clear from the sources. Galante and Delogu argue that this change occurred sometime in the late tenth and early eleventh centuries under the Lombard Princes of Salerno as the judges took on legal responsibilities formerly associated with princely officials, but these arguments are largely speculative given the paucity of evidence. What is striking is the absence of any possessive lordly or royal reference to any judges in Salerno: in the other towns I have studied, at least some of the local judges, though very few, seem to have been appointed by

¹²⁴ Arma Magna B 39 (1086): *Et neque a nobis neque a nostris iudicibus comitibus castaldeis neque a quibuscumque auctoribus reipublice quolibet tempore habeatis...* This document, according to the editors of the *Codex Diplomaticus Cavensis*, is a "forgery in the form of the original." We know, nonetheless, that it is authentic because it is copied in its entirety into a document from 1182 recording a court case between Cava and the royal stratigotus of Salerno, Arma Magna I 37 (1182). The document (Arma Magna B 39) is edited and discussed in: Carmine Carlone, Leone Morinelli, and Giovanni Vitolo, eds., *Codex Diplomaticus Cavensis*, vol. XII (Badia di Cava: Laveglia & Carlone, 2015), 19–21.

¹²⁵ Carocci argues that this plurality, alongside localism, characterizes southern Italian legal culture more broadly: Carocci, *Lordships of Southern Italy*, 367.

local lords.¹²⁶ The independence of the *iudices Salerni* is therefore distinctive and may have enhanced their political standing and legal authority within the city.

This same freedom and independence is evident in the 1162 episode when William I was going to punish the city for the part it played in the rebellion against him. He requested that the judges (*iudicibus*) and the *stratigotus* identify the traitors and hand them over to him. He did not presume to enter the city and do so himself.¹²⁷ It is significant that the judges and the *stratigotus* treated with the king as the city's representatives. The *stratigotus* was a royal official and represented royal interests in city court cases, so it is reasonable that he would be involved in negotiations with the king.¹²⁸ The judges, on the other hand, were not appointed by the king and were either chosen by their fellow citizens to represent the city or assumed the responsibility on their own. Their representation suggests that they were among the most prominent lay figures in the city, next to the royal officials, and associated with Salernitan identity enough to represent it effectively.

It is within this context of legal independence that the judges' new ability to take over widows' *mundia* matters. Technically, one might argue that judges were not invading royal rights: the legal mechanism at work was that the *mundia* was transferred by transferring the *scriptum mundii* document, the possession of which conferred the legal status of *munduald* on the holder. The judges were not claiming that these women had no *munduald* and therefore were

¹²⁶ The full evidence for this statement is covered in the next chapter, which explores the adoption of a Salernitan-style judgeship elsewhere in the Salernitano.

¹²⁷ Matthew, 32; Loud and Wiedemann, *A History of the Tyrants of Sicily by "Hugo Falcandus" 1153-69*, 132; Siragusa, *La historia o Liber de regno sicilie e la epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22:82.

¹²⁸ The position of *stratigotus* was usually held by a member of the Caputus family. Another man, named Petrus de Riso, also held the position in the 1160s: Arca xxiii 70 (1134); Arca xxiv 68 (1138); Arca xxv 117 (1146); Arca xxxi 32 (1163); Arca xxxiii 100 (1171); Arca xxxiv 106 (1174).

in their protection (which would have amounted to taking the royal *mund*), but rather that they, the *iudices*, held the women's *scriptum mundii* and were therefore their *mundualds* by the terms of the document. This amounts to much the same thing, of course, since tradition, legislation, and the evidence tells us that if these women lacked a male relative that could have held their *mundium*, it belonged to the Lombard king.

Without presuming the Norman kings knew or particularly cared about the details of the widows' *mundia*, it mattered to the Salernitans. Whether they had determined that keeping a widow's *mundium* within the city fell within these legal concessions of Roger II, in Lombard law this was clearly one embodiment of the king's role as holder of public trust, and thus they were effectively making a bid for full legal independence, endowing their judges with a kind of legal sovereignty. It is even more significant that in two different contexts, formal legal compromises and the *mundia*, legal change in Salerno during the early monarchy happened by documentary innovation. The judges, controlling the production of legal documents, now created new kinds of legal acts, the *remissiones actionum et calumpniorum* and *scriptum mundii*. This was an ability to make legal change that further centralized legal authority in their hands.

Conclusions

This chapter began by pointing out how contingent the meaning of the term *iudex* was and how the use of that term changed over time. In Salerno, being a *iudex* was similarly contingent, but carried with it a particular set of assumptions about social status and legal responsibilities. Judges were high status individuals who represented the city and its distinctive place in the political landscape of southern Italy. They were wealthy and connected to circles of power, both within the city and outside of it. They were responsible for essentially all legal business in their city, from the oversight of court cases to the authentication of dispositive documents. As the

representatives of a judicial institution that had weathered significant political change, the judges had exclusive possession of the public trust, which facilitated their oversight of all the city's legal transactions. The centralization of legal power in their hands, and especially their control of document production, meant that as legal change occurred, it occurred in ways that kept them at the center of Salernitan legal culture. The sources do not facilitate a clear understanding of the judges' agency in this change, but they do reveal that change occurred. And when it did, the constraints of the local legal and political context affected the nature of that change in profound ways. The judges' control of documentary production, which was consolidated before the Norman period (1077-1189), shaped how Salernitan legal culture accommodated an increase in mutual agreements in the mid-twelfth century. The combination of the judges' control of documentary production and their independence from political authority facilitated their assumption of widows' *mundia*, once a royal prerogative under Lombard law. The extent of the judges' power in the legal administration of their city, but especially their assumption of what was once a royal prerogative, highlight the limits of royal centralizing power in the twelfth century. Whether because of the concessions made to the city or the king's lack of practical power, there were real limits to what kings could achieve in terms of legal change.

In the next chapter, I will examine how this model of Salernitan judgeship, in different ways in different places, spread across the Salernitano in the twelfth century. Many of the conclusions of this chapter about the contingent nature of legal change will be explored further as I discuss how judges looking very much like the judges in Salerno appeared in places like Nocera, Eboli, and the Cilento peninsula in the twelfth century. Just as in this chapter, the documentary evidence that is the main source for understanding legal change in twelfth-century southern Italy offers both advantages and limitations to understanding those processes of legal

change. There are not any more narrative sources for understanding the rest of the Salernitano in the twelfth century. Salerno had a remarkably stable legal culture and model of judgeship that changed very little through episodes of dramatic political change, but the legal cultures of the other local contexts I will examine were much more vulnerable. When they experienced moments of political change, sometimes dramatic and sometimes rather local and mundane, the opportunity for legal change appeared. It is in the context of these opportunities for local legal change that I will examine the central questions of this dissertation; namely, how can we know about legal change in the twelfth century? What does legal change look like when it occurs? How does it manifest in a documentary record? And finally, what was the role of Norman royal law and legal culture (if any) in shaping that legal change at the local level.

Images

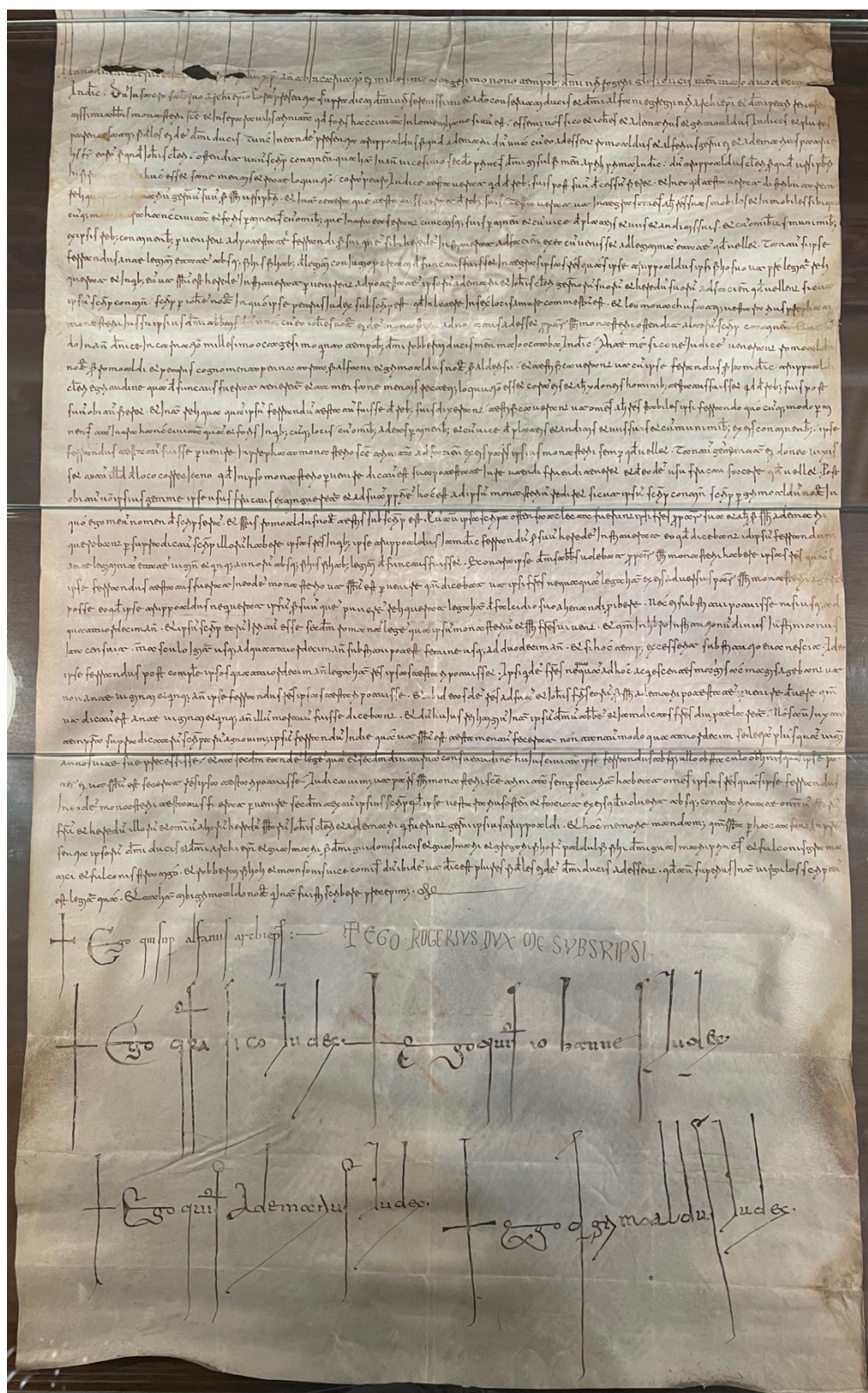


Figure 1: Arca xiv 118 (1089). Notice the large judicial signatures and the smaller signatures of the archbishop and duke.

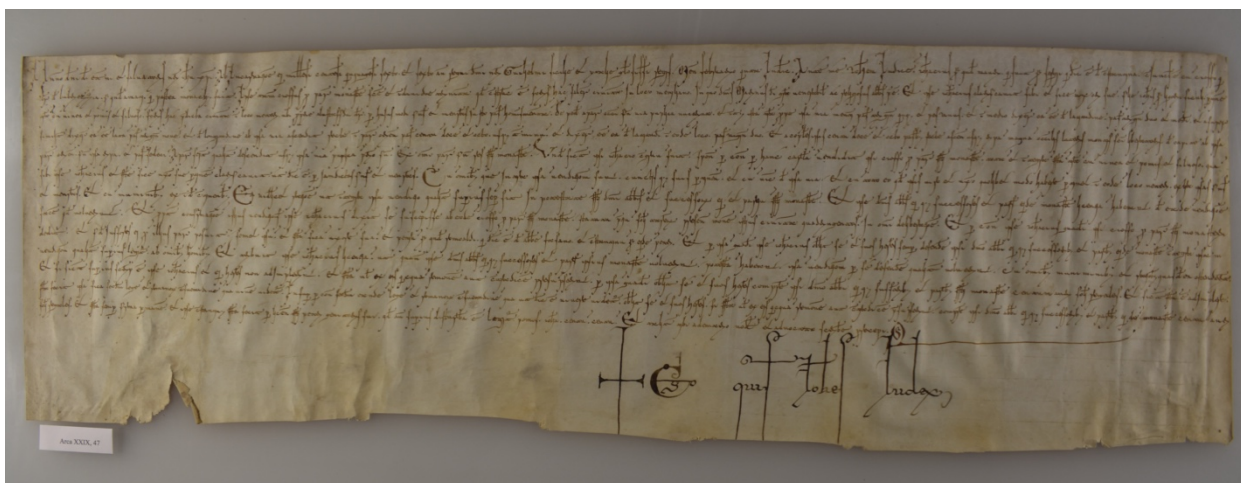


Figure 2: Arca xxix 47 (1156)

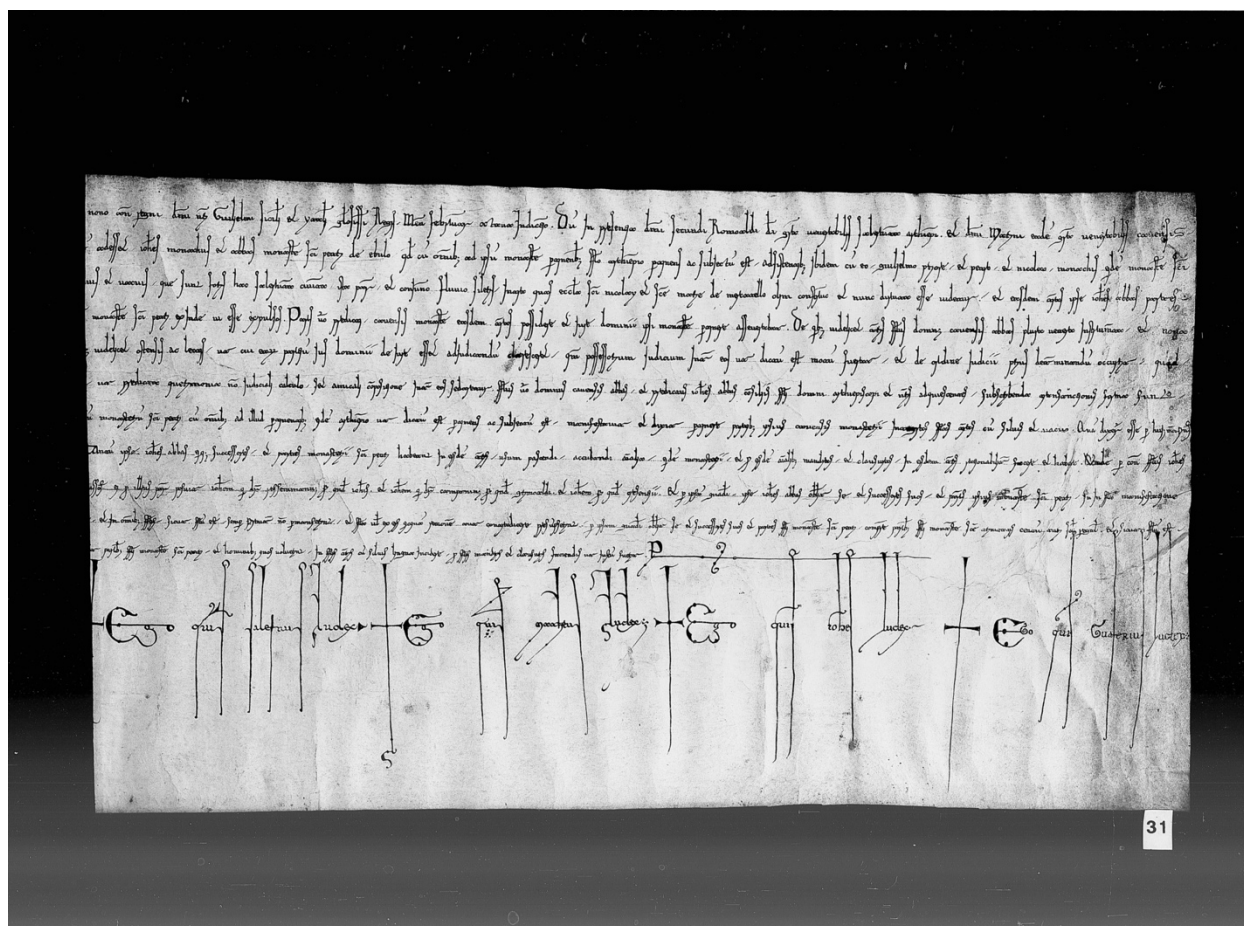


Figure 3: Arca xxx 31 (1159). This is only the right side of the document, the image of which is cut in half. The archivists denied my requests for a complete image because this image had already been made.

Chapter Three: Local Legal Change in the Salernitano

Introduction

Petrus *protonotarius* of Nocera died sometime between 1096 and 1102. He had been the notary in his small Campanian town since at least 1041, a long career spanning more than half a century.¹ His title indicates some kind of singular prominence in the local legal culture—there is no other *protonotarius* in Nocera before or after him. He wrote documents in a distinctive notarial style and in a script (Figure 1) which looks markedly different from the more standardized *beneventana documentaria* discussed in Chapter One. He could write documents in just about any style—*memoratoria*, *chartule*, or a hybrid—and did not seem to have an opinion about who authenticated them. Sometimes, it was two or more witnesses, other times two notaries, and still other times a judge. The common denominator of these different documentary formats was Petrus and his distinctive style. He was clearly an important and venerable man, and surely one of the foremost legal authorities for miles around. But when he died, his legal legacy died too.

His successor, Iohannes *notarius*, may have been a contemporary or pupil of Petrus,² but he did not continue his documentary legacy. In fact, under Iohannes in the opening years of the twelfth century, Nocera's formerly distinctive diplomatic and documentary culture gradually became indistinguishable from that of Salerno. Iohannes' hand looks much more like the *beneventana documentaria* of the Salernitan notaries across the mountains (Figure 2) than the unique hand of Petrus. And in contrast to the variable situation under Petrus, by 1113 at the latest

¹ Giovanni Vitolo and Simeone Leone, introduction to *Codex Diplomaticus Cavensis*, vol. IX (Cava dei Tirreni, 1984), xxxvi–xxxvii.

² A certain Iohannes signed a document written by Petrus: Arca xi 64 (1060). However, this may be too old a document to be the same Iohannes who succeeded Petrus.

a certain Iaquintus *iudex* appeared and began consolidating control over Nocera's legal culture, authenticating documents in the Salernitan style to the exclusion of all other documentary forms. There was therefore a clear shift in the legal and documentary culture of Nocera towards a Salernitan model after the death of Petrus *protonotarius* at the turn of the twelfth century.

This narrative of legal change in Nocera is constructed entirely from documentary evidence. There are no historical or other narrative sources for the region that discuss the activities of judges or notaries (even *protonotaries*). Indeed, the story of legal change in the twelfth-century Salernitano more broadly was one of relatively small-scale diplomatic and personnel changes in multiple humble, local contexts that, when considered together, amount to a broader narrative of change. Salerno's status first as the capital and most important city of the Duchy of Apulia and then as the mainland capital of the Kingdom of Sicily is central to this story because its legal culture—its documentary methods and institutional structure—became the model for the Salernitano. By the mid-twelfth century, the traditional Lombard legal institutions that characterized the legal cultures of most places around the city in the eleventh century were replaced by institutions and practices closely resembling those of the city.

Maria Galante, in her seminal article on the judges of Salerno, identified the essential contours of this process of institutional change. She noted that judges first appeared in roles similar to those of Salerno in “peripheral and provincial centers” like Nocera and the Cilento in the 1090s and that, “with the twelfth century,” the Salernitan model was fully adopted in those places.³ In other words, Galante brilliantly identified the beginning and end of the story, but did

³ Maria Galante, “Il giudice a Salerno in età normanna,” in *Salerno nel XII secolo. Istituzioni, società, cultura*, ed. Paolo Delogu and Paolo Peduto (Salerno: Centro studi salernitani “Raffaele Guariglia,” 2004), 53.

not articulate specifically when, where, or how the process of institutional change unfolded. The goal of this chapter is to fill in that middle part of the story.

In the context of the Salernitano, where documentary evidence is abundant but narrative evidence is not, the best way to see how institutions either change or get created is to track changes in documentary processes and personnel. By institutions, I mean, in the words of Marina Rustow, “a set of socially legible practices that constrain human behavior, give it meaning, and tend to get perpetuated because people perceive them as constitutive of social reality.”⁴ This definition is useful because it is expansive: both traditional Lombard practices (like witness authentication) and Salernitan ones (like judicial authentication) can be meaningfully described as ‘institutions.’ Both were accepted as authoritative ways of imbuing documents with legal meaning and legitimacy and had considerable longevity as such. Such an expansive definition therefore helps avoid the moralizing language that often accompanies discussions of legal change, especially in the twelfth century.⁵ Instead of focusing on value-laden concepts like rationalization or modernization, I am primarily interested in understanding *how* institutions changed and what it looked like in the documents when new ways of doing things emerged.

Local documents of practice were both products and producers of institutions. They conformed to a set of expectations about what made them legitimate and, by their conforming, reified those expectations and the normative power of the institutions that created them. By tracing changes in the diplomatic and legal personnel involved with creating legitimate

⁴ For the theoretical basis of this definition of institutions, see Rustow’s excellent and concise discussion: Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton: Princeton University Press, 2020), 62. In particular, she cites Hofer’s work, which was particularly clear and useful on the subject: Nathan Hofer, *The Popularisation of Sufism in Ayyubid and Mamluk Egypt, 1173-1325*, *Edinburgh Studies in Classical Islamic History and Culture* (Edinburgh: Edinburgh University Press, 2015), 14–20.

⁵ Anders Winroth, “The Legal Revolution of the Twelfth Century,” in *European Transformations: The Long Twelfth Century*, ed. John Van Engen and Thomas F. Noble (Notre Dame: University of Notre Dame Press, 2012), 346–51.

documents, it is possible to identify the dynamics of how institutions were created and changed over time.

Therefore, this chapter is focused primarily on institutional change in the twelfth-century Salernitano as it is revealed in documentary evidence. This change manifested in three key ways: the standardization of legitimate documentary types and their diplomatic; the development of stable documentary and legal procedures; and the concentration of legal power in the hands of professional, expert judges. In all cases, the institutional structures of the city of Salerno, described in the first two chapters and summarized in the chart below (Table 5), were the model for these changes. The adoption of the Salernitan model across the Salernitano in the twelfth century indicates a widespread demand for new kinds of institutions, specifically those that centered legal professionals rather than traditional Lombard law's "community-based, informal" sources of legal authority.⁶ Where it is possible to identify them, the central figures driving this institutional change are the local legal professionals themselves—judges and notaries familiar with Salernitan practices and steeped in the local law of the city.

Three Case Studies

To show the process of legal change, I present case studies of three places in the Salernitano—Nocera, the Cilento Peninsula, and Eboli—that changed at different times and for different reasons, but always in the direction of the Salernitan model. These places were chosen because they are representative of various trends occurring elsewhere in the twelfth-century Salernitano.

Nocera, located north of Salerno across the Monte Lattari on the edge of the broad volcanic plain south of Naples and Vesuvius, was a town on the rise in the eleventh century. It

⁶ Ada Maria Kuskowski, "The Time of Custom and the Medieval Myth of Ancient Customary Law," *Speculum* 99, no. 1 (January 1, 2024): 152.

was the nucleus of a developing and productive agricultural region⁷ that had been fortified a century earlier as an important and disputed frontier outpost between the Lombard Principalities of Salerno (851-1077) and Capua (887-1058).⁸ The region (or at least some part of it), was conquered by the Norman Princes of Capua (r. 1058-1129) in 1076 and became the seat of one of Prince Richard II's sons, Jordan of Nocera, sometime before 1109.⁹ For a brief period in the 1090s, it was conquered by the Norman Dukes of Apulia, as part of their campaign against the Duchy of Amalfi.¹⁰ Throughout this period of upheaval, Nocera remained an administrative center, perhaps in the form of a *gastaldatus*, an administrative region of Lombard origin overseen by an official called a *gastald*. Such administrative units are referenced in documents when they close with the phrase *actum Nucerie*, which was used in Nocera until 1102.¹¹ So while Nocera was a frontier zone, it was not peripheral; its borderland status in fact made it politically important.

Nocera is a useful case study for a few reasons. First, it was the home of Petrus *protonotarius*, whose idiosyncratic diplomatic style—dominant in the area during the eleventh century—is emblematic of the varied and decentralized documentary landscape outside Salerno

⁷ Based on the evidence of *pastinatio* contracts, which were leases that delayed rent for up to ten years to incentivize the clearing and planting of land. See: G. A. Loud, *The Age of Robert Guiscard: Southern Italy and the Northern Conquest*, 1st edition (London: Routledge, 2000), 53–54; Huguette Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle): Pouvoir et société en Italie lombarde méridionale*, Collection de l'École française de Rome (Rome: École française de Rome, 1991), 414–19.

⁸ Loud, *The Age of Robert Guiscard*, 43.

⁹ G. A. Loud, "A Calendar of the Diplomas of the Norman Princes of Capua," *Papers of the British School at Rome* 44 (1981): 115–18.

¹⁰ Evelyn Jamison, "Some Notes on the Anonymi Gesta Francorum, with Special Reference to the Norman Contingent from South Italy and Sicily in the First Crusade," in *Studies in French Language and Mediaeval Literature. Presented to Professor Mildred K. Pope*. (Manchester, 1939), 282.

¹¹ Many such documents from the Lombard period are cited in: Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*, 491–96. From my own corpus, documents with the phrase are: Arca xi 62 (1060); xi 64 (1060); Arca xiii 102 (1080); Arca xiv 28 (1086); xiv 29 (1086); xiv 57 (1086); Arca xiv 74 (1087); Arca xiv 82 (1087); xiv 83 (1089); xiv 84 (1088); xiv 86 (1088); xiv 102 (1088); xiv 105 (1089); Arca xv 6 (1089); xv 67 (1092); xv 68 (1093); Arca xvii 53 (1102).

in that period. Second, and related to this, is that the town's documents present a clear progression of change from traditional *memoratoria* to Salernitan *chartule*. And finally, Nocera was a politically significant frontier zone on the edge of Salerno's orbit, caught, at the turn of the twelfth century, between two rival Norman principalities. But in a legal sense, as the case study will show, it was firmly within the sphere of Salerno's influence, emphasizing the limited role of political entities in determining the shape of institutional change in the Salernitano.

The second case focuses on the Cilento peninsula, a rural, mountainous region south of Salerno whose social world was very different from that of the city. There were no major cities or towns in the region. The only urban center, the ancient city of Paestum on the coast, had largely been abandoned by the Norman period and both the town and its bishop had relocated to the nearby upland town of Capaccio away from the coast by the year 1000.¹² Settlement was increasing, though, due in large part to the efforts of Cava, which made the peninsula one of the main foci of its expansion efforts. The abbey purchased lands in the region, took over many smaller churches and monasteries, and established new villages.¹³ They also established a *castellum* on the coast at Castellabate in 1123,¹⁴ which served as the monastery's base of operations in the peninsula and the administrative center of its dependencies.¹⁵ By the mid-twelfth century, Cava had created a sizeable territorial lordship in the Cilento that was effectively

¹² G. A. Loud, *The Social World of the Abbey of Cava, c. 1020-1300* (Woodbridge: Boydell Press, 2021), 131, 157.

¹³ As in Nocera, part of the evidence for this expansion are the *pastinatio* contracts issued by the monastery, which incentivized colonists with tax and rent breaks: Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 133–34; Barbara Visentin, *Percorsi Monastici Nel Mezzogiorno Medievale: La Congregazione Di Cava*, vol. I, *Analecta Cavensia* 6 (Cava dei Tirreni: Badia di Cava, 2015), 217–315.

¹⁴ The name of this castle in the sources is sometimes *Castro Sancti Angeli*, and sometimes *Castellabate*. They are the same place.

¹⁵ Arca xxiv 61 (1138) Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 44, 244–47, 279

independent from public power as a result of grants of immunity by the Norman Dukes of Apulia, producing in its wake a substantial paper trail.¹⁶

It is precisely the rural and peripheral nature of the Cilento that makes it a useful case study. In terms of both politics and culture, it was well beyond the borders of Salernitan influence, but it nonetheless adopted the Salernitan model at much the same time as Nocera. Moreover, when compared to the city, its social landscape was characterized by a greater presence of clerics, knights, and lords. This social landscape is reflected in the enigmatic presence of figures called *milites et iudices*, a unique title in the lands of the Salernitano, and one that brings up important questions about the connections between legal personnel and lordship.

The final case study is about the castle town of Eboli. The castle sits on the northern edge of the Sele plain, a productive agricultural region between Salerno and the Cilento peninsula. It was a seigneurial possession,¹⁷ first of the Norman Lords of Eboli at the turn of the twelfth century¹⁸ and later the powerful Counts of the Principate, who took over the castle between 1121 and 1128 and made it their comital seat.¹⁹ The town was growing in the twelfth century,

¹⁶ G. A. Loud, "Labour Services and Peasant Obligations in Twelfth- and Thirteenth-Century Southern Italy," in *Italy and Early Medieval Europe: Papers for Chris Wickham* (Oxford: Oxford University Press, 2018), 193–94; See also Ramseyer's important discussions of the creation of Cava's lordship: Valerie Ramseyer, "Territorial Lordships in the Principality of Salerno, 1050-1150," in *The Haskins Society Journal*, 9:79–94 (Woodbridge: The Boydell Press, 1997), 79-94; Valerie Ramseyer, *The Transformation of a Religious Landscape: Medieval Southern Italy, 850–1150* (Ithaca, NY: Cornell University Press, 2006), 185–92.

¹⁷ The term "seigneurial" can refer to several different concepts depending on the historical and historiographical context. In an Italian context, the term *signoria* and its adjectival form seigneurial, refer to the combination of ownership of land and peasantry (the French *seigneurie foncière*) and the possession (as property) of local governmental powers like justice, taxation, and defense (the French *seigneurie banale*). This definition follows that of Sandro Carocci, the foremost scholar on southern Italian lordship. See his discussion of the problem in: Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, First edition (Roma: Viella, 2018), 19–25.

¹⁸ Emma (r. 1082-1104) and her grandchildren, Roggerius (r. 1104-1117), and Robbertus (r. 1117-c.1121), sons of Guilielmus. See: Errico Cuzzo, "'Milites' e 'testes' nella contea normanna di Principato," *Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano* 88 (1979): 123–24.

¹⁹ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 176; G. A. Loud, "Continuity and Change in Norman Italy: The Campania During the Eleventh and Twelfth Centuries," *Journal of Medieval History* 22, no. 4 (January 1996): 342.

sometimes even calling itself a *ciuitas*, and was given a charter of privileges in 1128 by Count Nicolaus of the Principate.²⁰ That charter included provisions for the outfitting of knights, guarantees about property rights for the churches in the town, and the terms under which immigrants or colonists could move into the region. So, while it did not rival Salerno in terms of size or economic and political importance, Eboli was nonetheless becoming an important agricultural and economic center for the central part of the Salernitano and a center of political power as the seat of a Norman count.

In the early twelfth century Eboli also experimented with a set of idiosyncratic legal institutions that distinguished it from Salerno. As a result, it adopted the Salernitan model later than either Nocera or the Cilento and underwent a different set of diplomatic and personnel changes in the process. Eboli's records are particularly interesting, as judges there explicitly drove the institutional change. In the other case studies, change happened silently, without comment from any of the legal personnel involved; but in Eboli, the judges had a more self-conscious understanding of their role that they expressed in their diplomatic.

Of course, all three places—Nocera, the Cilento Peninsula, and Eboli—had substantial connections to Cava, whose many properties in these regions were often the subject of document-generating disputes.²¹ All three were places where the monastery expanded its

²⁰ Paul Oldfield, *City and Community in Norman Italy* (Cambridge: Cambridge University Press, 2009), 8, fn. 23. Eboli refers to itself as a *ciuitas* in: Arca xxxvi 32 (1178). Sandro Carocci, *Lordships of Southern Italy*, 375; Léon Robert Ménager, *Les fondations monastiques de Robert Guiscard, duc de Pouille et de Calabre*, Quellen und Forschungen aus Italienischen Archiven und Bibliotheken, Bd. 39 (Tübingen: Max Niemeyer Verlag, 1959), 106, no. 33. “*iudex et notarius atque testes de hominibus sint.*” Ménager suggests this should probably read “*hominibus huius terre*,” or at least this is what is heavily implied.

²¹ My corpus contains a total of 36 documents from Nocera spanning the years 1060 to 1181, with most of this group (22 of 36 parchments) being from the period 1060-1102. The Cilento group is the most varied and comprises the documents of a variety of locations within the Cilento Peninsula, including Agropoli, S. Magno in Cilento, Castro S. Angeli (modern Castellabate) and S. Michaelis Archangelis. There is a total of 28 documents in this group, 17 of which come from the early monarchy period (1130-1160s). The Eboli group contains 66 documents relatively evenly distributed across the years 1090 to 1189. In contrast to my normal methodology, I did not view 22 of these

possessions early in its history and it continued to take an interest in the administration and expansion of its properties in these regions throughout the twelfth century.²² The specific ways that these connections shaped my corpus, especially Cava's growing ambitions as a territorial lord in certain parts of the Salernitano, will be discussed in the individual studies.

Case Study 1: Death of a Notary

As discussed in the introduction, Petrus *protonotarius* of Nocera most likely died sometime between 1096 (the year of the last extant document created by him) and 1102 (when a new notary took over documentary production in the area).²³ His death initiated a period of legal and documentary change in and around Nocera, the result of which was that by 1143 at the latest, documents from the region had taken on the material, visual, and diplomatic features of the Salernitan model. This case study will focus on the key changes in Nocerino legal personnel and diplomatic that occurred during this half-century. Some parts of the process are relatively minor diplomatic changes in script and formulae that nonetheless reflect the increasing standardization of documentary forms according to a Salernitan model (see Tables 5 and 6 for a summary of all shifts); more fundamental were changes in narration and authentication. These diplomatic shifts signal deeper institutional changes in Nocera that increasingly vested the power to legitimize legal action exclusively in experts known as *iudices* (as was the practice in Salerno), rather than in private individuals.

66 documents myself in the archive. For these 22 documents, I relied on a work by Carmine Carlone, *Documenti per la storia di Eboli*, which summarizes the contents of the documents and records their pertinent legal details (subscribing judge, notary/scribe, parties to the case, etc). This information was sufficient for my purposes in this chapter. When I reference the legal content of the document, this means I consulted it myself unless otherwise noted.

²² Ramseyer's account of the development of Cava's territorial lordship is excellent. For the specifics of their early expansion efforts, see: Ramseyer, *The Transformation of a Religious Landscape*, 163–64.

²³ Arca xvi 54 (1096); Arca xvii 53 (1102).

Signs of acculturation to a Salernitan style occur first in stylistic features. The most obvious of these is the abandonment of the distinctive notarial script of Petrus, our *protonotarius*. In my documentary corpus, Petrus is the sole notary working in Nocera between 1060 and 1102 and the central figure of Nocerino legal production in this period. But in earlier years (c.1030-1055), Petrus was only one of many notaries working in the town, all of whom, according to Maria Galante, used the same distinctive script characterized by irregular hatching, inclination to the left, the separation of individual letters in a word, and unique letter forms and ligatures (Figure 1). Galante has even argued that the use of this script in the mid-eleventh century is evidence of some sort of local notarial training.²⁴ The script was therefore not unique to Petrus and indeed had a much longer tradition in the town's notarial culture. But after his disappearance at the turn of the twelfth century, the distinctive notarial script of Nocera was quickly abandoned. Petrus' notarial successors, Iohannes *notarius* (c. 1102-1123) and later Petrus *notarius* (c. 1143-1145), immediately began using Salernitan *beneventana documentaria*, which remained the standard script in Nocera for the remainder of the twelfth century.²⁵

While the local scribal hand died with Petrus, the town's notaries were more conservative in making other changes. As Table 5 shows, Nocera continued to use a different invocation formula than Salerno until at least 1123.²⁶ By 1143, the notaries had decisively adopted the

²⁴ Maria Galante, "Il notaio e il documento notarile a Salerno in epoca longobarda," in *Per una storia del notariato meridionale*, Studi storici sul notariato italiano, VI (Rome: Consiglio Nazionale del Notariato, 1982), 71-94; I would argue, too, that the Nocerino script was inspired in some ways by the curial hands of nearby Amalfi, Naples, or Sorrento, though I have not done an in-depth paleographic analysis, which is beyond the scope of this chapter. For more on the curiales of the Tyrrhenian duchies, see: Jean-Marie Martin, "Les documents de Naples, Amalfi, Gaète (IX-XII siècle): écriture, diplomatique, notariat," in *L'héritage byzantin en Italie (VIIIe-XIIe siècle)*, ed. Jean-Marie Martin, Annick Peters-Custot, and Vivien Prigent, Collection de l'école française de Rome (Rome: École française de Rome, 2011), 51-85.

²⁵ Arca xvii 53 (1102); Arca xix 66 (1113); Arca xxi 96 (1123); Arca xxv 72 (1143).

²⁶ Arca xxi 96 (1123).

Salernitan invocation; and they never went back to the older version.²⁷ The dating clause was standardized at a similar time.²⁸

Diplomatic changes in narration style and authentication betray deeper institutional shifts. In the eleventh century, as Table 5 shows, Nocerino documents could be narrated and authenticated in a variety of ways, all equally valid. This non-standardized situation is evident in a sale from 1087, in which a certain Accebtore²⁹ sold some empty land inside the *castello* of Nocera to a certain Petrus, son of Litus *monachus* and had two documents made, both by Petrus *protonotarius*, that recorded the same transaction in different ways. The first, Arca xiv 72 (1087), is a traditional *memoratorium*, narrated in the first person, requested by Accebtore and signed by two lay witnesses.³⁰ But the second, Arca xiv 74 (1087), is a hybrid document, narrated and requested by Accebtore but signed by a lay judge, Mirandus *iudex*.³¹ It is not clear why Accebtore did this (perhaps the buyer, Petrus, had requested the two documents), but there were clearly different ways of doing legal business in eleventh-century Nocera. It is true that Petrus *protonotarius* was the one writing the documents and ensuring that the proper forms were

²⁷ Arca xxv 72 (1143).

²⁸ Before the fall of the Lombard Principality of Salerno in 1077, Petrus referenced the princes' regnal year (*anno principatus*) in the dating clause, but after that point, he used the year from Christ's incarnation (*anno ab incarnatione*), as was standard in Salerno. See: Arca xiii 102 (1080); Arca xiv 25 (1086); xiv 72 (1087); xiv 84 (1088); Arca xv 66 (1092); Arca xvii 53 (1102); Arca xix 66 (1113); Arca xxi 96 (1123). Unlike in the city, though, the dating clause in Nocera never referred to the Norman Dukes of Apulia, perhaps because of Nocera's uncertain political status as a border region between the Duchy and the Principality of Capua. By 1143, the dating clause was standardized according to the Salernitan model: see Arca xxv 72 (1143).

²⁹ In one document (Arca xiv 72), Accebtore's father is called *Mari de locum Barbaciano*, while in the other (Arca xiv 74), his father is named *Fasani qui vocitatus fuit Maczarasa*. This wrinkle is puzzling, since the documents are clearly copies of each other. It may be explained, as the editors of the *Codex Diplomaticus Cavensis* suggest, by the advanced age of the notary, our friend Petrus *protonotarius*, who by this time had been a notary for at least 46 years.

³⁰ Arca xiv 72 (1087): *Ego Accebtore...vona mea voluntate ante subscripti testes venundedit tivi Petri...Quam te Petrus protonotarius scribere rogavimus...+Ego Iohannes +Ego Petrus.*

³¹ Arca xiv 74 (1087): *Ego Accebtore...vona mea voluntate, ante Mirandus iudex venundedit tivi Petri...Quam te Petrus protonotarius scribere rogavimus. Actum Nucerie...+ Ego qui supra Mirandus iudex.*

followed, but their conceit was that Accebtore, a private individual, had the legal authority to narrate and describe his own legal business with another private person.

Traditional Lombard institutions of documentary production accommodated this kind of interpersonal legal business by requiring the signatures of witnesses, who could be any reputable person, rather than legal officials like judges or notaries. Even when Accebtore acquired the signature of a judge for one of the documents, that judge did not narrate the transaction or rhetorically control the process of documentary creation. Accebtore still narrated the document and himself asked the notary to create it. The judge's role was limited to that of a special witness with sufficient legal authority to substitute for the traditional two witnesses. Such a decentralized legal environment privileged the power of the notary, who controlled documentary production as one of the few sources of legal expertise in the area, but even his power was limited since he could not authenticate documents on his own. Legal power was therefore decentralized; members of the community, rather than any specific legal official, had the authority to define and authenticate legal acts.

After the turn of the twelfth century, this changed, albeit slowly. The first document from the twelfth century (Figure 2), written by Iohannes *notarius* in 1102, is a standard *memoratorium* of sale, narrated in the first person by the sellers—Miranda, widow of Guandalferius, and her two sons Iohannes and Ademarius—and witnessed by two laymen, Iohannes and Guisenolfus. They sold some land to Truppoaldus *notarius*, son of Petrus *notarius*, for 25 *tari*, and asked (*rogavimus*) the notary, Iohannes, to make the document (*quam te Iohannes notario scriber rogavimus*). Iohannes then inserted the traditional *actum Nucerie* phrase and his notarial sign before recording the signatures of the two witnesses.³² In its diplomatic, this document is no

³² Arca xvii 53 (1102).

different than any other from eleventh-century Nocera. The only difference, as noted above, is that Iohannes *notarius* used the Salernitan *beneventana documentaria* script rather than the traditional notarial script of Nocera.

The next document, from 1113 (Figure 3), is much closer in structure to a *chartule* in the Salernitan mode.³³ It was written by the same Iohannes *notarius*, as indicated by his notarial sign, but it was now a judge, Iaquintus *iudex*, who was central. The judge narrated the legal action in the third person perfect (*ante me Iohannem iudicem...tradidit*) and authenticated the document with his large and elaborate judicial signature in the same way as Salernitan judges. The only difference from Salernitan style is that Iaquintus asked (*rogavimus*) the notary to write the document in the first-person plural, rather than ordering him (*precepi*) in the first-person singular. In the language of the text, he had replaced the witnesses as the legal authority capable of authenticating a document and compelled the legal action to happen in front of him, but he did not yet have complete control over notarial production.

The next document in the Nocera group, Arca xxi 96 from 1123 (Figure 4), is another hybrid. It looks like a Salernitan document, written by Iohannes *notarius* and featuring Iaquintus' large and elaborate judicial signature, but it is narrated in the first person by a party to the case, the lord (*domnus*) Bonus the monk. It is not until our 1143 document that we have Salernitan style: Gottifredus *iudex* ordered (*precepi*) his notary, now Petrus *notarius*, to write the document (Figure 5).³⁴ The action happened “in front of” him (*ante me Gottifredum iudicem*) and he signed it with his large and elaborate judicial signature.

³³ Arca xix 66 (1113).

³⁴ Arca xxv 72 (1143).

To summarize, before 1143 and especially during the eleventh century when Petrus *protonotarius* was working, documents could take a variety of forms and even within those forms, the diplomatic of documents could be very different, as Table 5 shows. Documents all shared the same basic diplomatic structure—invocation, dating clause, narration, penalty clause, and eschatocol—but within these categories there was significant variation in language and structure. After 1143, production is standardized in the Salernitan mode, as described in the second column of Table 5. From then on, Nocerino documents were exclusively *chartule*, which centered the judge as the sole legal authority capable of legitimizing legal acts.

Such changes reflect a new emphasis on legal professionals. In contrast to the decentralized legal landscape of the eleventh and early-twelfth centuries, after 1143, private individuals were no longer capable of legitimizing legal acts on their own. That legal power was now vested in experts called *iudices*, who, just as in Salerno, controlled documentary production and were unique sources of legal legitimacy. Notaries, despite their role in documentary production, did not gain prominence in this new landscape; even if they were the ones with the legal knowledge required to make legitimate documents, the Salernitan diplomatic they adopted represented the judges as the ones with the power to authenticate and legalize acts.

The transformation of Nocera's legal culture in the twelfth century therefore led to the creation of institutions of judgeship very much like those in Salerno. In Nocera by 1143, a *iudex* was an expert legal official with specific legal powers that encompassed documentary production and authentication, overseeing legal procedure, and making judgements. This judicial monopoly is clear in a case from 1182. The *praepositus* of Cava, Petrus, lodged a case laying claim to some lands in Sarno before the royal chamberlain in Sarno, Guilielmus Butronile.³⁵ The chamberlain

³⁵ Arca xxxviii 34 (1182).

presided over the court alongside the Bishop of Sarno, an abbot, two priests, multiple other clerics, honorable men (*probi homines*), and, most importantly, Henricus *iudex Sarni* and Iohannes Paganus *iudex Nucerie*. While the court was presided over by the royal chamberlain and multiple ecclesiastical notables, the two judges were responsible for all aspects of legal procedure in the case, which involved interrogating witnesses, confirming the truth of that witness testimony with oaths on the Gospels, and issuing a sentence (*iudicantes decrevimus ipsam startiam ipsi monasterio pertinere*). The two judges also ordered (*precepimus*) the notary to make the document and signed it with their signatures. None of the others who presided over the case signed the document, including the chamberlain.

Table 1: The Judges of Nocera. The table shows the name and years the judges were active according to my corpus of documents. The table is therefore incomplete and does not necessarily reflect the totality of judges or their full tenures.

Name of Judge	Approximate Tenure (first appearance to last)
Petrus <i>iudex</i>	1067
Mirandus <i>iudex</i>	1086-1089
Iaquintus <i>iudex</i>	1113-1123
Gottifredus <i>iudex</i>	1143-1145
Petrus <i>iudex de Nuceria</i>	1152
Sergius <i>iudex Nucerie</i>	1163-1173
Iohannes Paganus <i>iudex Nucerie</i>	1172-1181

My corpus does not contain evidence, as it did in Salerno, of the social status or wealth of the Nocerino judges, but it is clear that there was a limited number of them, and never more than two at a time (Table 1). They also appear to be local men. In the rare instances that they are identified as something other than simply *iudex*, Nocera's judges call themselves *iudices*

Nucerie, “judges of Nocera,” perhaps in imitation of the *iudices Salerni* who also identified themselves with their city.³⁶

The complete subsumption of Nocera’s legal culture into that of Salerno and the attendant increase in judicial power is also evident in the fact that Nocerino judges and notaries used the *remissiones actionum et calumpniorum* documentary form that seems to have originated in Salerno in the twelfth century.³⁷ As I argued in Chapter Two, these documents are significant because the agreements they contain were made before coming to court, but the parties clearly wanted a document formalized and authenticated by a judge to legalize that agreement. They are evidence of the centrality and indispensability of judges as sources of legal legitimacy. Their appearance in Nocera after the 1150s confirms the institutional changes that I have described. No longer could private individuals make an agreement and legalize it themselves using witnesses; instead, they had to go before a judge because he had the exclusive authority to authenticate legal acts.

By 1143, Nocera was no longer a legal frontier region; it had fully adopted the Salernitan model, and thereafter its personnel and diplomatic were identical to those of the city. The identity and social status of these new experts is not clear from the evidence in Nocera, where they identify themselves only as *iudex* or *iudex Nucerie*, but in other parts of the Salernitano, notably the Cilento peninsula, the documentary evidence provides more clues.

Case Study Two: Knight and Judge: The Problem of Personnel

³⁶ Arca xxviii 41 (1152): Petrus *iudex de Nuceria*; Arca xxxiv 58 (1173): Iohannes et Sergius *iudices Nucerie*; Arca xxxviii 34 (1182): Iohannes Paganus *iudex Nucerie*.

³⁷ Arca xxxi 52 (1163); Arca xxxiv 23 (1172). The first of these documents, judicial acts attesting to someone’s dropping of cases against someone else, appears in Salerno in 1138: Arca xxiv 57 (1138). See Ch. 2, fn. 103-107.

Despite not being connected to Salerno politically, the Cilento peninsula underwent the same institutional development in the early twelfth century as Nocera did. I will not discuss that development in detail here because it has already been covered in an excellent study by Giulianna Capriolo. Suffice it to say that she identified largely the same key developmental stages in the Cilento as I did in Nocera and that my own corpus of Cilentan documents corroborates her findings.³⁸ The change happened slightly faster in the Cilento—the process began in 1099 and was complete by 1130 there, as opposed to 1143 in Nocera—but the same kinds of diplomatic and personnel changes occurred in both contexts.

The similarity of the documentary trajectories of the Cilento and Nocera allows us to focus instead on the issue of legal personnel in the peninsula. In contrast to Salerno (and Nocera) notaries in the Cilento tended to be clerics up until 1163. Moreover, a group of judges with the enigmatic title of *miles et iudex* first appear in 1129 (Table 2). These knight-judges provide crucial evidence about the social stratum that judges in the Salernitano tended to come from and the distinctly local kind of belonging that characterized judgeship as an institution. They also give us the chance to examine the question of legal personnel in the context of Sandro Carocci's recent and influential work on lordship in twelfth-century southern Italy.

³⁸ Giulianna Capriolo, "I documenti cavensi del Cilento tra Longobardi e Normanni," in *Riforma della chiesa, esperienze monastiche e poteri locali*, 2014, 199–216. Capriolo identifies three distinct phases of documentary production in Cilento. The first period (1041-c.1080) is characterized by the use of *memoratoria*, followed by a period, in the last twenty years of the eleventh century (1080-1100) when *chartule* began to be introduced, but in hybrid form and alongside *memoratoria*. In the final period, 1099-1130, documents became *chartule* in the Salernitan mode, ordered and authenticated exclusively by lay judges. My earliest documents, from the period c. 1060-1080, are *memoratoria* authenticated by two witnesses: Arca xii 57 (1068); xii 97 (1070); Arca xiv 16 (1084). Those from the transitional period, c. 1080 to 1100, are hybrid documents, subscribed by a judge but written in the first person by a party to the transaction: Arca xv 54 (1092); Arca xvii 74 (1103). And finally, the single document in my corpus from between 1103 and 1130 is a *chartule*, narrated, ordered, and authenticated by a judge (in this case two judges): Arca xxii 84 (1129).

Table 2: *The Judges of Cilento. List of judges attested in the Cilento group of my corpus (c. 1077-1189). Results are partial since I did not view every Cilentan document in Cava's archive.*

Judge	Approximate Tenure (first appearance to last)
Landus iudex	1092
Urso iudex	1103
Alferius iudex	1129-1142
Iohannes miles et iudex	1129-1165
Aymone iudex	1136-1167
Iohannes iudex	1136-1145
Landulfus miles et iudex	1141-1144
Raynaldus iudex	1144
Guido iudex	1144
Amatus iudex	1154
Guidonem miles et iudex	1156-1159
Guilielmus iudex	1156-1173
Alexander iudex	1163-1178
Marcus iudex	1169-1178

Clerical notaries were characteristic of the Cilento during the eleventh and early twelfth centuries.³⁹ Of the twelve notaries that appear in the Cilento group of my corpus between 1068 and 1183, five were clerics. Between 1068 and 1154, all but one of the Cilentan notaries were clerical,⁴⁰ and after 1163, all were laymen.⁴¹ Their clerical status does not seem to have impacted the way the notaries prepared documents. They used formulae (see Table 5) identical to those used by the lay notaries of Salerno and made documents for transactions among all combinations of clerics and laymen. While the distinction between laymen and clerics was important in other

³⁹ Capriolo suggests this may be a legacy of Byzantine documentary practice: Capriolo, “I documenti cavensi del Cilento tra Longobardi e Normanni,” 260.

⁴⁰ Landus *presbiter*: Arca xii 57 (1068); xii 97 (1070). Sammarus *presbiter*: Arca xiv (1084); Arca xv 54 (1092). Petrus *clericus*: (Arca xvii 74 (1103). Iohannes *clericus*: Arca xxii 84 (1129); Arca xxiv 10 (1136); xxiv 12 (1136); Arca xxvi 14 (1145). Constantinus: Arca xxxi 45 (1163). A document from 1141 (Arca xxv 13) was written by Alferius *notarius regalis et miles*, an anomalous title that is difficult to explain.

⁴¹ Conspicuous among the laymen was Marcus *notarius*, who later became a judge. First appearance as notary: Arca xxxi 58 (1165). Last appearance as notary: Arca xxxii 71 (1167). Marcus *iudex*: Arca xxxiii 38 (1169); Arca xxxiv 11 (1172).

aspects of southern Italian law,⁴² in terms of property law, the same rules applied to everyone. Salernitan documentary institutions therefore transcended the lay/clerical divide; there was a common set of expectations and assumptions about the way documents should look that applied to all people. Even though the notaries of Salerno were uniformly laymen, their institutional practices could be taken up by clerical notaries without alteration. Indeed, it was the Cilento's clerical notaries who adopted the Salernitan model between 1099 and 1130.

The other idiosyncratic feature of the peninsula's legal personnel are the men who called themselves *miles et iudex*, knight and judge. Their self-identification as both *milites* and *iudices*, a title unique in the Salernitano, connects the social prestige of knighthood with the legal authority of judgeship, indicating that judges were members of the local elite. The first such judge, Iohannes *miles et iudex*, appeared in 1129 and was then a consistent presence throughout the middle part of the twelfth century. He authenticated documents until 1165, after which point no other judge bore this double title, at least in my corpus.⁴³ Within this time frame (1129-1165), there were two other judges who called themselves knights, Landulfus *miles et iudex*⁴⁴ and Guido *miles et iudex*.⁴⁵ As Table 3 shows, the knight-judges were never the only judges around; there were always others working who identified themselves only as *iudex*, in the Salernitan manner.

⁴² Multiple royal laws made special provision for clerics as opposed to laymen: VL II, *De privilegio sanctarum ecclesiarum*; VL VIII, *De episcoporum privilegio*; VL XVI *De indigne anelantibus ad sacerdotum*; CC 38, *De excessu prelatorum et dominorum*; LA 1 68, *De clericis conveniendis pro possessionibus quas non tenant ab ecclesia*; LA III 20, *De collectis*; LA III 83, *De privilegiis ecclesiarum/De adulteriis in foro ecclesie pertractandis et clericis a laicis non iudicandis/De adulteriis coercendis*.

⁴³ Arca xxii 84 (1129); Arca xxiv 12 (1136); Arca xxv 13 (1141); xxv 36 (1141); xxv 50 (1142); Arca xxxi 45 (1163); xxxi 58 (1165); xxxi 60 (1165); xxxi 65 (1165); xxxi 99 (1165).

⁴⁴ Arca xxv 36 (1141).

⁴⁵ Arca xxix 53 (1156); Arca xxx 39 (1159).

The knightly status of these judges meant that they were members of the local Cilentan elite, as indicated by the lists of notables composing the *ydonei homines* of any given court session in the region. These lists usually contained multiple people identified as *miles*, usually at the end (Appendix 1). In a court held in the monastery of S. Magno in 1141, in addition to the two knight-judges listed (Landulfus *miles et iudex* and Iohannes *miles et iudex*), there were five other men at the court identified as *miles*.⁴⁶ Another court in 1141 which adjudicated a dispute over water rights between the prior of S. Arcangelo and a group of local men—including three knights named Urso, Mirandus, and Pandulfus, sons of Petrus de Batolla—was attended by seven men called *miles*.⁴⁷ Petrus *miles* de Laureiano and Goffus *miles* de Cleastro were among the *adstantes* present at a court in 1144.⁴⁸ By virtue of their being named in the lists, the *milites* stood out from the otherwise nameless group of “suitable men (*ydonei homines*)” of the community.

As in Salerno, judgeship in the Cilento was a local sort of belonging. Marcus *iudex*, in a document recording a debt transfer, is called an “inhabitant of the *casale* (village) of San Magno,” one of Cava’s dependencies in the Cilento.⁴⁹ He had previously worked as a notary in the nearby castle of Castellabate, where he wrote multiple documents for the *magister* of the castle, and his father may have done the same.⁵⁰ Sometimes judges identified themselves

⁴⁶ Arca Cxxv 36 (1141): Urso *miles de Radoaldo stratigotus domini Lampi*; Goffridus de Oriana *miles*; Dauferius *miles*; Stabile *miles*; and Petrus de Oriana *miles*.

⁴⁷ Arca xxv 13 (1141): Matheus *miles*; Riccardus *miles*; Maroldus de Massacanina *miles*; Vozzolino *miles*; Amalgino *miles*; Stabile *miles*; and Petrus de Oriana *miles*. The same Stabile and Petrus de Oriana were also present at the court in S. Magno cited above in fn 46.

⁴⁸ Arca xxxv 56 (1144).

⁴⁹ Arca xxxvi 10 (1178): *Ante me Alexandrum iudicem Iudex Marcus filius quondam Iohannis notarii habitans in casale Sancti Magni pertinentiis Cilenti...*

⁵⁰ Arca xxxi 58 (1165); xxxi 60 (1165); xxxi 70 (1165); xxxi 99 (1165). The last, Arca xxxii 71 (1167), is written for Iohannes, the prior of S. Arcangelo.

explicitly with a local place in their title. The list of *adstantes* at a court in Agropoli in 1144 includes Urso *iudex de Castello Nove*⁵¹ and Landulfus *iudex de Cilento*, who stood beside a great number of local notables from all over the Cilento both lay and clerical.⁵² They did not sign the document because they did not oversee the legal process, but their inclusion among the *adstantes* at court indicates their importance in the local community. The locally embedded nature of the judges is a defining feature of judgeship in the Salernitano. They were not imposed on local populations from the outside. Rather, they were part of the local social fabric, so that even their titles could reflect specific features of that fabric, as was the case for the *milites et iudices*.

To a certain extent, this finding aligns with the image of local judgeship outlined by Sandro Carocci in his influential book on lordship in southern Italy during the twelfth century.⁵³ Carocci has two major goals in the book as a whole: to move the debate about the political and social structures of the Norman South away from its traditional focus on relationships between lords and monarchs; and to relate it more closely to literature on the rest of the peninsula on the relationship between lordship and social change in the twelfth century. Rather than focus on how much the monarchy limited the capacity of ‘feudal’ lords to exercise the powers of banal lordship (governmental powers of justice, taxation, and defense), he thus considers the nature of southern lordship by focusing on what living under lordship meant for those without as much power.⁵⁴ Carocci is especially interested in noting the places where the power and pervasiveness

⁵¹ Modern Castelnuovo Cilento, near the mouth of the Alento River.

⁵² Arca xxv 56 (1144). Those present included Iohannes, bishop of Paestum/Capaccio; Roggerius of Cammarota, Lord of Corbella; another *iudex* named Gloriosus; Iohannes de Laurino, *stratigotus* of Capaccio; Nobellone *vicecomes de Castello Nove*, and multiple men identified as *milites* and notaries. Urso and Landulfus did not subscribe the document. The subscribers were Raynaldus *iudex* and Guido *iudex*.

⁵³ Carocci, *Lordships of Southern Italy*, 374–76.

⁵⁴ The book’s introduction is an extremely helpful summation of these debates: Carocci, *Lordships of Southern Italy*, 27–54.

(a word Carocci theorized more in an article in *Past and Present*)⁵⁵ of southern institutions of lordship differed from those in the rest of Mediterranean Europe.

Justice is one place where Carocci sees a difference between most peninsular lordship and the kind that prevailed in the South. In the chapter on “Seigneurial Justices,” he argues that southern-Italian lords had a limited capacity to use justice as a means of domination and control over local society.⁵⁶ The lords’ lack of legal power was unusual and distinctive: the literature on the medieval Italian *signoria* suggests that most peninsular lords *were* accustomed to controlling the local administration of justice and using it as a means of domination.⁵⁷ To explain this difference, Carocci identifies two key characteristics of southern-Italian legal culture: a plurality of courts and localism. Both are relevant to his main argument in the chapter in different ways.

By a “plurality of courts,” Carocci means that “in the noble lordships of the Norman kingdom, there were many co-presences. Justice tended to become almost pulverized among a multiplicity of titleholders and jurisdictions.”⁵⁸ In other words, a person might be the subordinate of many different people or entities—a local knight, the count, a monastery, the king—based on who they had acquired property from or pledged themselves to for protection. Any of these relationships of subordination or dependence, he argues, might be seigneurial and therefore have

⁵⁵ Sandro Carocci, “The Pervasiveness of Lordship (Italy, 1050–1500),” *Past & Present* 256, no. 1 (2022): 3–47.

⁵⁶ Carocci, *Lordships of Southern Italy*, 363–64.

⁵⁷ Timothy Reuter and Chris Wickham, “The ‘Feudal Revolution,’” *Past & Present*, no. 155 (1997): 204; Chris Wickham, “Property Ownership and Signorial Power in Twelfth-Century Tuscany,” in *Property and Power in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1995), 225; Wickham’s summary of the “feudal revolution” debates is a very helpful guide to the larger context: Chris Wickham, “The ‘Feudal Revolution’ and the Origins of Italian City Communes,” *Transactions of the Royal Historical Society* 24 (December 2014): 30–31; The French analogue of this concept, the *seigneurie banale*, is classically described in: Georges Duby, *La société aux XIe et XIIe siècles dans la région mâconnaise*. (Paris: Librairie Armand Colin, 1953); Cheyette’s discussion of it is helpful, even as he criticizes the idea that the shift from public to private exercise of justice was new around the year 1000: Frederic L. Cheyette, “Georges Duby’s Mâconnais After Fifty Years: Reading It Then and Now,” *Journal of Medieval History* 28 (2002): 294–95.

⁵⁸ Carocci, *Lordships of Southern Italy*, 367.

rights of justice, so that people would have had to go to different courts depending on the dispute.⁵⁹ Carocci's argument is that such a fracturing of jurisdictions made it difficult for large landholders like "the *signori fondiari* of Italian historiography" to consolidate control of the law because of the many competing claims of jurisdiction that might be relevant to their judging of any given person.⁶⁰ Southern Italian lordships, therefore, were not like the *signorie fondiarie* characteristic of other parts of Italy.

Carocci then argues further that this plurality of courts was made possible by the other defining characteristic of southern-Italian legal culture: localism. The strength of local law and customary practices meant that there was, in general, a continuity of procedure between the "plurality" of courts.⁶¹ Carocci does not describe this local law or legal procedure, but its strength is evident, he argues, in the fact that, more often than not, southern lords lost cases in their own courts. These "lords who lose" were unable to control local judges, who upheld local custom (whatever that might be) whenever they could, often at the lord's expense.⁶²

I largely agree with this argument—indeed, this chapter is about how an institutional model of local judgeship like the one Carocci describes spread across the Salernitano in the twelfth century. However, I do disagree with his interpretation of some of his evidence and, more fundamentally, his use of lordship as the frame within which he understands local legal culture. My primary issue is that, at least in the context of the Salernitano, I have not seen documentary evidence suggesting that the overlapping jurisdictions of Carocci's "plurality of courts" were meaningful in a legal sense. His argument is largely based on documents recording formal

⁵⁹ Carocci, *Lordships of Southern Italy*, 367.

⁶⁰ Carocci, *Lordships of Southern Italy*, 367.

⁶¹ Carocci, *Lordships of Southern Italy*, 363.

⁶² Carocci, *Lordships of Southern Italy*, 374–75.

concessions of judicial rights by lords to monasteries, churches, or other, subordinate lords, but it is not clear from documentary sources that these concessions affected practical jurisdiction or influenced how a court worked.⁶³

When we look to the Cilento, we find that in 1123, Duke William of Apulia granted a sweeping set of concessions that effectively made Cava the territorial lord of much of the Cilento peninsula, exempted from taxes and interference by ducal officials.⁶⁴ Among these privileges, he conceded to Cava just the kind of judicial rights Carocci describes when he granted them permission to build a castle to protect their holdings in the Cilento—the *castellum abbatis*, or Castellabate. He gave the monastery judicial rights (*iuri et dicioni*) over their subjects (*subiectos*) securely and without the contradiction (*securiter absque contrarietate*) of any of his officials.⁶⁵ Cava was granted the kind of judicial rights over their subjects characteristic of a *signoria*, so their subjects should have been required to solve their disputes in courts which Cava controlled as their lord. This type of situation, found in many concessions, is why Carocci makes so much of “lords who lose;” they are losing in what he considers ‘their’ courts, courts that they controlled.

⁶³ Carocci, *Lordships of Southern Italy*, 366–73.

⁶⁴ Cava took great interest in administering its Cilentan dependencies; the great number of documents from the region in the twelfth century and the personal involvement of monks from Cava in the region’s affairs testify to that. For a clear and careful discussion of the development of this territorial lordship in the Cilento, see: Ramseyer, *The Transformation of a Religious Landscape*, 185–92. See also: Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 273–91.

⁶⁵ Arma Magna F 24 (1123): ...*et potestatem habeatis censiles et homines eiusdem monasterii sancte trinitatis iura emunitatem eiusdem castelli ad habitandum recipere et iuri et dicioni suprascripti monasterii sancte trinitatis subiectos semper habere securiter absque contrarietate nostra et heredum et successorum nostrorum et partium suprascripte reipublice...*

But what did it mean, in practice, to control a court? It may have been related to its physical location, which in the literature on banal lordship is often a castle.⁶⁶ Graham Loud cites a privilege granted to the inhabitants of Castellabate by Abbot Simeon of Cava in 1138 which said that “justice should be administered within the *castello*. While not expressly referring to a court there, this was surely the implication.”⁶⁷ However, Cava’s documents from the Cilento in this period show clearly that its officials and priors (the heads of dependent monasteries) held and attended courts all over the region, not just inside the castle they were given permission to build.⁶⁸ If court should have been held in the *castello* by the terms of a formal document, in practice this was only sometimes the case.

Choosing and appointing the judge, as Carocci suggests, may have been another way that seigneurial lords exercised control over local courts. He says that while “the exact method of choosing judges remains, to be honest, unclear...In the explicit *consuetudines*⁶⁹ on the subject, the lord is always the person who holds the right of appointment.”⁷⁰ He also points out that local communities could play “a considerable role” in this process, so that the lord’s appointment was little more than a ritual formality, indicating the limits of lordly power in this regard.⁷¹ In the

⁶⁶ Bisson makes constant reference to the centrality of castles to the kind of violent lordship he is interested in: Thomas N. Bisson, “The ‘Feudal Revolution,’” *Past & Present*, no. 142 (1994): 16; Wickham discusses the centrality of castles to the exercise of lordship extensively: Wickham, “Property Ownership and Signorial Power in Twelfth-Century Tuscany,” 224–25; Carocci also discusses their importance in the historiography of lordship: Carocci, *Lordships of Southern Italy*, 24–25.

⁶⁷ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 279. The document in question is Arca xxiv 61 (1138), which is unfortunately not part of my corpus.

⁶⁸ Documents do not often specify the location of the court. When they do, the locations are: Castellabate (Arca xxiv 12 (1136)); S. Magno (Arca xxv 36 (1141)); S. Arcangelo (Arca xxxi 45 (1163)); the *casale* of Pentasemanda (Arca xxxiv 78 (1173)).

⁶⁹ By this term, Carocci refers to documents about “relations between lords and subjects.” In other words, these are documents outlining the privileges granted by lords to their subjects: Carocci, *Lordships of Southern Italy*, 172, fn. 23.

⁷⁰ Carocci, *Lordships of Southern Italy*, 377.

⁷¹ Carocci, *Lordships of Southern Italy*, 377.

Cilento peninsula, there is no documentary evidence of lords appointing judges or for judges owing their judicial authority to a lord (and, as noted in Chapter Two, such evidence appears only very rarely in the Salernitano more broadly).⁷² We know what it looked like when officials *were* appointed by a lord because the documents of the Cilento are full of figures whose titles explicitly name their superior—Amatus, *cappellanus suprascripti domni abbati*; Urso, *stratigotus Falco abbati*; Guilielmus de Montorio, *stratigotus domini Enrici*; Petrus de Copersito, *vicecomes de domini Enrici*.⁷³ But, as we have seen, judges in the Salernitano usually called themselves simply *iudex*, at most adding a geographic descriptor to their title (*iudex Salerni*, *iudex Nucerie*, *iudex de Cilento*). They may have done so in imitation of the *iudices Salerni*, who were particularly independent, as discussed in Chapter Two, and did not owe their authority to any political figure.⁷⁴ Even the *milites et iudices*, whose title seems to suggest a connection with lordship, never mention that they were dependents of other lords or that their knightly status influenced their role as judge.⁷⁵

Because he looks at the law through the lens of lordship, Carocci is concerned most of all with the question of judicial authority—who gave a judge the right to be a judge? And what was the nature of the judge’s relationship to whoever granted him this authority? To answer these questions, he looks to records of *consuetudines*—documents which outline the privileges granted by a lord to their subjects and which claim to structure legal practice. But, at least in the

⁷² See Ch. 2, fn. 20-22.

⁷³ Arca xxv 13 (1141); Arca xxv 36 (1141).

⁷⁴ See Ch. 2, fn. 116-128.

⁷⁵ *Milites et iudices* did not have any special judicial authority or remit; they were legally interchangeable with a *iudex*. Documents authenticated by a *miles et iudex* do not differ diplomatically from those authenticated by *iudices* except in the differing judicial title. Nor was judicial procedure different when a *miles et iudex* ran a case. Just as in Salerno, they were expert procedural guides solely responsible for all legal aspects of a case, including cases where there were a great many *ydonei homines* (including many other *milites*) or lords present and presiding at court: Arca xxv 36 (1141); xxv 56 (1144); Arma Magna I 41 (1184).

Salernitano, it is not clear that such *consuetudines* reflect local practice or accurately tell us much about sources of judicial authority. As discussed above, the court of Castellabate was supposed to be held in the castle, but local documents reveal that it often was not. Based on the terms of *consuetudines* documents, lords were supposed to appoint judges, but there is very little evidence from the Salernitano that they did so. The documents of practice from the twelfth century consistently show that lords did not possess the legal rights that they claimed power over in the *consuetudines* documents. It is not just that there were “limitations to the seigneurial rights of justice;” it is not clear that the rights of justice were considered seigneurial at all.⁷⁶

Instead, the documentary evidence shows that, over the course of the first half of the twelfth century, legal authority was consolidated in the figure of the local judge, who, at least in their own self-fashioning, represented themselves as independent of any lord. Carocci himself rightly points out that “a continuity of procedure, of probative methods, of the figures of the judges and of the *adstantes* present at the judicial assembly made the lay lord’s *curia* resemble that of the royal justiciar, the local church or the small notable.”⁷⁷ In other words, the identity of the lord who held the court was largely irrelevant to the way the law worked within that court. I would argue, therefore, that it is more useful to analyze twelfth-century southern Italian legal culture through the lens of judgeship as an institution, rather than lordship. As I have described in this and previous chapters, judges in the Salernitan mode were the ones doing the work of the law—ordering and authenticating documents, overseeing procedure, making judgements—not lords or their officials. Indeed, the evidence shows that judges did this work without being explicitly authorized to do it by a lord or other higher power.

⁷⁶ Carocci, *Lordships of Southern Italy*, 363.

⁷⁷ Carocci, *Lordships of Southern Italy*, 374.

How the judges acquired their authority or why they sought it out is usually not visible in the sources; it is only possible to characterize it once they possess it. But diplomatic, paleographic, and prosopographic evidence suggests that judges of the Salernitano were independent local elites steeped in local custom and experts in documentary production, legal procedure, and judgement, just as they were in the city of Salerno. The emergence of a common understanding of the law as the preserve of these expert *iudices* in the Salernitan mode is the central story of legal change in the Salernitano during the twelfth century. Even when local social contexts introduced some variation into the model, as with the *milites et iudices*, its essential contours remained consistent.

Case Study Three: Judicial Ambition in Eboli

The *milites et iudices* were not the only example of variation in the model. In the early twelfth century, the castle town of Eboli developed an idiosyncratic set of legal institutions that did not align neatly with either traditional Lombard or judge-centric Salernitan practice. It experimented with the use of professional witnesses, an *officium testandi*, as they called it, rather than a judge; a different manifestation of the impulse to give power over legal legitimacy to an expert or office holder. But eventually, this experiment was sidelined by an ambitious group of judges who, between 1145 and 1158, rapidly consolidated control over the town's legal institutions. Unlike in other parts of the Salernitano, where the agents of institutional change are generally not visible in the documents, the Ebolitan judges had a clear sense of their power that they expressed in their diplomatic.

The town had a unique diplomatic in the eleventh and early twelfth centuries. As Table 5 shows, Ebolitan notaries used the same invocation and dating clause as in Salerno, but the exclusive use of *memoratoria*, first person narration, and witness authentication were more

traditionally Lombard. Carmine Carlone, who has done the most work on these documents, has also noted that “often, Ebolitan documents can be identified with a simple look” because of their unique material qualities: the ink tends to be a dark black and the parchment more yellow, cut neatly, and ruled both vertically along the left margin and horizontally.⁷⁸ Notaries also used a decorative symbol to begin the invocation; before the 1140s, this was a simple elongated “I” bisected by a horizontal dash that rose above the first line (much like the one used in Salerno), but after 1140, these initial I’s became very elaborate and finely drawn (Figures 7 and 8). Each notary had his own distinctive style of initial I, in addition to a unique notarial sign, usually much more elaborate than those of Salernitan notaries (Figures 8 and 9). Ebolitan script, while also *beneventana documentaria*, is more angular, upright, and ornate.⁷⁹ These visual and material features were most prominent in the first half of the twelfth century, but even in 1178, documents could still bear the elaborate initial “I” (Figure 10).⁸⁰

Ebolitan diplomatic therefore did not align neatly with either traditional Lombard or Salernitan practices. Its uniqueness was compounded by the town’s experimentation with the use of professional witnesses in the early twelfth century. The institution had no precedent in Lombard practice or contemporary equivalents in southern Italy. They first appeared in 1122, considerably later than judges in the Salernitan mode did in Nocera and the Cilento.⁸¹ The earliest pair (and they were always a pair) that appears consistently in my documents are *Angelus presbiter* (after 1127, *archipresbiter*) and a man named Alessius (Table 3). They

⁷⁸ “spesso i documenti ebolitani si possono individuare con un semplice sguardo...” Carmine Carlone, *Documenti per la storia di Eboli*, vol. I (Salerno: Carlone Editore, 1998), xiii–xvii.

⁷⁹ Some of these distinctive features may have been the legacy of chancery practice, given that the castle of Eboli was the seat of a Norman lord from 1082 to 1156: Cuozzo, “‘Milites’ e ‘testes’ nella contea normanna di Principato,” 125, 136; Carlone, *Documenti per la storia di Eboli*, I:xiv.

⁸⁰ Arca xxxvi 32 (1178).

⁸¹ Arca xxi 73 (1122).

occupied this role until 1130,⁸² when a man named Iohannes Guandi⁸³ replaced Alessius until 1145.⁸⁴ Then, after the disappearance of Angelus *archipresbiter*, the position was held primarily by laymen: briefly, Iohannes Guandi and Amatus *miles* in 1146;⁸⁵ then Iohannes Guandi and Guilielmus *filius* Amatus from 1147 to 1154;⁸⁶ and finally, Paternus *diaconus* and Baianus, from 1155 to 1158.⁸⁷ The rigidity and stability of these pairs and the way they follow in perfect succession without a gap in years already suggests that this was a formal legal office in the town. This is confirmed by a reference to Iohannes Guandi and Angelus *archipresbiter* in an 1143 document as “*Eboli terre testes*” and then again in an 1178 document, twenty years after the office disappeared, as those who “in that time in the city of Eboli bore the office of witnessing (*qui tunc temporis in civitate Eboli testandi officium gerebant*).”⁸⁸

Table 3: Tenures of “town witnesses” in Eboli. Dates of tenure are approximate and restricted to the evidence from my corpus.

Names of Town Witnesses	Tenure
Angelus <i>archipresbiter</i> ; Alessius	1122-1130
Angelus <i>archipresbiter</i> ; Iohannes Guandi	1130-1145
Iohannes Guandi; Amatus <i>miles</i>	1146
Iohannes Guandi; Guilielmus <i>filius</i> Amati	1147-1154
Paternus <i>diaconus</i> ; Baianus	1155-1158

⁸² Arca xxi 73 (1122); xxi 74 (1122); Arca xxii 10 (1126/7); xxii 51 (1128); xxii 76 (1130).

⁸³ Cuozzo refers to Iohannes Guandi as a *miles*, but I have not been able to find any reference to him having this title, nor does Cuozzo himself provide evidence. Cuozzo, “‘Milites’ e ‘testes’ nella contea normanna di Principato,” 135.

⁸⁴ Arca xxii 83 (1130); xxii 98 (1130); Arca xxiii 23 (1133); xxiii 41 (1132); xxiii 70 (1134); Arca xxiv 84 (1139); Arca xxv 48 (1142); xxv 75 (1143); Arca xxvi 2 (1145). This is not an exhaustive list of documents which they subscribed, but it does demonstrate the temporal breadth of their tenure in office.

⁸⁵ Arca xxvi 52 (1146).

⁸⁶ Arca xxvi 75 (1147); Arca xxvii 17 (1148); Arca xxviii 74 (1153); BSNP (Biblioteca della Società Napoletana di Storia Patria), perg. n. 2 AA III 7 (1154).

⁸⁷ ACC (Capitolo di Campagna), perg. n. 19 (1156); Arca xxix 110 (1156/7); ACC perg. no. 22 (1158). I am indebted for many of the preceding references to: Carlone, *Documenti per la storia di Eboli*.

⁸⁸ Arca xxv 75 (1143); Arca xxxvi 32 (1178): *Et de hoc ipse uesterarius ostendit unum instrumentum per manus Madii presbiterii et notarii scriptum et roboratum subscriptione Angeli arhipresbiter et Iohannis Guandi qui tunc temporis in ciuitate Eboli testandi officium gerebant*.

As holders of a legal office, these “town witnesses” occupied a legal space between traditional Lombard witnesses and judges in the Salernitan mode. In a traditional Lombard document, in theory, the witness' signatures at the foot of the parchment represented their promise to attest to the validity of that transaction if it was disputed. Their willingness to do so was usually based on a personal relationship with one or both of the parties to a transaction or their status as an upstanding man of the community.⁸⁹ Although Eboli's “town witnesses” may have been respected individuals in their community, they were not witnesses in this traditional Lombard sense. They were, rather, formalized legal personnel with a circumscribed procedural role. They were involved in legal transactions as officials performing an official duty, much like the *iudices Salerni*, not because they had a personal relationship with either party.

The official and institutional nature of the town witnesses gave documents bearing their signatures a hybrid legal character between traditional probative *memoratoria* and dispositive Salernitan *chartule*. To understand this hybridity better, it is helpful to examine a document. In January of 1137, Abbot Simeon of Cava leased a piece of land in Tusciano, near Eboli, to a man named Iohannes Saraceno and his family.⁹⁰ The document was narrated in the first person by Abbot Simeon (*Ego Simeon...abbas...dono concedo atque in vita sua confirmo tibi Iohanni Saraceno*), the donor of the property. At the conclusion of the document, the abbot ordered (*precepi*) the notary, *Madius presbiter et notarius* to write it and for it to be corroborated (*corroborari*) by the subscribed witnesses (*subscribendis testis*) and his seal (*nostro sigillo*).⁹¹

⁸⁹ Taviani-Carozzi, *La principauté lombarde de Salerne (IXe-XIe siècle)*, 525–30.

⁹⁰ Arca xxiii 104 (1137): *...de frudio suprascripte vine offero totam et integram decimam per unumquemque annum ecclesie sancti archangeli.*

⁹¹ Despite this order, there is no trace of a seal ever having been on the document. See Figure 11.

Those witnesses were the town witnesses of Eboli, Angelus *archipresbiter* and Iohannes Guandi (Figure 11).

The relationship between the legal personnel, the legal act, and the document is not particularly well-defined in this charter, nor does it fit neatly into the probative/dispositive dichotomy. Traditional Lombard *memoratoria* were written in the first-person past tense and were therefore probative—they recorded a transaction already done. But the abbot narrates the transaction in the first-person present tense (*dono concedo atque...confirmo*) and only switches to the first-person perfect in the eschatacol when ordering the notary to make the document (*precepi*). In fact, the use of the present tense for the legal action in this case (*dono concedo atque confirmo*) suggests that this document was being used dispositively—its creation and the legal act it records were the same thing. The document was then authenticated by witnesses, a characteristic of probative *memoratoria*. But Eboli's town witnesses were not traditional witnesses. If they were expected to attest to the validity of a disputed transaction, they did so as specialized legal personnel performing an official duty, like a Salernitan judge. This changed the legal meaning of their witnessing and signatures. Instead of personally vouching for one of the parties, they were legalizing the document as officials.

The town witnesses are evidence that Eboli was subject to the same institutionalizing impulses as the rest of the Salernitano in the early twelfth century. The adoption of the Salernitan model of judgeship was the main manifestation of this institutionalization; the town witnesses were another. They replaced traditional Lombard witnesses in Eboli, becoming the sole means of authenticating transactions. From the earliest examples of their witnessing, transactions were said to happen “before the subscribed witnesses through this charter (*ante subscriptos testes per*

hanc cartulam),” just as transactions happened *ante iudicem* and *per hanc cartulam* in the Salernitan mode.⁹²

Though its documents may be unique, it is worth emphasizing that Eboli was not isolated from the rest of the Salernitano or from the city. The region, like Nocera and the Cilento, features prominently in the documents of the Cava archive because the monks made a concerted effort to acquire lands there, especially the fertile alluvial plain between the rivers Tusciano and Sele.⁹³ The castle itself was the seat of multiple Norman lords, first the Lords of Eboli⁹⁴ and then the Counts of the Principate, who were generous to Cava and important political figures in Salerno.⁹⁵ There would have been considerable exchange between the castle and the city. Indeed, it is clear from an 1131 sale of a mill to Cava by Robbertus, judge of Eboli (*iudex Ebulensis*), that the Ebolitani were familiar with Salernitan institutions. The document was a standard Salernitan sale in every way, except that it was made in Eboli.⁹⁶ Therefore, the town witness experiment in Eboli and the adoption of the Salernitan model elsewhere should be seen in continuity, as part of the same early twelfth century impulse towards legal expertise.

Ultimately, though, the experiment only lasted a generation. Beginning in the 1140s, judges began to appear more frequently in Ebolitan documents. By 1158, the town witnesses had been sidelined and Eboli had adopted the judge-centric Salernitan model in its entirety. This

⁹² Arca xxi 73 (1122); xxi 74 (1122).

⁹³ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 135; Loud, “Labour Services and Peasant Obligations in Twelfth- and Thirteenth-Century Southern Italy,” 191.

⁹⁴ Emma (r. 1082-1104) and her grandchildren, Roggerius (r. 1104-1117), and Robbertus (r. 1117-c.1121), sons of Guilielmus. See: Cuzzo, “‘Milites’ e ‘testes’ nella contea normanna di Principato,” 123–24.

⁹⁵ Loud, *The Social World of the Abbey of Cava, c. 1020-1300*, 176; Loud, “Continuity and Change in Norman Italy: The Campania During the Eleventh and Twelfth Centuries,” 342.

⁹⁶ Petrus made the sale inside the monastery of S. Petrus in Eboli, in front of Abbot Simeon of Cava, certain *ydonei homines* and, most importantly, Petrus, a judge of Salerno, who narrated the sale. Petrus *iudex* then ordered the notary and advocate, a fellow Salernitan, to write the charter and signed the document with his large and elaborate judicial signature: Arca xxiii 8 (1131).

change happened quickly (c. 1142-1158, 16 years) compared to Nocera (1102-1143, 41 years) and the Cilento (1099-1130, 31 years).

In the first half of the 1140s, judges and town witnesses worked alongside one another, sometimes authenticating documents together and sometimes separately. Judges had been a part of the legal landscape of Eboli since the late eleventh century, but in a limited legal role as special witnesses.⁹⁷ Their role in legal procedure is unknown, since there are no records of court cases in Eboli from before 1145, but judges did not authenticate economic transactions on their own; this was the town witnesses' role. In the 1140s, judges begin to appear as an option for authenticating legal business, alongside the town witnesses. Robbertus, *iudex Ebulensis*, authenticated two economic transactions on his own in 1142,⁹⁸ and Rao Monachus *iudex*,⁹⁹ who would become a prominent figure in twelfth-century Eboli, presided over and made judgements alone in 1145 and 1146.¹⁰⁰ But the judges did not have yet exclusive control over legal authentication. The town witnesses continued authenticating both economic and case record documents (Appendix 2).¹⁰¹

Table 4: Tenures of judges in Eboli. Tenures are based on my corpus and are therefore approximate.

Judge	Tenure
Landulfus <i>iudex</i>	1090
Robbertus <i>iudex Ebulensis</i>	1131-1142
Rao Monachus <i>iudex Ebulensis</i>	1145-1178

⁹⁷ They mostly signed documents as witnesses alongside others, especially the Counts of the Principate: Arca xv 19 (1090): Landulfus *iudex* signs alongside Abbot Gregory, Romoaldus *presbiter et monachus*, Petrus *presbiter et monachus*, and Iohannes *vicecomes*; Arma Magna G 6 (1131): Petrus *iudex* (a judge of Salerno) and Robbertus *iudex* sign as witnesses alongside Count Nicolaus of the Principate, Guilielmus (his brother), Adamus Dedea, and Beranrdus of Salerno; Arca xxiii 115 (1136): Robbertus *iudex* signs alongside Count Nicolaus.

⁹⁸ Robbertus *iudex Ebulensis*: Arca xxv 5 (1142); xxv 6 (1142).

⁹⁹ His name, Rao Monachus, is found in his testament from October of 1180 which calls him *Rao iudex qui dicitur Monacus*: Arca xxxvii 46 (1180).

¹⁰⁰ Arca xxvi 3 (1145); Arca xxvi 48 (1146); Arca xxvii 29 (1149).

¹⁰¹ Arca xxvi 52 (1146).

David <i>iudex</i>	1153-1157
Amifredus <i>iudex</i>	1160-1172
Landulfus II <i>iudex</i>	1165-1178
Petrus <i>iudex</i>	1178-1189

Beginning in the latter half of the 1140s, there is a clear trend away from documents being authenticated solely by the town witnesses. From 1140 to 1145, seven of eleven total documents were authenticated by the town witnesses only (64%);¹⁰² but from 1145 to 1150, they subscribed only two of ten on their own (20%), plus a further three (30%) alongside the judge, Rao (who alone subscribed the remaining five documents).¹⁰³ In the 1150s, of twenty-seven total documents from the town, only six (22%) were subscribed by the town witnesses alone, and a further three (11%) were subscribed by both a judge and the town witnesses.¹⁰⁴ After 1158, the town witnesses disappear entirely.

The quantitative data therefore suggests that the judges of Eboli steadily sidelined the town witnesses between 1145-1158, perhaps in response to local demand for legal expertise; the diplomatic of documents from this period shows the judges' agency in effecting this institutional change. Rao and David *iudices* ended many of their documents with both the customary order for the notary to make the document and a formulaic corroboration statement: "I corroborated this

¹⁰² For the following figures, I use Carlone's inventory of documents from Eboli. Some of these were in my corpus, but many are not. Some are found in the archiepiscopal archive in Salerno, which I did not consult. The numbers therefore do not correspond exactly with Appendix 2, which only includes documents from Eboli that are in the Cava archive. Carlone, *Documenti per la storia di Eboli*, I:72–82 The following documents were part of my corpus: Town Witnesses: Arca xxiv 107 (1140); Arca xxv 48 (1142); xxv 75 (1143); xxvi 2 (1145). Judge: Arca xxv 5 (1142); xxv 6 (1142).

¹⁰³ Carlone, *Documenti per la storia di Eboli*, 79–88. Documents in my corpus: Town Witnesses only: Arca xxv 92 (1145); Arca xxvi 2 (1145). Town Witnesses and Judge: Arca xxvi 52 (1146); xxvi 75 (1148); Arca xxvii 17 (1149). Judge (Rao *iudex*) only: Arca xxvi 3 (1145); Arca xxvi 48 (1146); Arca xxvii 29 (1149); xxvii 40 (1149); xxvii 46 (1149).

¹⁰⁴ Carlone, *Documenti per la storia di Eboli*: 88–102. Town Witnesses and Judge: Arca xxviii 43 (1153); xxviii 74 (1153); Arca xxix 110 (1157). Judge only: Arca xxviii 45 (1152); Arca xxix 36 (1156); Arca xxx 56 (1160); Arca xxx 57 (1160).

with the signature of my authority written below (*et signo crucis nostre auctoritatis subscribendo corroboravi*).” This formula was first used in 1146 by Rao *iudex*, who used it until 1172 and it appears in documents signed by David *iudex* from 1152 to 1157.¹⁰⁵ The formula, which is unique in the documents of the Salernitano, claimed that the judge’s signature legitimized the document and the transaction or judgement it contained. By its logic, the formula sidelined the town witnesses, whose authentication was no longer strictly necessary, even in cases when they signed alongside the judge. When Rao Monachus *iudex* brokered an agreement between two knights and the abbey of Cava in 1146, both he and the town witnesses, Amatus *miles* and Iohannes Guandi, signed the document. However, the grammar of the corroboration formula—*et signo crucis nostre auctoritatis subscribendo corroboravi*—insinuates that only the judge’s signature was necessary for authentication. The phrase for signature, *signo crucis*, is in the singular, as is the verb *corroboravi*, even as the judge uses the majestic plural to refer to his authority (*nostre auctoritatis*).¹⁰⁶ The formula was used both in documents recording the outcome of court cases¹⁰⁷ and in economic transactions,¹⁰⁸ indicating that the judges intended to be the sole source of legal legitimacy.

Rao *iudex* seems to have had a particularly clear sense of the role, powers, and responsibilities of judgeship and, in a series of documents from 1145 and 1146, describes these aspects of the office in a way that suggests he had some formal legal training.¹⁰⁹ In several case

¹⁰⁵ Rao *iudex*: Arca xxvi 48 (1146); xxvi 52 (1146); Arca xxvii 29 (1149); Arca xxxi 19 (1163); Arca xxxiii 52 (1170); Arca xxxiv 15 (1172); David *iudex*: Arca xxviii 45 (1152); Arca xxix 36 (1156); xxix 110 (1157).

¹⁰⁶ Arca xxvi 52 (1146).

¹⁰⁷ Arca xxvi 48 (1146); xxvi 52 (1146); Arca xxvii 29 (1149); Arca xxix 36 (1156); Arca xxxi 19 (1163); Arca xxxiii 52 (1170); Arca xxxiv 15 (1172).

¹⁰⁸ Arca xxviii 45 (1152); Arca xxix 110 (1157).

¹⁰⁹ It is of course possible that the notary of the document (here Alfano *notarius*) rather than the judge was primarily responsible for the learned language used in the documents. However, even if this was the case, the

records in which he is the judge, the narration of the case includes a prologue describing the role and importance of the judge. This is atypical in Ebolitan documents. In the first document bearing his signature, from 1145, the narrations begins with Rao's comment on "the proper and legal duty (*officium*) of a judge," stating that it was his duty, "in as much as he is able, to legally conserve and protect the *ius proprium*."¹¹⁰ To Rao, the judge was the guardian of the law and of the *ius proprium*—the local law that varied from place to place—in particular, a claim which placed the judge at the top of the local legal hierarchy.¹¹¹

The judge was also responsible, according to Rao, both for making legal documents so that litigants could not lodge repeated complaints about the same case and for solving such cases as amicably as possible. In the first of a pair of related documents from May of 1146 detailing a dispute over some land in Tusciano between Iohannes, a monk of Cava, and two brothers, Roggerius and Robbertus, Rao begins the narration by stating that he made a *memoratorium* "because we know it is the custom (*consuetudinem*) of bad men (*malorum hominum*) to often come against their agreements legitimately made, to deceive the contracting ones, and at the end of business, to begin another case repeating the same complaint."¹¹² The *memoratorium* (here used in the generic sense of a record for posterity) records the initial complaint of Iohannes

notaries represented the judges as the ones speaking and who had power, not themselves. The notaries occupied the position of scribe and did not claim any kind of legal authority to authenticate or judge. They may even have worked for the judge as his subordinate, given that there seems to have been relatively rigid judge-notary pairs in Eboli. Rao's notary was usually Alfano, for example, though in this document (Arca xxvi 3 (1145)), it is Iohannes *notarius*, who usually worked with David *iudex*. See the tables in: Cuzzocrea, "'Milites' e 'testes' nella contea normanna di Principato," 126–27.

¹¹⁰ Arca xxvi 3 (1145): *Quoniam cuiusque iudicis est proprium et legalem officium in quantum valet unicuique ius proprium tueri et legaliter conservare, id circo ego Rao iudex a modo et semper notum fieri volo quod...*

¹¹¹ Manlio Bellomo, *The Common Legal Past of Europe, 1000-1800.*, trans. Lydia G. Cochrane (Washington, D.C.: Catholic University of America Press, 1995), 32, 78–83, 88–89.

¹¹² Arca xxvi 48 (1146): *Quoniam malorum hominum novimus esse consuetudinem adversus sua pacta legitime peracta sepiissime venire et contrahentes decipere et finem negotii alterius cause lite repetata exordium facere, id circo ego Rao iudex memoratorium facio...*

against the brothers, as well as witness testimony and documentary evidence about the facts of the case. The document, and thus the facts of the case included in it, was then authenticated by Rao *iudex* with his signature and the corroboration phrase (*et signo crucis nostre auctoritatis subscribendo corroboravi*).

The resolution of the case is recorded in a second document from later in May of 1146. Rao begins by commenting on the desirability of amicable dispute settlement without formal judgement before stating that the parties came together before him, the town witnesses, and other suitable men (*ydoneos homines*):

“Since it is the custom of good men that, if there should be disputes between them, they, on the advice of friends and other parties, make an agreement and concord so as not to prolong the case up to judgement, but rather amicably agree not to be divided by judicial sentence and benevolently make peace, therefore, before me, Rao, Ebolitan *iudex* (*iudicem Ebulensem*), the subscribed witnesses, and other *ydoneos homines*, Roggerius son of Roger of Asclittino, knight, with the authority of his brother Robert, his tutor, was brought together (*coniunctis est*) with Iohannes, monk of Cava...”¹¹³

The document then narrates how, after the brothers Roggerius and Robbertus had heard the testimony and seen the documents recorded in the earlier case record (Arca xxvi 48), they recognized (*cognoverunt*) that the monk, Iohannes, was in the right. So, they, on the advice of friends (*per eloquia comunium amicorum*), made an agreement with Iohannes to sell the land to the monastery for four hundred *tari* of Salerno. Rao then sealed the document with the

¹¹³ Arca xxvi 52 (1146): *Quia bonorum hominum sunt more ut si accidat ut inter eos lites fiant ipsi inter se amicorum colloquiis utrasque partes amantium se convenient et concordiam faciant quatinus eorum cause non usque ad sententiam iudicis protendantur set amicabiliter concordentur ut non iudiciali sententia diffiniantur set amicitia et benivolentia pacificentur. Ante me igitur Raonem iudicem Ebulensem astantibus subscribendos testibus aliisque ydoneis viris...*

corroboration formula and signed it, as did the town witnesses, Amatus *miles* and Iohannes Guandi.

These case records represent the judge as the central figure of legal process. He created and narrated the documents—even including descriptive prologues that are not usually part of legal documents in Eboli—established the facts of the case through interrogation and procedure, and confirmed the first document with his signature alone. The judge also supported, legitimized, and authenticated the terms of the amicable settlement that ended the dispute. At least in his own narration of the process, judge Rao played the active role in the legal work, while the town witnesses were merely bystanders and, at the end of the process, additional authenticators of the agreement. Indeed, the use of the corroboration formula made the town witnesses largely superfluous to the legal process.

Rao appears to have had a particularly clear understanding of his role and powers as a judge, which may indicate that he had some formal legal education or training. The use of the phrase *ius proprium* in the 1145 document above (Arca xxvi 3) suggests some familiarity with Roman legal vocabulary. In the same document, Rao also references a legal maxim from royal legislation that was itself a refashioning of passages from the *Digest* and *Institutes*. As a way of justifying his judgement, Rao states, “Nobody, as the law of our lord orders, can be deprived of his own light (*Nemini quippe ut precipit lex domini nostri lux suum est detraendum*).”¹¹⁴ This is a reference to the royal assize *De confugio ad ecclesiam*, which states at its conclusion, “No one can be deprived of his own right (*Nemini quippe ius suum est detrahendum*).”¹¹⁵ While Rao or his notary mistakenly wrote *lux* rather than *ius*, this is a clear reference to a royal law. As

¹¹⁴ Arca xxvi 3 (1145).

¹¹⁵ Ortensio Zecchino, ed., *Le assise di Ariano: Testo critico, traduzione e note* (Cava dei Tirreni: Di Mauro, 1984), 28–32. VA VI: *De confugio ad ecclesiam*.

Kenneth Pennington has pointed out, the maxim was itself a refashioning of passages from the *Digest* and *Institutes* that summarized the meaning of the king's law.¹¹⁶ Its use in this local context demonstrates the judge's ability to apply rules gleaned from normative legislative texts (which in 1145 would have still been new)¹¹⁷ to novel practical contexts that those texts did not explicitly cover.

Rao's judicial colleague, David *iudex*, also manipulated an authoritative legislative text for his own purposes in a way that suggests legal education. In a document from 1157, he claimed a power for judges that traditionally belonged to witnesses in Lombard law by changing the text of a statute. A law of King Liutprand from 717 required a groom to publicize the *morgincaph*, or morning gift, he gave to his bride: "on a day before [the wedding] (the groom) announces the gift (the *morgincaph*) to his relatives and friends by means of a document strengthened by witnesses (*per scriptam a testibus roboratum*) and says 'look what I gave my wife as *morgincaph*' so that in the future she may not lose the gift by perjury."¹¹⁸ This was a well-known statute of Lombard law and was often referred to in marriage agreements from the Salernitano.¹¹⁹

It was not so well-known, though, that some husbands did not occasionally forget to make the document. At some point prior to 1157, a man from Eboli named Civitas, son of Peter Staupelli, had married Augustina, daughter of Guandi,¹²⁰ but had not made her a document of

¹¹⁶ Kenneth Pennington, "The Normans in Palermo: King Roger II's Legislation," *Haskins Society Journal: Studies in Medieval History* 18 (2007): 157–58.

¹¹⁷ See Ch. 4, fn. 22-29.

¹¹⁸ *Ita decernimus ut alia die ante parentes et amicos suos ostendat per scriptum a testibus roboratum et dicat quia ecce quod coniugi meae morgincap dedi ut in futuro pro hac causa periurium non percurrat.* Alfredus Boretius, *Liber Leges Langobardorum Papiensis Dictus*, vol. Leges IV, *Monumenta Germaniae Historica* (Hannover: Monumenta Germaniae Historica, 1868), 405, Liutprand 7.

¹¹⁹ Arca xxiii 4 (1131); xxiii 72 (1134); Arca xxxiv 27 (1172); xxxiv 111 (1174).

¹²⁰ This may be Iohannes Guandi who was a town witness from 1130-1154, but it is not clear.

morgincaph at the time of their marriage (*quando ei sibi in coniugio sociavit hoc scriptum morgincap ei non fecit*). So, he went before the judge, David, in 1157 to have one made. In that document, David *iudex* cited Liutprand's law, but with a revision: "Because it is found in the written law (*in legibus scriptum reperritur*) that on a day apart from the wedding as long as the husband showed a *morgincaph* document *strengthened by a judge* (*morgincaph per scriptum a iudice roboratum*) and said look what I gave my wife in *morgincaph*..."¹²¹ The judge had replaced the requirement for the document to be strengthened by witnesses (*a testibus roboratum*) with the requirement that the document be strengthened by a judge (*a iudice roboratum*), centering the judge as the sole source of legal legitimacy in Eboli. The judges of Salerno made a similar claim when they arrogated the power to take over the *mundia* of women without a male guardian. That had been a royal prerogative, not about witnesses, but it was a similar claim of judicial power.¹²²

David *iudex*'s creative revision of the statute did not endure; later documents of *morgincaph* from Eboli in 1172 and 1174 cite Liutprand's law correctly. In the 1172 document, a judge still witnessed and signed the transaction, while in 1174, an old town witness, Paternus *diaconus* did so.¹²³ But by 1172, the judges had long since consolidated their control of the law in Eboli and there was no longer an argument to be made about the supremacy and importance of the judges. After 1158, the town witnesses disappeared and Eboli's transition to the Salernitan model was complete. The change happened relatively quickly and was carried out by a pair of judges with a clear sense of their own power and responsibilities, perhaps acquired through legal

¹²¹ Arca xxix 110 (1157): *Quoniam in legibus scriptum reperritur ut alia dienuptiarum quatinus maritus ostendat morgincap per scriptum a iudices roboratum et dicat ecce quod coniugi mee in morgincaph dedi...*

¹²² See Ch. 2, fn. 108-115.

¹²³ Arca xxxiv 27 (1172); xxxiv 111 (1174).

education. It bears emphasizing that even if Rao and David had a legal education, the institutional model of judgeship that they adopted was that of Salerno. The formation of that model in the early eleventh century, as discussed in Chapter Two,¹²⁴ predates the foundation of the Northern Italian law schools and the arrival of the Normans in southern Italy. It was a local model shaped by local institutions and the experts whose legal power it privileged were local too.

Conclusion

By 1158, Nocera, the Cilento, and Eboli had all adopted the Salernitan model. Where the traditional Lombard model had been characterized by a variety of possible documentary types and community-based institutions, there was now standardization and institutions of expertise (Table 6). It was no longer possible for individuals to legitimize their own legal acts, or to do so with only the approval of the upstanding members of their community. That legal power, like the power to oversee legal procedure and make judgements, was vested solely in local experts called judges.

This momentous and consequential institutional change happened mostly in silence. Documents were made a certain way at one point, and differently at another, without giving a reason why. There is no evidence of a broader movement for legal reform led by judges from Salerno or the royal court, nor is the institutional shape of the Salernitan model ever explicitly theorized or discussed. In other words, the agents of institutional change are not revealed in the sources, or, if they are, their agent-ness is not evident. Only in Eboli, where the judges had a particularly self-conscious understanding of their own legal role and power, are there traces of the kind of agency required to change institutional structures.

¹²⁴ See Ch. 2, fn. 126.

Despite the documents' reticence about motivations, the diplomatic changes we have identified and tracked in this chapter reveal a set of transformations in how people in the twelfth-century Salernitano thought about the law, both as an idea and as a set of practices. Adopting the Salernitan model meant changing one's assumptions about what made documents and legal acts legitimate. In the traditional Lombard model, legal legitimacy had less to do with adherence to certain documentary protocols than with the social status and good will of those witnessing and authenticating legal acts. The Salernitan institutional model, on the other hand, centered the figure of the judge, an expert who ensured that legal acts adhered to standardized and well-defined procedures and who had the necessary public trust (*publica fides*) to grant them legitimacy. The increasingly formal and esoteric nature of the law in this context would have made it more difficult and potentially perilous to navigate without expert help, which would only reify the notion that the law should be the preserve of experts like the judges.

The increase in professionals working in the administration of justice and the subjection of the law to a more defined and systematic set of rules are usually central features of narratives about the origins of modern states and their bureaucratic development. The drivers of legal and institutional change in such narratives tend to be political powers like the popes, communes, or, more commonly, monarchies like England, France, and, because of the Normans, the Kingdom of Sicily. Indeed, twelfth-century southern Italy is generally characterized as a monarchical space, whose wealth, administrative efficiency, and legal innovations are products of the Norman Kings. But what this chapter has shown is that the course of legal change in the Salernitano was not connected to the Kings of Sicily or any other political entity. The Salernitan model was stable and unchanging throughout the Norman period (c. 1077-1130), and no Norman lord, whether the Dukes of Apulia, the Counts of the Principate, or the Kings of Sicily promoted it or

sought to influence it in any discernible way. If anything, as the next chapters will argue, the Kings of Sicily relied on the local judges to do the basic stuff of royal legal administration at the local level. Despite the normative claims to jurisdiction in royal legislation, most legal business in the kingdom remained beyond the scope of royal law. It is to that law that we now turn.

Table 5: Key diplomatic features of 11th-century documents

	Traditional Lombard	Salerno	Nocera	Cilento	Eboli
Support	Parchment	Rectangular Parchment; pale yellow/white	Rectangular Parchment; light brown	Rectangular Parchment; light brown	Rectangular Parchment; pale yellow/white
Ink		Brown	Brown/Black	Brown	Brown/Black
Script	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>	Hand of Petrus <i>protonotarius</i>	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>
Document Type	<i>Memoratoria/chartule</i>	<i>Chartule</i>	<i>Memoratoria/chartule</i> /hybrid	<i>Memoratoria/chartule</i> /hybrid	<i>Memoratoria</i>
Chrismon		Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right
Invocation	<i>In nomine domini dei nostri Iesu Christi/ In Christe nomine</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>	<i>In nomine domini nostri Iesu Christi...</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>

Dating Clause	<i>Anno regni...</i>	<i>Anno ab incarnatione ...temporibus domini nostri...mense...indictione</i>	<i>Anno principatus/anno ab incarnatione...mense...indictione</i>	<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>	<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>
Narration	First Person/third person	Third person (<i>ante me X iudicem</i>)	First person (<i>Ego...ante subscripti testes</i>)/ Third person (<i>Ante me X iudicem</i>)	First Person (<i>Declaramus nos...</i>)/Third person (<i>ante me X iudicem</i>)	First Person (<i>Ego ante subscripti testes</i>)
Naming of Notary		<i>et taliter tibi X notario scribere precepi</i> (by judge)	<i>Quam te X notarius scribere rogavimus</i> (By party to case)/ <i>Et taliter tibi X notario scribere precepi</i> (by judge); <i>Actum Nucerie</i>	<i>Et taliter scribere rogavimus te X notarius</i> (by party to case)	<i>Et taliter scribere rogavimus te X notarius</i> (by party to case)
Notarial Sign		yes	yes	yes	rare
Authenticator	Witnesses (<i>testes</i>)	Judge (<i>iudex</i>)	Witnesses (<i>testes</i>)/Judge (<i>iudex</i>)	Witnesses (<i>testes</i>)/Judge (<i>iudex</i>)	Witnesses (<i>testes</i>)

Table 6: Key Diplomatic Features of 12th-century Documents

179		Traditional Lombard	Salerno	Nocera	Cilento	Eboli
	Period of Transformation to Salernitan Model			1102-1143	1099-1130	1145-1158
	Change Complete			1143	1130	1158
	Support	Parchment	Rectangular Parchment; pale yellow/white	Rectangular Parchment; pale yellow/white	Rectangular Parchment; pale yellow/white	Rectangular Parchment; pale yellow/white
	Ink		Brown	Brown	Brown	Brown/Black
	Script	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>	<i>Beneventana documentaria</i>

Document Type					
	<i>Memoratoria/chartule</i>	<i>Chartule</i>	<i>Chartule</i>	<i>Chartule</i>	<i>Chartule</i>
Chrismon		Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right	Vertical line, bisected by diagonal from lower left to upper right
Invocation	<i>In nomine domini dei nostri Iesu Christi/ In Christe nomine</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>	<i>In nomine domini dei eterni et salvatoris nostri Ihesu Christi</i>
Dating Clause		<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>	<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>	<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>	<i>Anno ab incarnatione...temporibus domini nostri...mense...indictione</i>
Narration	First Person/third person	Third person (<i>ante me X iudicem</i>)	Third person (<i>Ante me X iudicem</i>)	Third person (<i>ante me X iudicem</i>)	Third person (<i>ante me X iudicem</i>)
Naming of Notary		<i>et taliter tibi X notario scribere precepi</i> (by judge)	<i>Et taliter tibi X notario scribere precepi</i> (by judge)	<i>Et taliter tibi X notario scribere precepi</i> (by judge)	<i>Et taliter tibi X notario scribere precepi</i> (by judge)

Appendix 1: Composition of Select Cilentan Courts

Document	Date	Location	Subscribing Judges and Notary	Parties to Case	Adstantes
Arca xxiv 10	1136	Castellabate (Castro S. Angeli)	Aymones <i>iudex</i> ; Iohannes <i>iudex</i> ; Iohannes <i>clericus et notarius</i>	Abbot Simeon of Cava; Stabile <i>miles</i> son of Bonus	Abbot Simeon of Cava; <i>dominus</i> Iohannes of S. Georgio; <i>dominus</i> Iacobus Varisano; <i>dominus</i> Tipaldus, <i>magister castro</i> S. Angeli; <i>viris idoneis</i>
Arca xxv 13	1141	Monte Cilento	Alferius <i>iudex</i> ; Aymone <i>iudex</i> ; Iohannes <i>miles et iudex</i> ; Alferium <i>notarium regale et militem</i>	Iohannes et Alfano de Griduara, <i>brothers</i> , Iohannes, son of Ioffo, Romualdus son of. Iohanne, Urso, Mirando and Pandulfi <i>milites</i> (brothers and sons of Petrus de Batolla); Leotherius, prior of S. Arcangelo	Falco, abbot of Cava; Iohannes of S. Georgio, prior of S Magni; Iohannes, prior of S Fabian; Roggerius, <i>magistro castro</i> S. Angeli; Amatus, <i>cappellanus suprascripti domni abbati</i> ; Iohannes, archpriest of Cilento; Petrus, priest of S. Nicolay; <i>domnus</i> Alfredus; Matheo <i>miles</i> ; Riccardus <i>miles</i> ; Maroldus <i>miles</i> de Massacanina; Vozzolino <i>miles</i> ; Amalgino <i>miles</i> ; Stabele <i>miles</i> ; Petro <i>miles</i> de Orlana; Urso Castellimaris; <i>aliis plures viris idoneis</i>
Arca xxv 36	1141	S. Magno	Alferius <i>iudex</i> ; Landulfus <i>miles et iudex</i> ; Iohannes <i>miles et iudex</i> ; Aimo <i>iudex</i> ; Iohannes <i>clericus et notarius</i>	Aimo <i>iudex</i> , advocate of S. Magni; Urso Frosinum; Petrus and Donatus and Ermannus, <i>brothers</i> and sons of Disideus Frosinus	Iohannes of S. Goergio, prior of S. Magni; Guilielmus de Montorio <i>stratigotus domini Enrici</i> ; Urso <i>stratigotus</i> Falco (abbot of Cava) <i>abbati</i> ; Urso <i>miles</i> de Radoaldo <i>stratigotus domini Lampi</i> ; Petro de Copersito <i>vicecomes domini Enrici</i> ; Iohannes de Gaita <i>vicecomes</i> de <i>domina Icta</i> ; Goffridus de Oriana <i>miles</i> ; Dauferius <i>miles</i> ; Stabile <i>miles</i> ; Petro de Oriana <i>miles</i> ; Urso Gartianese; <i>alii plures ydonei homines</i>
Arca xxv 56	1144	Agropoli	Raynaldus <i>iudex</i> ; Guido <i>iudex</i> ; Iohannes	Abbot Falco of Cava; Abbot Cosma of S. Marie de Pantano	Iohannes, Bishop of S. Pestana; Abbot Falco of Cava; Cosma, Abbot of S. Maria de Pantano; Ursus <i>iudex</i> de Castello Noue; Gloriosus <i>iudex</i> ;

			<i>clericus et notarius</i>		Landolfus <i>iudex</i> de Cilento; Rogerius of Cammarota, <i>dominus</i> of Corbella; Iohannes of Laurino, <i>stratigotus</i> of Caput Aqua (Capaccio); Iohannes, <i>archipresbiter</i> of Cilento; Guilielmus and Enricus Cappellani; Abbot Lando of S. Nicolay; Goffridus Matarellus; Robbertus son of Falco Gentecore; Landulfus Cannarei; Nobellone <i>vicecomes</i> of Castello Noue; Petrus <i>miles</i> de Laureiano; Dauferius de Fenoclitio; Goffus <i>miles</i> de Cleastro; Iohannes de Contrata; Petrus and Robbertus, <i>notarii</i> of the bishop; <i>ydonei homines</i>
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Appendix 2: Select Documents of Eboli, 1140-1160 from the Cava Archive

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Archive Catalogue Number					Date	Judge(s)	Town Witnesses	Notary
Cava	Arca	xxiv	107	1140			Angelus archipresbiter; Iohannes Guandi	Alfanus notarius
Cava	Arca	xxv	5	1142/1	Robertus			Amifredus notarius
Cava	Arca	xxv	6	1142/1	Robertus			Amifredus notarius
Cava	Arca	xxv	48	1142			Angelus archipresbiter; Iohannes Guandi	Iohannes notarius
Cava	Arca	xxv	75	1143			Angelus archipresbiter; Iohannes Guandi	Alfanus notarius
Cava	Arca	xxv	92	1145			Angelus archipresbiter; Iohannes Guandi	Iohannes notarius
Cava	Arca	xxvi	2	1145			Angelus archipresbiter; Iohannes Guandi	Iohannes notarius
Cava	Arca	xxvi	3	1145	Rao iudex			Iohannes notarius
Cava	Arca	xxvi	48	1146	Rao Iudex			Alfanus notarius
Cava	Arca	xxvi	52	1146	Rao Iudex	Amatus miles; Iohannes Guandi		Iohannes notarius
Cava	Arca	xxvi	75	1148	Rao iudex	Iohannes Guandi; Guilielmus de Amato		Alfanus notarius
Cava	Arca	xxvii	17	1149	Rao iudex	Iohannes Guandi; Guilielmus de Amato		Alfanus notarius
Cava	Arca	xxvii	29	1149	Rao iudex			Alfanus notarius
Cava	Arca	xxvii	40	1149	Rao iudex			Alfanus notarius
Cava	Arca	xxvii	46	1149	Rao iudex			Alfanus notarius

Cava	Arca	xxviii	43	1153	David iudex	Petrus Martinense; Petrus di non Albino	Alfanus notarius
Cava	Arca	xxviii	45	1152	David iudex		Iohannes notarius
Cava	Arca	xxviii	74	1153	David iudex	Iohannes Guandi; Guilielmus de Amato	Iohannes notarius
Cava	Arca	xxix	36	1156	David, iudex		Iohannes notarius
Cava	Arca	xxix	110	1157	David iudex	Paternus gerestis; Baianus testis	Iohannes notarius
Cava	Arca	xxx	56	1160	Amifredus Iudex		Ursonus notarius
Cava	Arca	xxx	57	1160	Amifredus Iudex		Ursonus notarius

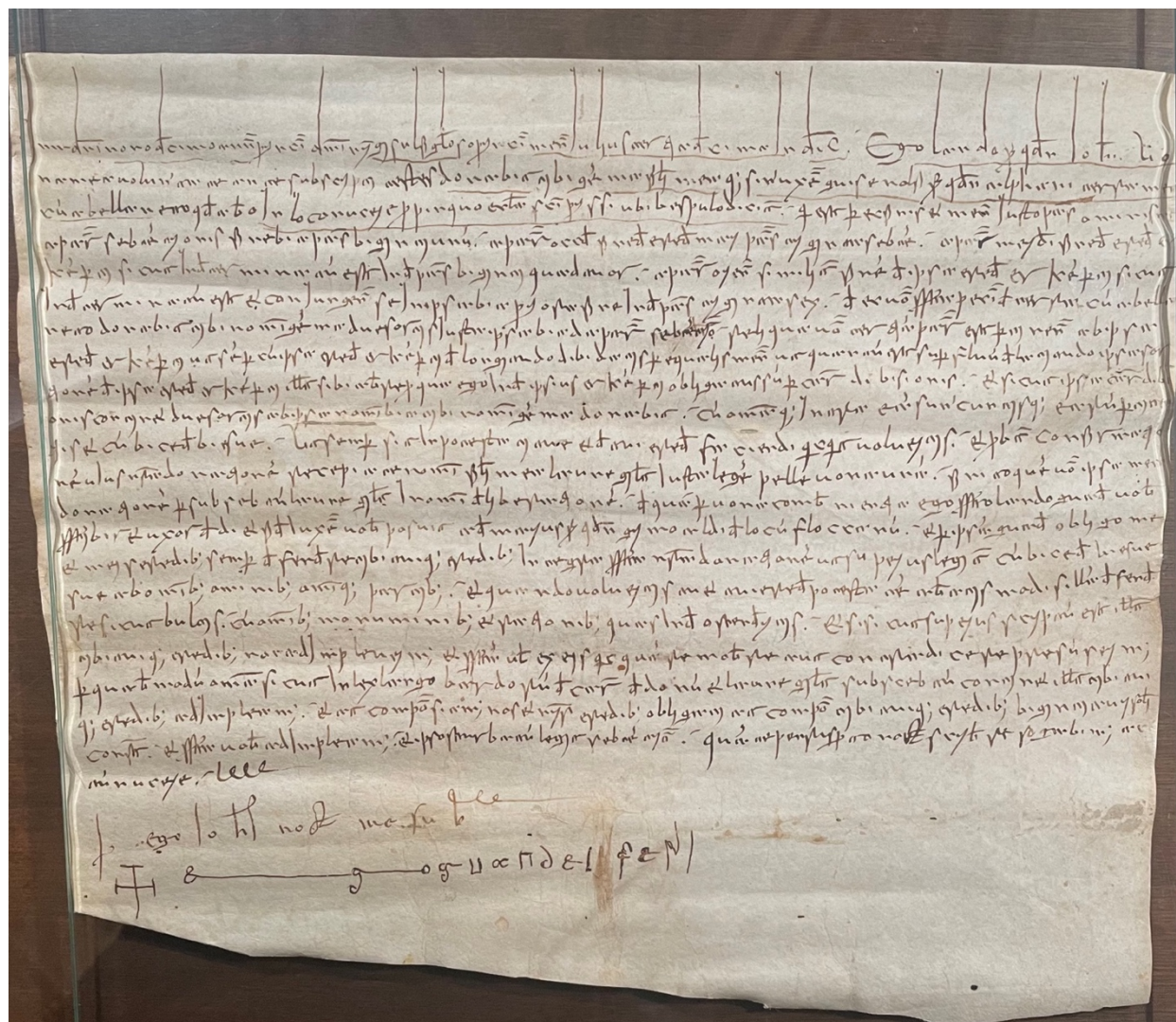


Figure 1: Arca xi 64 (1060)

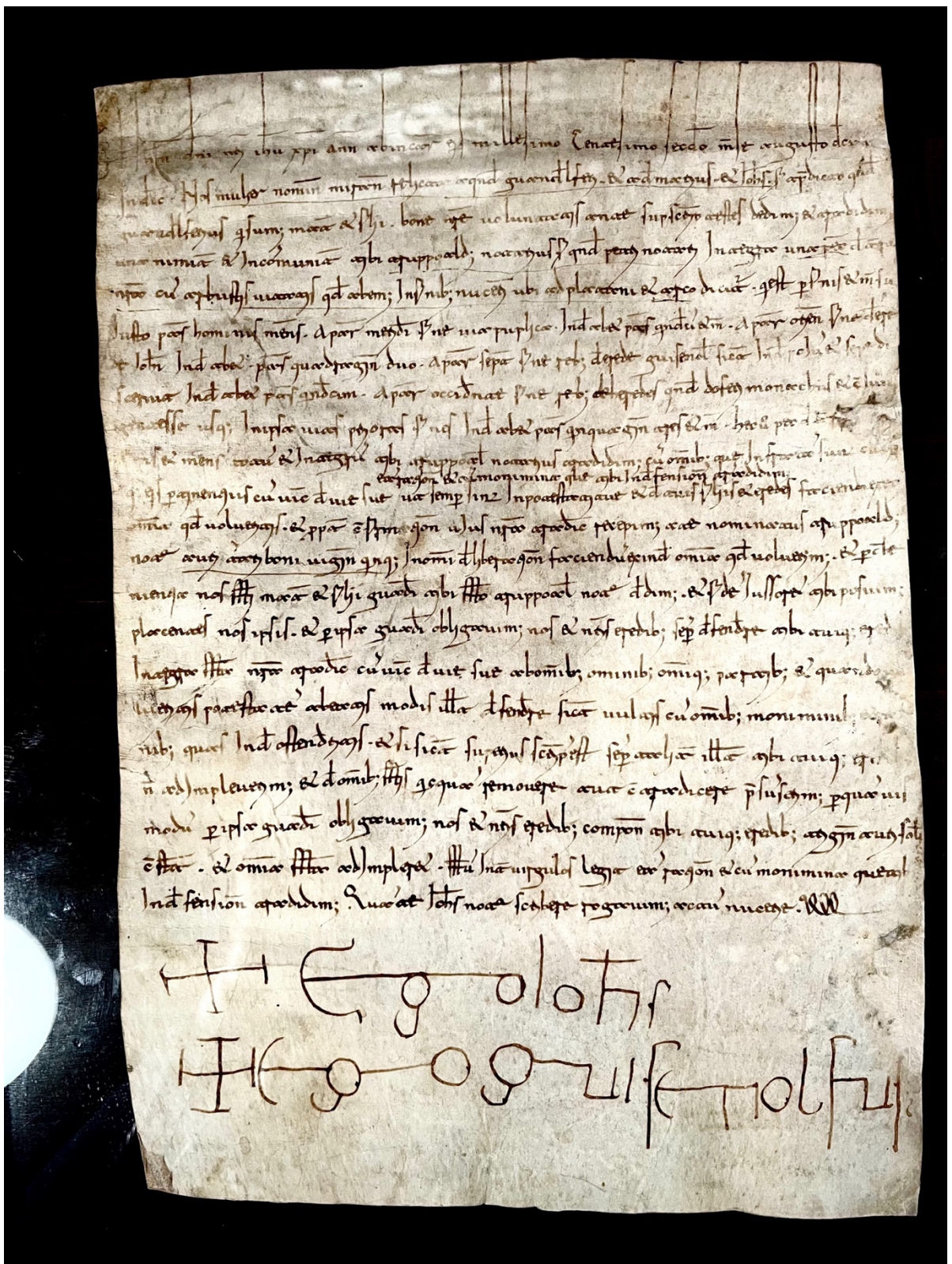


Figure 2: Arca xvii 53 (1102)

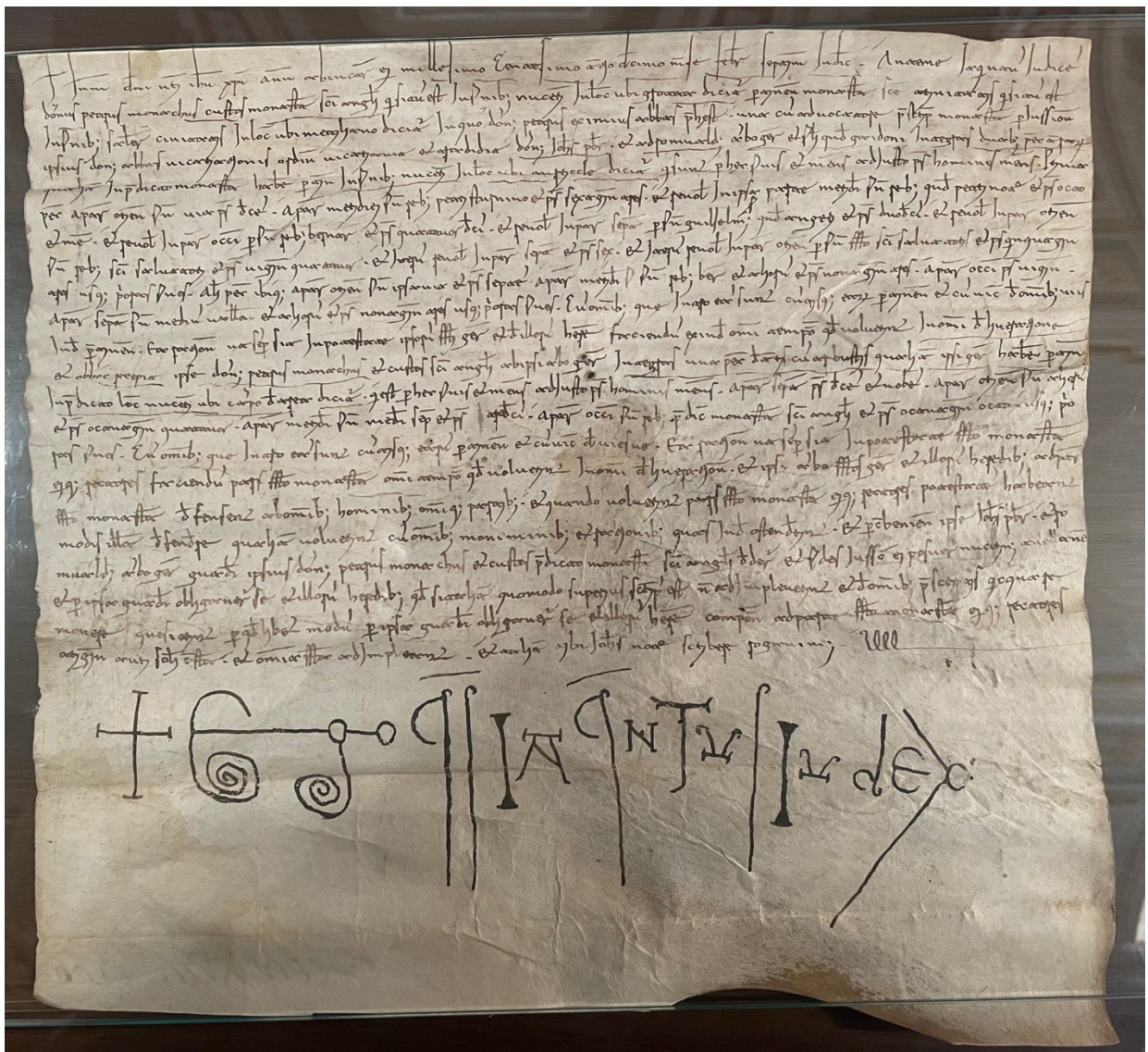


Figure 3: Arca xix 66 (1113)

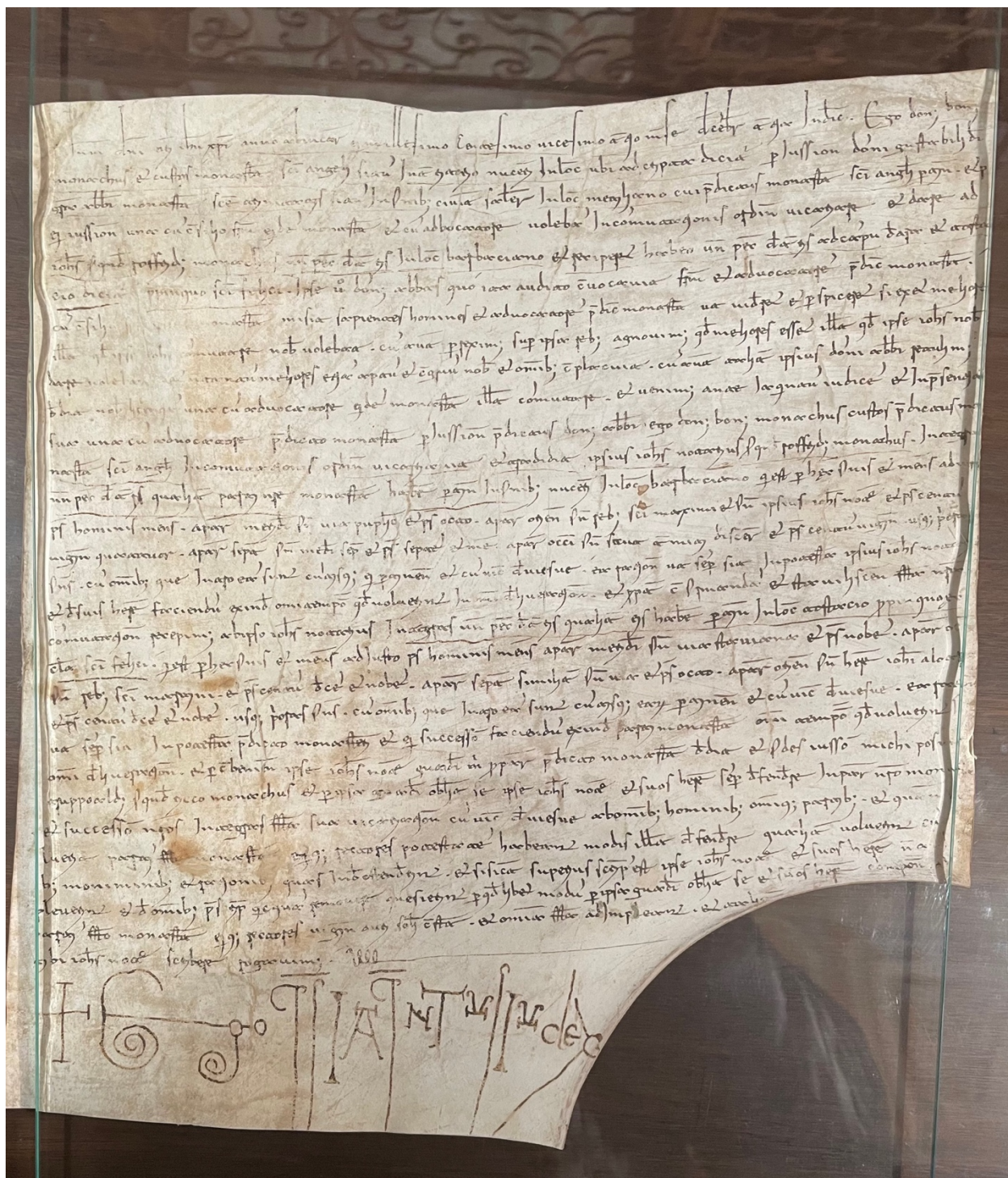


Figure 4: Arca xxi 96 (1123)

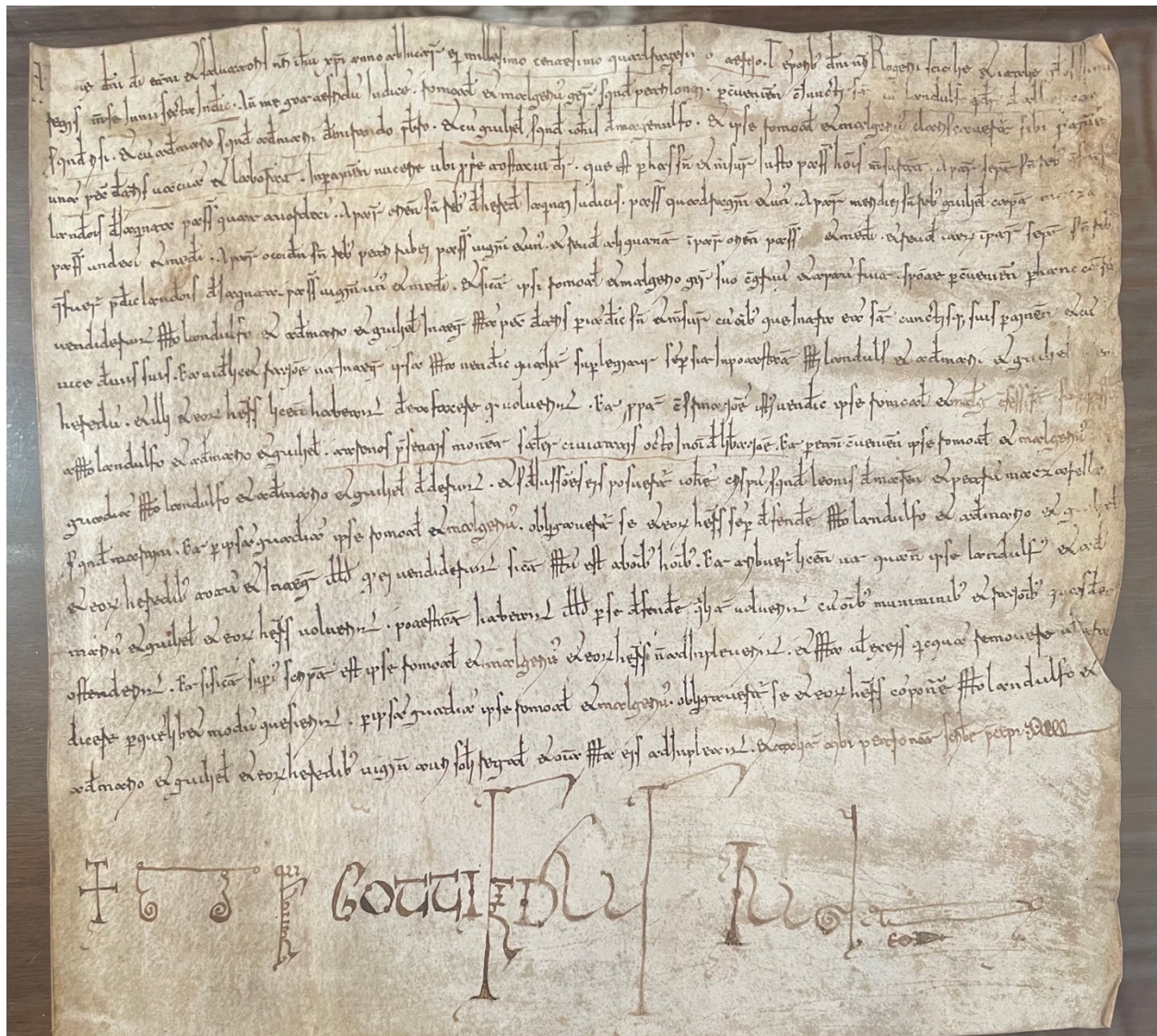


Figure 5: Arca xxv 72 (1143)

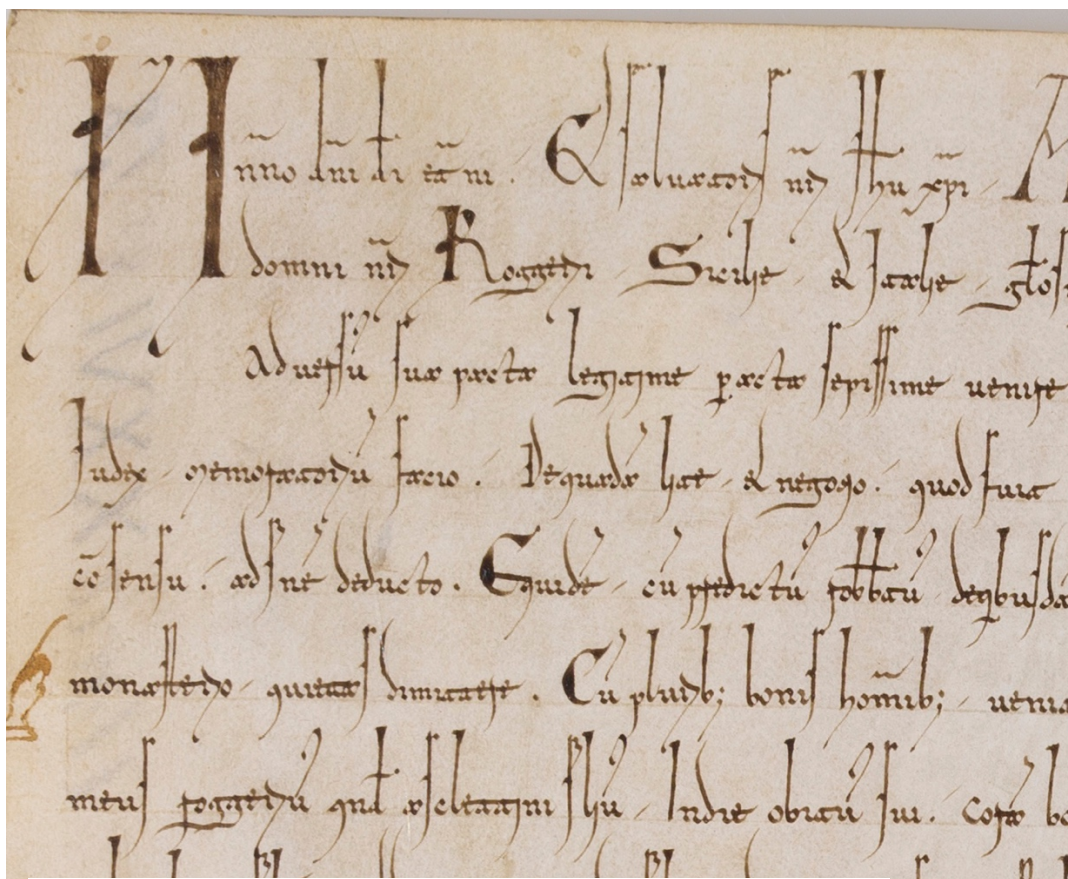
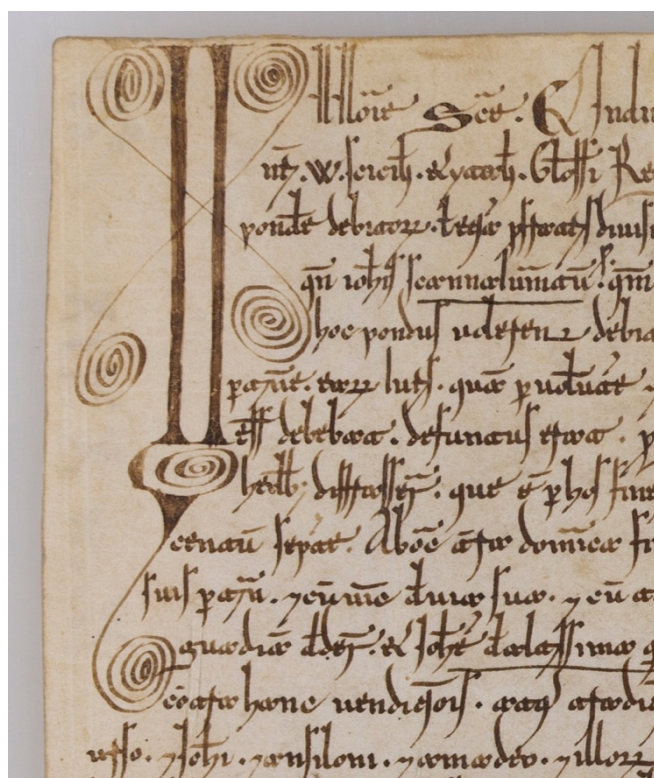


Figure 7: Detail, Arca xxvi 48 (1146)



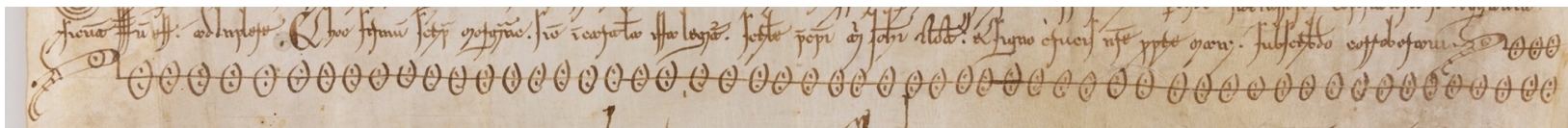


Figure 9: Detail, Notarial sign of Iohannes notarius, Arca xxix 110 (1157)



Figure 10: Arca xxxvi 32 (1178)

Anno dñi millesimo centesimo octavo. Ego simon dñs monasterii scti pascualis de uia uenitabilis abb. comuni cōtra meo scti. dono cōcedo a. x. i. uia tua cōsimo
 iohi pascualis qñd amos. s. simon aui qñd h. qñd a uxor nax tñs ci. ruy s. un. una p. s. a. d. t. cū uia tua p. s. o. b. s. f. u. c. h. s. f. u. t. m. s. y. p. e. t. n. b.
 a. n. a. t. e. t. i. p. h. a. c. y. n. e. n. s. e. a. b. e. u. b. i. c. u. s. i. a. n. u. s. i. s. c. l. e. g. u. a. n. d. i. d. r. y. e. y. n. e. y. m. e. n. s. a. l. u. t. o. p. a. s. s. u. h. o. i. m. e. n. d. y. p. o. p. e. t. a. n. t. e. e. t. e. s. i. n. i. s. y. p. a. s. t. h. g. n. d. y. p. a. s. t. e. p. a.
 a. p. l. e. o. n. i. s. t. a. d. i. s. i. n. i. s. y. p. a. s. t. a. g. n. q. u. a. c. a. u. o. r. d. y. p. a. s. t. e. c. c. a. t. a. n. s. i. n. i. s. y. p. a. s. t. q. u. a. d. t. u. g. n. u. n. i. y. p. a. t. u. n. i. d. y. p. a. s. t. m. d. u. n. e. a. u. s. s. o. n. i. l. u. c. e. t. e. s. i. n. i. s. y. p. a. s. t. a. g. n. d. u. o.
 c. o. l. u. n. g. s. e. p. o. b. i. n. i. c. u. o. i. b. i. s. i. s. t. a. s. e. a. b. n. a. o. b. i. s. i. u. s. q. y. n. e. n. d. i. s. y. c. u. u. i. c. e. t. d. u. a. s. u. a. E. a. u. i. f. u. g. o. n. e. u. a. a. u. a. y. i. a. t. a. s. t. a. s. i. p. s. i. a. i. p. o. a. e. s. t. a. e. t. u. s. e. u. s. a. d. i.
 o. b. i. c. i. u. u. s. m. o. d. f. a. c. i. e. n. d. u. i. e. a. q. u. e. u. o. l. u. e. t. a. s. E. a. c. o. d. i. c. i. o. n. e. u. a. n. s. i. a. q. i. o. h. i. t. a. u. i. s. i. s. u. a. s. u. p. u. s. d. i. x. i. m. h. e. n. g. e. e. a. u. e. n. d. e. a. u. a. d. o. n. a. t. e. t. q. u. o. c. u. i.
 q. u. o. d. m. o. d. e. a. l. i. e. n. a. t. e. s. i. s. o. l. u. m. o. d. o. t. a. l. a. u. o. p. a. t. e. t. a. d. l. a. u. o. p. a. n. d. u. o. p. d. i. n. a. t. e. y. d. f. u. d. e. o. f. a. c. i. e. t. e. q. u. e. u. o. l. u. e. t. a. s. q. u. a. y. p. a. s. t. b. o. n. a. t. u. a. u. o. l. u. n. t. a. t. e. y. c. o. n. e. n. i.
 e. a. g. o. o. b. l. i. g. a. t. u. s. e. s. i. n. m. e. s. q. u. o. d. s. u. b. c. e. s. s. o. b. i. s. d. u. n. e. a. l. l. a. q. u. a. i. n. t. o. p. a. d. i. c. t. o. l. o. c. o. t. u. o. p. o. e. m. i. s. s. i. p. o. s. t. o. b. i. c. i. u. a. u. i. t. u. o. y. q. u. o. d. h. o. y. n. o. p. a. d. i. c. t. o. m. o. n. a. s. t. e. r. i. o.
 s. i. n. t. o. c. c. a. s. s. i. n. e. d. i. m. i. s. s. i. t. E. a. y. p. a. s. t. c. o. s. t. m. a. g. o. n. h. u. l. n. t. e. d. o. n. a. g. o. n. i. c. o. c. e. s. s. i. o. n. i. a. t. a. y. c. o. s. t. m. a. g. o. n. i. s. s. e. c. q. u. i. a. t. e. p. m. a. n. u. p. e. a. t. o. n. i. n. b. u. e. c. c. o. m. a. s. t. a. u. c. i. a. n. i.
 b. o. u. e. u. n. i. u. m. i. n. s. u. p. b. o. n. u. a. t. a. y. s. a. t. e. s. t. u. g. u. i. E. a. n. e. q. a. m. e. p. a. d. i. c. t. o. s. i. m. e. d. u. e. a. b. b. a. t. e. n. e. q. a. m. e. s. s. u. b. c. e. s. s. o. b. i. s. t. y. o. s. t. e. t. o. b. i. s. i. n. e. m. o. n. a. s. t. e. r. i. o. n. e. c.
 a. n. u. l. l. i. s. h. o. i. b. i. s. a. l. i. e. n. a. t. i. o. n. i. b. u. s. q. u. o. l. u. e. t. a. t. e. p. o. t. c. o. a. t. a. b. e. n. e. d. i. c. t. a. t. e. a. l. i. q. u. a. t. e. s. i. n. i. p. e. t. a. t. u. a. u. a. n. s. i. s. i. d. u. e. o. p. e. i. s. t. a. s. i. h. e. e. t. i. n. u. a. t. a. u. s. a. s. e. u. p. a. l. l. i. u. a. b. e. n. e. d. i. c. t. a. t. e. s. i. n. e. t. a. t. e.
 y. p. o. s. s. i. d. e. a. t. a. t. a. y. f. a. c. i. a. t. a. y. s. e. e. t. a. q. u. a. m. o. d. u. s. u. p. u. s. s. c. h. y. e. a. b. s. q. m. e. a. m. e. o. z. q. u. o. d. s. u. b. c. e. s. s. o. r. t. m. a. n. a. r. c. h. o. y. c. o. a. t. a. b. e. n. e. d. i. c. t. a. t. e. s. i. g. u. s. i. c. o. a. t. a. h. a. n. e. m. e. a. d. o. n. a. g. o. t.
 c. o. c. e. s. s. i. o. n. e. a. t. a. y. c. o. s. t. m. a. g. o. n. i. s. t. a. n. g. t. a. t. a. t. e. u. e. t. a. t. e. p. e. r. p. i. o. u. a. d. a. t. e. a. u. t. o. s. o. l. o. s. c. o. s. t. o. c. o. p. o. s. a. u. s. s. i. a. q. u. o. d. i. o. h. i. s. a. u. i. s. i. s. y. a. h. o. s. d. a. t. e. n. o. m. o. n. a. s. t. e. r. i. o.
 q. u. a. t. a. l. a. m. p. l. e. c. u. i. a. y. a. t. m. a. r. c. h. o. p. a. t. o. y. n. o. a. h. o. n. e. p. a. g. n. a. t. e. p. e. r. p. i. o. y. a. t. s. u. b. s. e. t. e. n. d. i. s. e. t. h. o. y. n. o. q. u. o. d. i. l. l. o. c. o. s. t. a. b. o. t. a. t. o. y.
 E. g. o. i. o. h. i. s. p. y. h. a. t. u. s. b. o. n. m. e. a. u. o. l. n. d. f. u. d. i. o. s. t. e. u. n. e. t. e. o. f. f. e. t. o. a. u. a. y. i. a. t. a. s. t. a. d. e. c. i. m. a. y. u. n. i. q. u. e. a. n. n. u. e. t. e. s. e. i. a. r. c. h. a. n. g. e. l. i.



Ego ANSELMS ARCHIEPBR



Ego IOHNS WAND

Figure 11: Arca xxiii 104 (1136)

Chapter Four: Royal Legislation and Legal Culture in the Norman Kingdom of Sicily

Introduction

By all contemporary accounts, Roger II, the first Norman King of Sicily (r. 1130-1154), had a fearsome sense of justice. When his cousin William, the Duke of Apulia, died in 1127, Roger laid claim to the Duchy and added it to his already extensive domains in the County of Sicily, conquered between 1061 and 1091 by Roger's father (also Roger) and his uncle, Robert Guiscard.¹ In 1130, the count and now Duke Roger II convinced one of two rival claimants to the papal throne, Anacletus II, to elevate him as King of Sicily. Roger's claim to kingship, bitterly opposed by the Norman and Lombard lords of southern Italy, initiated a decade of war on the peninsula that only ended with the 1139 Treaty of Mignano between Roger and Pope Innocent II, the eventual victor of the struggle for the papacy.

In his history of these wars of pacification, written in praise of the king and addressed directly to him, the abbot Alexander of Telese described King Roger as the "sharp sword" of God, "drawn from the sheath of the province of Sicily" to ensure that the wicked "should be frightened by fear of Roger and brought back to the path of justice."² The anonymous Sicilian author of the *Liber de Regno Sicilie*, a scathing history of the intrigue and scheming at the Sicilian court in the 1150s and 1160s, said with the approving tone of a historian recalling a

¹ The County of Sicily comprised both the large and fertile island of Sicily and Calabria, the mountainous toe of the Italian boot. For the narrative of the conquest, see: G. A. Loud, *The Age of Robert Guiscard: Southern Italy and the Northern Conquest*, 1st ed. (London: Routledge, 2000), chap. 4; Annliese Nef, *Conquérir et gouverner la Sicile islamique aux XIe et XIIe siècles*, Bibliothèque des Écoles française d'Athènes et de Rome, 346 (Rome: École française de Rome, 2011), 22–66; The primary source for this conquest has been translated by Kenneth Baxter Wolf: Geoffrey Malaterra, *The Deeds of Count Roger of Calabria and Sicily and of His Brother Duke Robert Guiscard*, trans. Kenneth Baxter Wolf (Ann Arbor: The University of Michigan Press, 2005).

² G. A. Loud, trans., "Abbot Alexander of Telese, The History of the Most Serene Roger, First King of Sicily," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 64; Ludovica de Nava and Dione Clementi, eds., *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie* (Rome: Istituto Storico Italiano, 1991), 3.

golden age, that Roger “made efforts to administer justice in its full rigor,” though some called him “tyrannical” and others “inhuman” in his harshness.³ His enemies had the same evaluation of his rule: the German historian Otto of Freising— who was generally very hostile to Roger, since he saw him as a usurper of imperial rights—claimed disapprovingly that Roger oppressed his people “with many afflictions” such that his “works of cruelty, patterned upon the deeds of the ancient Sicilian tyrants” were well known to everyone.⁴

These historians of Roger’s reign are equally unanimous about the fruits of that harshness. Because of his subjects’ fear of him (and with the help of God), Abbot Alexander says, “evildoing was almost entirely eliminated from every part of his kingdom and only justice and peace prevailed.”⁵ For the author of the *Liber de Regno Sicilie*, Roger’s harshness was necessary, “for there was no other way in which the savagery of a rebellious people could have been suppressed.” And it was suppressed, so that “after many efforts and dangers he had brought a peace to his kingdom that remained unshaken for as long as he lived.”⁶ Even Otto of Freising, who so disapproved of Roger’s claims to kingship, admitted that “there are those who say he does these things in the interest of justice rather than of tyranny and claim that he is more than all other rulers a lover of peace.”⁷

³ G. A. Loud and T.E.J. Wiedemann, eds., *A History of the Tyrants of Sicily by “Hugo Falcandus” 1153-69* (Manchester: Manchester University Press, 1998), 58; G.B. Siragusa, ed., *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, *Fonti per la storia d’Italia* (Roma: Istituto Storico Italiano, 1897), prologue, pg. 6.

⁴ Otto of Freising, *The Two Cities: A Chronicle of Universal History to the Year 1146 A.D.*, ed. Austin P. Evans and Charles Knapp, trans. Christopher Charles Mierow, *Records of Civilization: Sources and Studies* (New York: Columbia University Press, 1928), bk. VII c. 23, p. 432.

⁵ Loud, “Abbot Alexander of Telese, The History of the Most Serene Roger, First King of Sicily,” 122; de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie*, 83.

⁶ Loud and Wiedemann, *A History of the Tyrants of Sicily by “Hugo Falcandus” 1153-69*, 58; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: prologue, pg. 6.

⁷ Otto of Freising, *The Two Cities: A Chronicle of Universal History to the Year 1146 A.D.*, bk. VII, c. 23, p. 432.

King Roger's hard-won peace was secured by administrative reforms, in which he seems to have taken an uncommon personal interest. In his idle moments, according to Abbot Alexander, the king pored over his accounts and "looked after his property with much care and diligence."⁸ The Archbishop Romuald of Salerno, whose chronicle is one of our best sources for the political history of the realm in the twelfth century, describes the most important of Roger's legal and administrative reforms: "King Roger...established peace and good order in his kingdom and to preserve that peace instituted chamberlains and justiciars throughout the land, promulgated laws which he had newly drafted and removed evil customs from their midst."⁹ In this contemporary view, Roger may have established peace with a fearsome and even harsh sense of justice, but once that work was done, the king's role changed. He became the guardian and caretaker of the law, empowered to change it, improve it, and ensure its good functioning.

There is a clear connection, expressed in contemporary historians' characterization of Roger II, between kingship and law in the Norman Kingdom of Sicily. That connection was an essential part of the argument for the king's legitimacy. The Kings of Sicily certainly needed to make such an argument, given the novelty of their kingdom and its uncertain status in the eyes of their European peers and enemies—Otto of Freising was not alone in naming them tyrants.¹⁰ The novelty and drama of the kingdom's foundation and the uncertain legitimacy of its rulers has

⁸ Loud, "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," 121–22; de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie*, 82.

⁹ G.A. Loud, trans., "Romuald of Salerno, Chronicon sive Annales, 1125-54," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259; Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.C.1178)*, ed. C. A. Garufi, *Scriptores, Rerum italicarum*, (Città di Castello, 1914), 225.

¹⁰ Helene Wieruszowski, "Roger II of Sicily, Rex-Tyrannus, in Twelfth-Century Political Thought," *Speculum* 38, no. 1 (1963): 53–60.

drawn a great deal of scholarly attention, most of it focused on the king's role in lawmaking and the place of the Italian Normans in the broader narrative of twelfth-century state formation.

Significantly less attention has been paid to the experience of royal power and its impact on local legal cultures. It is an open question how the interests and ambitions of the Norman kings in terms of law and legal administration manifested in practice. This chapter and the next form an argumentative pair whose overarching goal is to evaluate the nature of royal power as it worked at the local level. Before analyzing the documentary evidence of royal legal practice in the specific local context of the Salernitano (the subject of Chapter Five), this chapter investigates the subjects of royal legal interest, expressed in legislation and other legal output, and the evidence of the royal administration's capacity to govern. What are (and are not) the subjects of royal legislation, and what does this tell us about the nature of royal claims to power? What was the nature of the legal institutions the kings built and what was their relationship to local structures? These questions are fundamental to understanding the place of royal Norman-Sicilian legal culture in the narratives of legal change described in Part One of this dissertation and in the broader narratives of state-building and legal revival.

Sources

In contrast to Part One, which was based primarily on original archival documents, the sources available for understanding royal legal culture are more diverse, and all are problematic in their own way. They can be divided into three categories: literary sources, legal output, and documents of practice.

The literary sources are somewhat limited in their usefulness because they focus their attention on royal legal issues only insofar as it serves their larger rhetorical purpose. Romuald of Salerno's mention of legislation and new royal administrative institutions, mentioned above,

comes at a natural concluding point in his text when King Roger's main southern-Italian adversary, Count Rainulf of Alife, has died, along with the hostile German Emperor Lothar. In contrast to the passing away of these troublesome figures, King Roger, victorious, "established peace" and set up administrative institutions. More details about how those institutions worked are not necessary for his narrative.¹¹ In the case of Abbot Alexander of Telesse's propagandist history of Roger II's wars in the 1130s, discussed above, the abbot is primarily concerned with praising the new king and emphasizing the divinely ordained nature of his ascent to power.¹² The history, which covers the years 1127 to 1136, is bookended by a prologue glowing with praise for Roger and his conquest—the quote about Roger being a sharp sword "drawn from the sheath of the province of Sicily" is from this prologue¹³—and a direct address (*alloquium*) from the abbot to the king exhorting him to remember that he is an instrument of God, "by whose benevolence we do not doubt you have triumphed and obtained your kingdom."¹⁴ Roger's commitment to justice is both a reason for and evidence of his divine favor, but the particulars of law and administration are not of interest to the abbot.

The *Liber de Regno Sicilie*, on the other hand, which focuses on the events at the royal court in Palermo between the years 1154 and 1169, is deeply invested in the workings of the court and the royal administration. While traditionally attributed to a certain 'Hugo Falcandus' or 'Pseudo-Hugo,' the text is anonymous and the author remains unknown, though scholars have

¹¹ G. A. Loud, trans., "Romuald of Salerno, Chronicon sive Annales, 1125-54," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259–60.

¹² de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie*, 178–79.

¹³ See fn. 2 above

¹⁴ Loud, "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," 126; de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie*, 89–90.

advanced arguments about his (or her) identity.¹⁵ Evelyn Jamison's contention that the author was a certain Eugenius, a prominent royal official and one of the masters of the administrative office called the *duana baronum*,¹⁶ is the most ambitious, though scholars do not accept it.¹⁷ Nonetheless, her assessment of the author's essential characteristics—that they were connected to the royal administration, interested in and knowledgeable about legal issues, and well-versed in the classics—is certainly accurate. The text has a clear point of view and a general disdain for the royal administration. As will be discussed below, the text narrates multiple instances of deception, rebellion, and intrigue at the royal court and relishes in the comeuppance of corrupt, exploitative royal officials. The *Liber de Regno*'s evaluations of royal administration must therefore be taken with a considerable pinch of salt. Nonetheless, it is undoubtedly our best source for the structure, workings, and culture of royal administration and courts in Palermo. There are nineteen trials mentioned in the text, seven of which are explored in detail.¹⁸

The final literary source of note is the prologue appended to the Vatican version of the royal legislation, which was probably composed in the mid-twelfth century. The details of what the prologue states and its relationship to the legislation itself will be discussed in more detail below, but here it is sufficient to say that its purpose is to construct a legislative ideology for the

¹⁵ The name "Hugo Falcandus" first appeared in the earliest printed edition of the text from 1550, but its source is not clear. There are no people by this name in any charter from the twelfth-century Kingdom. In general, for the most up to date discussion of the authorship of the text, see: Loud and Wiedemann, *A History of the Tyrants of Sicily by "Hugo Falcandus" 1153-69*, chaps. 28–42.

¹⁶ We will meet him briefly in the next chapter. See: Ch. 5, fn. 25,

¹⁷ Evelyn Jamison, *Admiral Eugenius of Sicily, His Life and Work, and the Authorship of the Epistola Ad Petrum, and the Historia Hugonis Falcandi Siculi*. (London: Published for the British Academy by Oxford University Press, 1957).

¹⁸ Despite this evident treasure trove of legal material, as far as I can gather, none of these court cases have ever been explored in detail from a legal-historical perspective. Evelyn Jamison, in her book exploring the vexed question of the authorship of the *Liber de Regno Sicilie*, came closest when she references these cases, but says "this is not the place to discuss these reports [of the cases] in detail; but even the present brief notes are sufficient to indicate the wealth of material offered and the knowledge behind it." See: Jamison, *Admiral Eugenius of Sicily*, 245.

Norman Kings, which it achieves through several allusions to both Biblical and Roman legal texts.¹⁹ Kenneth Pennington has argued convincingly that the text was written by a jurist of unknown origins trained in Roman law in the mid-twelfth century.²⁰ The prologue is not taken up into the later version of the royal legislation²¹ and does not appear in the *Liber Augustalis*, so it does not appear to have been considered an indispensable part of royal legislation. This is why I classify it among the literary sources.

In general, these sources are useful as evidence of the intellectual milieu surrounding the kings at their court and the effect of royal lawmaking on the larger project of bolstering royal legitimacy. The author of the *Liber de Regno* and the author of the prologue were deeply knowledgeable about the law, both its practice and its intellectual underpinnings. Their knowledge of Roman law indicates the importance of the learned legal tradition at the court. At the same time, the Kings of Sicily were not only thinking about the law in Roman terms. As Abbot Alexander's history demonstrates with its many Biblical allusions and appeals to divine authority, the church had a powerful impact on royal legal culture as well, especially in the context of royal legitimacy. The exact nature of these influences is beyond the scope of this chapter and dissertation.

The second category of source is legal output, by which I mean legislation and administrative orders. The laws of the Kings of Sicily, known collectively but misleadingly as

¹⁹ Ortensio Zecchino, ed., *Le assise di Ariano: Testo critico, traduzione e note* (Cava dei Tirreni: Di Mauro, 1984), 22, 26.

²⁰ Kenneth Pennington, "The Normans in Palermo: King Roger II's Legislation," *Haskins Society Journal: Studies in Medieval History* 18 (2007): 146–50.

²¹ That is, the Cassino version.

the *Assizes of Ariano* (I will refer to them as simply the *Assizes*),²² are preserved in two manuscript versions, one from the Vatican Library and one from Montecassino, and in the *Liber Augustalis*, Frederick II's 1231 law code for the Kingdom. The *Assizes* are a mix of extracts from Roman legal texts—Books I and IX of Justinian's *Codex* (534), Book XVIII of Justinian's *Digest* (533), and the *Ecloga* (c. 741) of the Isaurian Emperors Leo III (r. 717-741) and Constantine V (r. 741-775)—Lombard law,²³ and original laws covering a range of topics.

The earliest scholarly debates about the laws were over the manner of their promulgation and whether or not they should be read as an official compilation or a private collection of laws. Early-twentieth century historians, primarily German scholars, believed that the *Assizes* were promulgated in a legislative assembly at Ariano c. 1140, based on both documentary evidence of an assembly and references to royal lawmaking in the chronicles of Romuald of Salerno (mentioned above)²⁴ and Falco of Benevento.²⁵ The legislative assembly hypothesis was the

²² They are also sometimes called the *Assizes of Roger II*. The title of “assize” comes from the title rubric attached to the laws in the Cassino manuscript, “*Assise regum regni Siciliae* (Assizes of the Kings of the Kingdom of Sicily).” But this manuscript is from the thirteenth century, so some scholars are hesitant to use this title. Pennington has suggested calling them the *Constitutions* of Roger II. I will, for the sake of clarity, retain the traditional use of the *Assizes* title, but will refrain from calling them the *Assizes of Ariano* because the evidence for their promulgation at Ariano is not convincing (See below, fns. 25 and 26). Where possible, I will refer to the specific king who promulgated the laws, such as “the *Assizes* of Roger II,” or “the *Assizes* of William II,” but generally, the title of *Assizes* will be used to refer to all of the Norman legislation. See: Kenneth Pennington, “The Normans in Palermo: King Roger II's Legislation,” *Haskins Society Journal: Studies in Medieval History* 18 (2007): 150.

²³ One law, XXXIII *De iniuriis privatis personis illatis*, in the Vatican version, refers to the compensation for cutting off a horse's tail, which is responding to Edict of Rothari 338. Another law, XXX *De violatione thori*, about adultery, permits the killing of the adulterers if they are caught in the act. This is also in Edict of Rothari 212.

²⁴ See above, fn. 9.

²⁵ These early positions are summarized and explained in: Zecchino, *Le Assise di Ruggerio II: Problemi di storia delle fonti e di diritto penale*, (Naples: Casa Editrice Dottore Eugenio Jovene, 1980), 53–79; Kenneth Pennington, “The Normans in Palermo: King Roger II's Legislation,” 142; Crucial for this early position are: Hans Niese, *Die Gesetzgebung der Normannischen Dynastie im Regnum Siciliae* (Halle: Max Niemeyer Verlag, 1910); Caspar, *Roger II (1101-1154) und die Grundung der Normannisch-Sicilischen Monarchie*; Jamison, in her brief note on the assembly, cites Caspar and Niese: Evelyn Jamison, “The Norman Administration of Apulia and Capua,” *Papers of the British School at Rome* 6, no. 6 (1913): 255–56; G.A. Loud, trans., “Romuald of Salerno, Chronicon Sive Annales, 1125-54,” in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259; Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.c. 1178)*, 225; G.A. Loud, trans., “The Chronicle of Falco of Benevento,” in *Roger II and the Creation of the Kingdom of Sicily* (Manchester:

prevailing consensus until a 1969 article by Léon-Robert Ménager, in which he argued that both versions of the laws were private collections created by monastic institutions in the late-twelfth and early-thirteenth centuries.²⁶ His argument has been convincingly criticized,²⁷ but Ménager's skepticism about the tidy legislative origins of the laws was warranted. Kenneth Pennington argued in an important 2007 article that the Vatican version of the laws was an official compilation composed by a Roman jurist, based on codicology, paleography, and an analysis of the legal texts. His argument, which is somewhat of an outlier in its concern for the old questions of date and origin, is that the other texts in the Vatican manuscript, all of which are legal texts, would have been superseded by 1150 or so, so it makes the most sense to date the manuscript to that period. Likewise, the marginal symbol used to refer to the *Digest* (a capital D bisected by a line) suggests that the manuscript is from the mid-twelfth century, after which point that symbol was not used.²⁸

For the purposes of this chapter, these debates will be largely put to one side. While the nature of the texts as they survive in the manuscripts is an important and contested issue in the context of the legislation's relationship to the burgeoning study of Roman law, in terms of legal practice, what matters is the authenticity of its content. Indeed, in the past three decades or so, a new consensus has emerged in which scholars accept the limitations of the evidence with regards

Manchester University Press, 2012), 245; Falco of Benevento, *Cronisti e scrittori sincroni della dominazione normanna nel Regno di Puglia et Sicilia*, ed. Giuseppe Del Re, vol. 1: I Normanni (Naples: Stamperia dell'Iride, 1845), 251.

²⁶ Léon Robert Ménager, "La législation sud-italienne sous la domination normande," in *I Normanni e la loro espansione in Europa nell'alto Medioevo*, Settimane di studio del Centro italiano di studi sull'alto medioevo 16 (Spoleto, 1969), 439–96.

²⁷ Antonio Marongiu, "La legislazione normanna," in *Atti del Congresso internazionale di studi sulla Sicilia normanna*, 1973, 195–212; Zecchino, *Le Assise di Ruggerio II: Problemi di storia delle fonti e di diritto penale*, 89–104.

²⁸ Pennington, "The Normans in Palermo," 145.

to when, where, or how the Norman laws were promulgated while remaining confident that all of them are authentic legislation of the Norman kings, especially Roger II.²⁹ This new consensus has led to scholars using the laws as a rich evidentiary vein for royal thinking in a wide variety of contexts beyond the strictly legal.³⁰

There are three versions of the legislation: the Vatican and Cassino compilations and the laws as they appear in Frederick II's *Liber Augustalis*.³¹ The Vatican version (Codice Vaticano Latino 8782, fols. 91rb-94va) is the earliest, probably composed, as Pennington argues, in the mid-twelfth century. All forty-three titles in this manuscript are attributed to Roger II (r. 1130-1154) in the *Liber Augustalis*, which supports the traditional dating that they were issued during

²⁹ Donald Matthew, *The Norman Kingdom of Sicily* (Cambridge: Cambridge University Press, 1992), 185; Takayama is somewhat more skeptical of the trends against the legislative assembly hypothesis: Hiroshi Takayama, *The Administration of the Norman Kingdom of Sicily* (Leiden: Brill, 1993), 76; Hubert Houben, *Roger II of Sicily: A Ruler between East and West*, trans. G. A. Loud and Diane Milburn (Cambridge: Cambridge University Press, 2002), 135–40; Joanna Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194* (Ithaca: Cornell University Press, 2002), 19; Paul Oldfield, *City and Community in Norman Italy* (Cambridge: Cambridge University Press, 2009), 12, 82; G. A. Loud, *The Latin Church in Norman Italy*, Reissue edition (Cambridge: Cambridge University Press, 2011), 282–83; Hervin Fernández-Aceves, *County and Nobility in Norman Italy: Aristocratic Agency in the Kingdom of Sicily, 1130-1189* (New York: Bloomsbury Academic, 2020), 6.

³⁰ Kinship and family: Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077-1194*, 60–61, 80–81; Relationship of king and city: Oldfield, *City and Community in Norman Italy*, 86, 105; Relationship of the kings and the Latin Church: Loud, *The Latin Church in Norman Italy*, 282–85.

³¹ Citations of the Vatican version of royal legislation are henceforth abbreviated as VL (Vaticano Latino) followed by a Roman numeral and the title. Citations of the Cassino version are abbreviated as CC (Codice Cassinese) followed by an Arabic numeral and the title. The *Liber Augustalis* of Frederick II is abbreviated as LA followed by a Roman numeral indicating the book number and an Arabic numeral indicating the chapter number. These numbers correspond with Stürner's now-definitive edition of that text. For both manuscript versions, I rely on the 1984 edition produced by Ortensio Zecchino, which contains both the Vatican and Cassino versions as well as helpful facing Italian translations: Zecchino, *Le assise di Ariano: Testo critico, traduzione e note*, (Cava dei Tirreni: Di Mauro Editore, 1984); I also used Stürner's now definitive version of the *Liber Augustalis*, published in the *Monumenta Germaniae Historica* in 1996: Wolfgang Stürner, ed., *Die Konstitutionen Friedrichs II. Für Das Königreich Sizilien*, vol. Leges, 5, *Monumenta Germaniae Historica* (Hannover: Hahnsche Buchhandlung, 1996); I produced my own English translations of both the Vatican and Cassino versions, based on Graham Loud's translation of the Vatican laws: G. A. Loud, trans., "The Assizes (or Constitutions) of King Roger," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 314–28; the *Liber Augustalis* was translated into English in 1971 by James M. Powell before Stürner's edition, which makes it somewhat problematic to use, though the translations are still sound: James M. Powell, trans., *The Liber Augustalis or Constitutions of Melfi Promulgated by the Emperor Frederick II for the Kingdom of Sicily in 1231* (Syracuse: Syracuse University Press, 1971).

his reign.³² The other manuscript version (Codice Cassinese 468, fols. 43r-44v) most likely dates to the late-twelfth or early-thirteenth centuries. It contains thirty-nine titles, which contain all the laws from the Vatican version, but in a reordered and reorganized form. The final seven chapters (CC 33-39) contain laws not included in the Vatican version, suggesting that they were promulgated after that collection had been made. Stürner, the editor of the *Liber Augustalis*, suggests that CC 33, 34, and 36 are from Roger's reign (r. 1130-1154), while CC 37-39 are from that of William II (r. 1166-1189).³³ The concordance of one of these laws, CC 39, with a law in the *Liber Augustalis*, LA III 3, attributed to "King William (*rex Guilielmus*)" supports this thesis.³⁴ In addition to the two manuscript versions of the laws, there are a further twenty-six named chapters in the *Liber Augustalis* not found in either manuscript version and attributed to one of the Williams—the text says only "*Rex Guilielmus*" or "*idem rex*," without specifying which William.

The relationship between the Vatican and Cassino manuscripts is complex. Stürner, the editor of the MGH edition of the *Liber Augustalis*, argues based on his comparison of the two texts that the Cassino version, though later, does not rely on the Vatican text, but rather a now-lost third version. He also argues that, while the *Liber Augustalis* generally seems to rely on the Vatican version for the text and sequencing of the laws, it also has divergent readings that follow the Cassino version. Since it is unlikely that the compilers of Frederick's laws would have had

³² Pennington, "The Normans in Palermo," 143–45.

³³ Stürner, *Die Konstitutionen Friedrichs II. Für Das Königreich Sizilien*, Leges, 5: 71.

³⁴ CC 39, *Rescriptum pro clericis* and LA III 3, *De hiis, qui debent accedere ad ordinem clericatus*. Caspar, *Roger II (1101-1154) und die Grundung der Normannisch-Sicilischen Monarchie*, 275–83; Houben, *Roger II of Sicily: A Ruler between East and West*, 138; Stürner, *Die Konstitutionen Friedrichs II. Für Das Königreich Sizilien*, Leges, 5: 71.

access to both the Vatican and Cassino manuscripts, he suggests that they worked from this now-lost third version.³⁵

The Vatican version is part of a composite manuscript containing several useful legal texts. It begins with the *Liber Papiensis*, one of the many versions of the Lombard laws that circulated in the twelfth century, fols. 1r-46vb; a set of excerpts from the Justinianic *Code*, fols. 47r-48v; Justinian's *Institutes*, fols. 49r-91va; and then the Norman legislation, fols. 91rb-94 va. Finally, in a slightly later hand, there are two procedural treatises on Roman law: the letter of Bulgarus to the papal chancellor, Haimeric, which summarizes Roman procedural law, fols. 94a-95rb,³⁶ and another tract on procedure from the early-twelfth century, fols. 95v-96v. No scholar has done a complete review of the other texts in the manuscript to determine the relationship between them, but the combination of Roman and Lombard legal texts, new legislative material, and procedural treatises strongly suggests that this was a legal manual for use by a legal expert in southern Italy. The text of the Norman legislation itself is divided into two columns and organized into titles written with an initial capital and in red ink (as opposed to the black ink of the main text). This layout, as Pennington argues, conforms to the standard layout of a legal compilation in the twelfth century.³⁷ Indeed, the Norman legislation is visually identical to the other legal texts in the manuscript.

Like the Vatican, the Cassino version is also part of a composite legal manuscript, this one more ecclesiastical in bent.³⁸ The first text is a version of the *Lombarda*, a different

³⁵ Stürner, *Die Konstitutionen Friedrichs II. Für Das Königreich Sizilien*, Leges, 5:69–72; Houben's discussion of the manuscripts is helpful: Houben, *Roger II of Sicily: A Ruler between East and West*, 136–38.

³⁶ This treatise, which was widely attested, was translated by Brasington. He includes a very helpful introduction: Bruce C. Brasington, *Order in the Court: Medieval Procedural Treatises in Translation*, Medieval Law and Its Practice, volume 21 (Leiden: Brill, 2016), 81–111.

³⁷ Pennington, "The Normans in Palermo," 145.

³⁸ Pennington, "The Normans in Palermo," 144, fn. 23.

collection of the Lombard laws similar, but not identical, to the *Liber Papiensis* (pgs. 1-82).³⁹ The Norman legislation follows this (pgs. 83-86). Then there is a copy of Bernard of Pavia's (d. 1213) *Brevarium* (pgs. 87-203), a collection of canon law from 1190 for use in the schools. And finally, the last pages are dedicated to the *Acta* of the Fourth Lateran Council and a few papal letters of Honorius III (pgs. 205-222). The texts accompanying the Norman laws in this manuscript were part of the reason that Ménager argued for the monastic origins of the legislation in his article.⁴⁰ In general, the layout of this edition of the legislation is less formal, and the text is arranged in a single column, but the titles are still organized into chapters with headings in red ink.

As stated above, the Cassino version contains the same laws as the Vatican but reorganized. In some cases where the Vatican version had multiple titles, the Cassino groups multiple laws under one title. The laws about forgery and documents, for example, comprise four separate titles in the Vatican version (VL XX-XXIII), but are grouped under a single title (CC 14) in the Cassino. It is not clear whether this new organization is a product of the Cassino compiler or is based on the hypothesized third version. The Cassino text also contains more than just the Rogerian laws, though it is difficult to parse the origin of individual titles. It is also an incomplete collection, as shown by the twenty-six laws preserved only in the *Liber Augustalis* referencing a "King William (*rex Guilielmus*).” Roger's successors continued to legislate, but not all their laws made it into the Cassino version.

It is not clear exactly how the laws preserved in the Vatican and Cassino versions were promulgated (hence the debates over provenance), but many of the later laws preserved in the

³⁹ The pages of this manuscript have been numerated by a much later hand. This is why I refer to them by page number (which is the conventional way of referring to this manuscript), rather than folio number.

⁴⁰ Ménager, "La législation sud-italienne sous la domination normande," 439-496.

Liber Augustalis as laws of King William appear to have been made in response to petitions or other specific situations. LA III 54, *De furtis et latrociniiis*, for example, begins with the phrase “It has come to the attention of our highness (*Pervenit ad aures nostri culminis*).” LA III 55, *De animalibus in pascuis affindandis*, was made because “When we (the king) were traveling through Apulia, a general cry and complaint was raised everywhere to our highness (*cum per partes Apulie feliciter transiremus communis undique clamor et querimonia proposita est celsitudini nostre*).” An even more specific 1187 law about abolishing tolls levied on pack animals and riders on royal demesne lands was issued as a royal *mandatum* bearing the royal *rota* and publicized through the king’s administrative officials.⁴¹

Royal legislation is the most useful source for understanding the subjects of royal legal interest, but as normative sources they do not reveal much about royal legal practice. The administrative orders of the royal government, called *mandata*, are much more helpful in this regard. Except for one example from the middle of Roger II’s reign in 1147,⁴² these documents do not survive as originals, but rather as *deperdita*, references to lost documents in extant ones. These *mandata* texts are usually verbatim, meaning that the entire text of the lost document is copied into the ‘host’ document. As I will discuss in the next chapter, this is likely because the information they contained was considered useful and relevant to court cases. *Mandata* are rare before the reign of William I, though Roger II issued some, and they were used most often during the reign of William II (r.1166-1189).⁴³ These sources are an essential witness to the

⁴¹ Jamison, *Admiral Eugenius of Sicily*, 340–41, Calendar nos. 10–12. Record of these royal documents was lost when the Archivio di Stato in Naples was destroyed in 1943.

⁴² Carlrichard Brühl, ed., *Rogarii II. Regis Diplomata Latina*, vol. II, Codex Diplomaticus Regni Siciliae 1 (Cologne: Bohlau, 1987), no. 73.

⁴³In the chronicle of Alexander of Telesse, he describes how King Roger II sent a *mandatum* to his vice-chancellor about some property relating to his monastery: de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogerii regis Sicilie Calabria atque Apulie*, bk. III.36: *Cancellinus ergo cum mandatum ipsius accepisset...*

functioning of the royal administration and often give the clearest sense of the hierarchical structure of offices.

The final category of source is documents of practice. These are the sales, donations, case records, confirmations, and all other kinds of legal documents related to the king or to his officials. Traditionally, alongside the *mandata* and legislation, these sources have been used as the scaffolding for the scholarly reconstructions of royal administration. The Latin (and occasional Greek) documents of the first two Kings of Sicily, Roger II (r. 1130-1154) and William I (r. 1154-1166), have been collected and edited in the *Codex Diplomaticus Regni Siciliae* series.⁴⁴ I have made extensive use of these collections in this chapter to understand the diplomatic of the royal chancery and administration more broadly. Most of the documents in these edited editions are *diplomata*, formal documents issued by the royal chancery for economic and judicial purposes like confirming older charters, donating property, making contracts, and formalizing the resolution of disputes.⁴⁵ I discuss below how useful these sources are for reconstructing certain aspects of royal administrative capacity.⁴⁶

These edited collections of *diplomata* only include documents issued by the kings themselves; they do not include a large corpus of original parchments related to royal administration from local archives like Cava. Such documents are the source base of my analysis of the workings of royal administration in the Salernitano in Chapter Five. Some original documents from a castle in Apulia called Sant'Agata are also discussed in this chapter. The editions also do not include a great number of Arabic and Greek administrative documents

⁴⁴ Brühl, *Rogarii II. Regis Diplomata Latina*; Horst Enzensberger, ed., *Guillelmi I. Regis Diplomata*, *Codex Diplomaticus Regni Siciliae* (Cologne: Bohlau, 1996).

⁴⁵ Horst Enzensberger, "Il documento regio come strumento del potere," in *Potere, Società e Popolo Nell'età Dei Due Guglielmi*, vol. 4 (Bari: Centro europeo di studi normanni-svevi, 1981), 133.

⁴⁶ See below, fn. 135-146.

related to the governance of the island of Sicily. Select documents from this corpus have been edited and published sporadically by Jeremy Johns and others,⁴⁷ but historians still eagerly await the publication of his complete edition.⁴⁸

There is therefore a considerable and diverse set of sources for understanding royal legal interests and administrative capacity. They do, however, have some limitations. Most of the sources are not related to practice and those that are (the local documents, *mandata*, and *diplomata*) do not always give a clear sense of where they fit in the broader picture of royal administration. Moreover, unlike in the Islamic world, or in Norman England, there are no administrative manuals that describe the shape of the Norman administration, the way it should work, and the function of each of its offices.⁴⁹ These aspects of the legal and institutional history must instead be gleaned from the literary, legislative, administrative, and documentary sources available. That lack of a descriptive text, among other things, has led to considerable debate over the structure of Norman government.

⁴⁷ Jeremy Johns and Alex Metcalfe, "The Mystery at Chùrchuro: Conspiracy or Incompetence in Twelfth-Century Sicily?," *Bulletin of the School of Oriental and African Studies* 62, no. 2 (June 1999): 226–59; Jeremy Johns, "The Boys from Mezzoiuso: Muslim Jizya-Payers in Christian Sicily," in *Islamic Reflections, Arabic Musings: Studies in Honour of Professor Alan Jones*, ed. Alan Jones, Robert G Hoyland, and Philip F Kennedy (Cambridge: Gibb Memorial Trust, 2004); Jeremy Johns, "Arabic Sources for Sicily," in *Byzantines and Crusaders in Non-Greek Sources, 1025-1204* (British Academy, 2007).

⁴⁸ The Arabic and Greek documents of the royal administration are largely left out of this study for reasons of space, time, and relevance. I am focused on the Latin documents because these are most relevant to the administration of the mainland provinces like the Salernitano. The non-Latin sources were only ever used in the administration of Sicily and Calabria, which were distinct from the rest of the kingdom in their organization.

⁴⁹ The Islamic administrative manual tradition is vast, but Johns has a useful discussion about them in his book on the Arabic administration of Sicily. See: Jeremy Johns, *Arabic Administration in Norman Sicily: The Royal Diwan* (Cambridge: Cambridge University Press, 2002), 15; Rustow devotes two chapters to administrative manuals in her book on Fatimid documents. The first traces the manuscript history and authors of certain Fatimid manuals (Ch. 10), and the other uses one of those manuals, the work of Ibn al-Sayrafi, and her documentary evidence to reconstruct the structure of the Fatimid chancery (Ch. 11): Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton: Princeton University Press, 2020), chaps. 10–11; Rustow's discussion of Fatimid petitions also discusses some administrative manuals and gives an idea of the kind of information they contained. They were clearly detailed and useful. See: Marina Rustow, "The Fatimid Petition," *Jewish History* 32, no. 2–4 (December 2019): 367–68; Richard Fitzneale et al., *Dialogus de Scaccario: The Dialogue of the Exchequer*, Oxford Medieval Texts (Oxford: Oxford University Press, 2007); Nick Barratt, "Finance and the Economy in the Reign of Henry II," in *Henry II: New Interpretations*, ed. Christopher Harper-Bill et al. (Woodbridge: The Boydell Press, 2007), 242–56.

Historiography

There are essentially two strands of legal-historical writing about the Norman Kingdom of Sicily. One is concerned with the royal administration, both fiscal and legal: its organization, hierarchies, and the identity and responsibilities of its officials. The other is about royal legislation more specifically and particularly how it fits in the picture of the twelfth-century European legal revival. The two strands are connected but let us take them each in turn.

Traditionally, scholars have extolled the virtues and sophistication of the Norman Kings' administrative capabilities. This complex tradition stretches back to the early nineteenth century,⁵⁰ but Evelyn Jamison's comment that the Norman kingdom was "the best organized state of the Middle Ages" is emblematic.⁵¹ The first scholar to propose a complete fiscal administrative structure was Carlo Alberto Garufi in 1901, based on the Latin, Greek, and Arabic documents of Sicily.⁵² He did not, however, deal with the peninsula in detail. Evelyn Jamison, whose brilliant early twentieth-century work (especially the prosopography) is still essential for the topic, reconstructed the administration of Apulia and Capua under Kings Roger II and William I based on literary sources like the chronicles of Romuald and Alexander, the texts of royal legislation, and a remarkable survey of original documents from all over the peninsular kingdom, many of which are no longer extant.⁵³ She constructed a cohesive picture of the

⁵⁰ The best study of the historiography is Takayama's, though his conclusions have been challenged by later scholars and will be further challenged in this chapter: Takayama, *The Administration of the Norman Kingdom of Sicily*, 11–24; More recent is: Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, (Roma: viella, 2018), 30–32.

⁵¹ Jamison, "The Norman Administration of Apulia and Capua," 265.

⁵² C.A. Garufi, "Sull'ordinamento amministrativo normanno in Sicilia, exhiquier o diwan?," *Archivio Storico Italiano*, V, XXVII (1901): 225–63.

⁵³ The archives of the Archivio di Stato in Naples, where many of the documents of the Norman and Hohenstaufen kings were stored, were destroyed by the Nazis in 1943 during their occupation of southern Italy. See: Count Riccardo Filangieri, "Report on the Destruction by the Germans, September 30, 1943, of the Depository of Priceless Historical Records of the Naples State Archives," *The American Archivist* 7, no. 4 (1944): 252–55 Unfortunately,

Norman administration out of these sources that identified and arranged the different officials in a systematic hierarchy and even assigned them administrative districts.⁵⁴ Her reconstruction has been the basis for all subsequent Anglophone discussions of the administration. Another outline of the administration proposed by Mario Caravale in 1964 largely followed Garufi and Jamison's schemes, except for his argument, now widely accepted, that the administration eventually became split geographically, between Sicily (plus Calabria) and the mainland.⁵⁵ All of these studies and schemes worked from the assumption that a reference to a royal official, such as a chamberlain or justiciar, was in fact a reference to an organized financial or judicial administration whose complete shape only just evaded the historian and could be reconstructed.⁵⁶

Hiroshi Takayama, whose scheme is now the standard, has recently taken a more measured approach, stressing how royal administration varied and changed across time and space.⁵⁷ He argues that in the early years of the kingdom, before the reign of William II (r. 1166-1189), administration (both fiscal and legal) was still decentralized and dependent on local power structures. This was especially true on the mainland. In the traditional County of Sicily (which included Calabria), much of the land was governed directly as part of the royal demesne, and there is stronger evidence for centralized fiscal structures based on Fāṭimid models and staffed

there has not been a systematic attempt to reconstruct the Naples archive or what may have been lost from the Norman period. Some indication of what was lost sometimes appears in later work. One finds, for example, multiple references to documents "destroyed in 1943" in the calendar of documents appended to Evelyn Jamison's 1957 book on the Admiral Eugenius of Sicily. See: Jamison, *Admiral Eugenius of Sicily*, 338, 341, 358.

⁵⁴ Jamison, "The Norman Administration of Apulia and Capua"; Evelyn Jamison, "The Administration of the County of Molise in the Twelfth and Thirteenth Centuries," *The English Historical Review* 44, no. 176 (1929): 529–59.

⁵⁵ Mario Caravale, "Gli Uffici Finanziari Nel Regno Di Sicilia Durante Il Periodo Normanno," *Annali Di Storia Del Diritto* VIII (1964): 177–223; Mario Caravale, *La Monarchia Meridionale: Istituzioni e Dottrina Giuridica Dai Normanni Ai Borboni*, Collana Di Fonti e Studi 6 (Roma: Laterza, 1998).

⁵⁶ See Carocci's comments on this tendency: Carocci, *Lordships of Southern Italy*, 364–65.

⁵⁷ Takayama, *The Administration of the Norman Kingdom of Sicily*, 23; Hiroshi Takayama, "Law and Monarchy in the South," in *Italy in the Central Middle Ages: 1000-1300* (Oxford: Oxford University Press, 2004), 66.

by Arabic- and Greek-speaking bureaucrats.⁵⁸ North of Calabria, though, there is little evidence of such an organized administration until the reign of William II (r. 1166-1189).⁵⁹ It was only around 1168, under William II, that the *duana baronum*, the branch of the royal fiscal administration concerned with the peninsular regions, first appeared. Takayama argues that only once this office was created can we speak of “the completion of centralization of the Norman administrative system.”⁶⁰ Therefore, Takayama largely agrees with earlier evaluations of the structure and centralization of the kingdom’s administration but delays its realization to the reign of William II.

Not all assessments of Norman administration are as careful and measured as Takayama’s. In 1964, Antonio Marongiu famously called the Kingdom of Sicily a “model state,” based on the principles of sovereignty and legislative authority expressed in royal legislation and literary sources.⁶¹ Even more bombastically (and anachronistically), Harold Berman called the Norman Kingdom “the first modern territorial state in the West, with the first modern Western system of royal law.”⁶² Underpinning these claims is the connection of law and state-building in

⁵⁸ The foundational study remains that of Jeremy Johns. He was the first scholar in the Anglophone tradition to reexamine the Arabic-language evidence of the various *dīwāns* from Sicily. His conclusions, that Roger II attempted to reconstitute the former Islamic administration using Fāṭimid officials imported from Egypt, remains the scholarly consensus: Jeremy Johns, *Arabic Administration in Norman Sicily: The Royal Diwan* (Cambridge: Cambridge University Press, 2002); See especially Part Two of Nef’s monograph: Annliese Nef, *Conquérir et gouverner la Sicile islamique aux XIe et XIIe siècles*, Bibliothèque des Écoles française d’Athènes et de Rome, 346 (Rome: École française de Rome, 2011), 237–353.

⁵⁹ The kings still tried to administrate effectively; Roger II reorganized the counties of the mainland in the 1140s and began the survey of military obligations to the crown known as the *Catalogus baronum* in 1150 or so. See: Houben, *Roger II of Sicily: A Ruler between East and West*, 154–59; Fernández-Aceves, *County and Nobility in Norman Italy*; Evelyn Jamison, ed., *Catalogus Baronum*, vol. 101, Fonti per la storia d’Italia (Roma: Istituto storico italiano per il Medio Evo, 1972).

⁶⁰ Takayama, *The Administration of the Norman Kingdom of Sicily*, 148, 165.

⁶¹ Antonio Marongiu, “A Model State in the Middle Ages: The Norman and Swabian Kingdom of Sicily,” *Comparative Studies in Society and History* 6, no. 3 (1964): 319.

⁶² Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 414; To be fair to Berman, he was following a tradition set by the great Charles Homer

the twelfth century, crystallized in Joseph Strayer's 1970 monograph *On the Medieval Origins of the Modern State*. He argues there that, since "the state was based on law and existed to enforce law," a strong state (of the European kind) cared about the law and used it as a means of extending their power.⁶³ For scholars like Marongiu and Berman, the mere existence of royal legislation that expressed seemingly modern principles of sovereignty and legislative authority meant that Norman Sicily could be called a state. Its statehood then led them to assume (since in a state, power is structured by enacted law) that the legislation was evidence not only of royal ambitions, but also the realities of power in a clear one-to-one manner. Marongiu argues that royal officials "were subject to control through laws which punished both illegitimate appropriation and dereliction of duty;" in support of this claim, he merely cites the legislation that says as much.⁶⁴ Berman, too, claims that the Normans used law to "effectuate" their rule, but does not cite any evidence of practice in support of this claim.⁶⁵

It is the most basic tenet of legal-cultural studies that there is not such a clear relationship between norms and practice; just because legislation says something should happen one way does not make it so.⁶⁶ This is obvious, but it bears pointing out because even when scholars do not accept that legislation straightforwardly structured practice, they *do* tend to assume that there was a royal administrative plan or program structured by royal law.⁶⁷ Scholars like Jamison or Takayama gather material from a wide variety of local contexts hoping to find evidence of royal

Haskins, who called the Kingdom of Sicily "the first modern State": Charles H. Haskins, *The Normans in European History* (Boston: Houghton Mifflin Company, 1915), 233.

⁶³ Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970), 23.

⁶⁴ Marongiu, "A Model State in the Middle Ages," 312–13.

⁶⁵ Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, 419.

⁶⁶ See discussion of legal culture as a methodology in Introduction, fn. 87–88.

⁶⁷ Takayama, *The Administration of the Norman Kingdom of Sicily*, 75–76; Carocci, *Lordships of Southern Italy*, 364–66.

officials. When they find them, they recreate administrative structures that accommodate both the evidence from local documentary sources and the literary and legislative texts, as if the two must line up. This leads them to create administrative schemes that are perhaps over-organized and not representative of the reality of royal power.

This brings us to the second major strain of legal historiography in the Norman Kingdom, which is concerned with understanding the nature of royal legislation and especially its place in the larger narrative of the twelfth-century legal revival. During the eleventh century, the full text of Justinian's *Corpus iuris civilis*, the emperor's 534 codification of Roman law and legal learning, was rediscovered in Western Europe. Scholars have varying opinions about who rediscovered the texts and when, but all agree that the most important of these texts in the context of the legal revival was the *Digest*, the book of Justinianic law dedicated to jurisprudence.⁶⁸ By the mid-twelfth century, there was a group of jurists in Bologna dedicated to studying and teaching the *Digest* and the rest of the *Corpus iuris civilis* (as well as the texts of canon law) and by the thirteenth, these jurists and their followers had transformed the study and practice of law in Western Europe.⁶⁹ As discussed above, the origins and nature of the Norman *Assizes* have been contested since they were discovered.⁷⁰ In particular, scholars have puzzled

⁶⁸ The argument that most scholars have adopted is that of Fournier, who argued that the laws were rediscovered as part of the efforts of canonists in reforming circles searching for legal precedents for papal power. See: Paul Fournier, "Un tournant de l'histoire du droit, 1060-1140," *Nouvelle revue historique de droit français et étranger* 4 (1917): 129–80; Charles Radding argued, instead, that the laws were rediscovered by Lombard jurists in Pavia, the evidence of which is found in the marginal glosses to Lombard law texts. See: Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850-1150* (New Haven: Yale University Press, 1988); Charles Radding and Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival* (Leiden: Brill, 2007).

⁶⁹ Anders Winroth, "The Legal Revolution of the Twelfth Century," in *European Transformations: The Long Twelfth Century*, ed. John Van Engen and Thomas F. Noble (Notre Dame: University of Notre Dame Press, 2012), 340–45; Susan Reynolds, "Medieval Law," in *The Medieval World*, ed. Peter Linehan and Janet L. Nelson (London: Routledge, 2003), 572–73.

⁷⁰ See above, fn. 25-28.

over the ‘Roman’ nature of the *Assizes* attributed to Roger II and have varying opinions about the sophistication of Roman legal knowledge at Roger II’s court and its connections to Bolognese legal learning.⁷¹

Kenneth Pennington provides the most comprehensive attempt to connect the Normans in Sicily to the Roman legal revival in Bologna. Based on paleography, the codicological evidence of the other texts bound with the legislation, and analysis of the text, he argues that the Vatican version of the *Assizes* represents “a royal compilation of laws” dating from Roger II’s reign (r. 1130-1154) made by a trained jurist (or jurists) who had access to and experience with the *Digest*.⁷² Given the general paucity of places to acquire formal legal training that involved the study of the *Digest* in Western Europe in the early twelfth century, Pennington supposes that such a jurist or jurists had to have come from the schools in Bologna.⁷³ This is an interesting problem that deserves further study, but the intellectual roots of the Norman *Assizes* are beyond the scope of this dissertation. Most important for my purposes is that Pennington’s impulse to connect Roger’s court to Bologna also connects Roger’s legislative activity to the narratives of state formation. Strayer had argued that twelfth-century kings and rulers needed legally-minded

⁷¹ Ennio Cortese, *Il diritto nella storia medievale. 2: Il basso medioevo* (Rome: Il cigno Galileo Galilei, 1999), 323; Those who believe Roger’s court had a great deal of Roman influence: Caspar, *Roger II (1101-1154) und die Grundung der Normannisch-Sicilischen Monarchie*, 222–24; Zecchino, *Le Assise di Ruggerio II: Problemi di storia delle fonti e di diritto penale*, 92; Matthew is the most pessimistic about the legislation’s Roman sophistication: Matthew, *The Norman Kingdom of Sicily*, 186–87; helpful summary in: Houben, *Roger II of Sicily: A Ruler between East and West*, 138–39.

⁷² Pennington, “The Normans in Palermo,” 145, 150.

⁷³ Pennington, “The Normans in Palermo,” 158–62; there is also a substantial tradition of scholarship tracing the inspiration for the king’s laws and legislative ideology to the Byzantines, but Pennington does not engage with this theory. See: Francesco Brandileone, *Il diritto romano nelle leggi normanne e sveve del Regno di Sicilia* (Rome: Fratelli Bocca, 1884), 337; Francesco Brandileone, *Il diritto greco-romano dell’Italia meridionale sotto la dominazione normanna*, vol. xxxvi, Archivio Giuridico (Bologna, 1886); Antonio Marongiu, “La forma religiosa del matrimonio nel diritto bizantino, normanno, e svevo,” in *Byzantine, Norman, Swabian, and Later Institutions in Southern Italy* (London: Variorum Reprints, 1972), 12; Walter Ullmann, “Roman Public Law and Medieval Monarchy: Norman Rulership in Sicily,” in *Jurisprudence in the Middle Ages: Collected Studies*, Variorum Collected Studies Series (London: Variorum Reprints, 1980), 171-175; Zecchino, *Le Assise di Ruggerio II: Problemi di storia delle fonti e di diritto penale*, 128.

people, ideally (but not necessarily) trained in legal schools like Bologna, to run their administrations.⁷⁴ By arguing that Roger's legislation was the product of such a Bologna-trained jurist, Pennington makes the claim that Roger's kingdom should be seen as a place where the kind of state-building that Strayer argues for occurred, and perhaps even earlier in the twelfth century than elsewhere.

For Pennington, Roger is therefore a key figure in both the narrative of the legal revival and Strayer's state-building narrative, which assumes the superiority of enacted law like the *Assizes* over local or customary law as a foundation for state building.⁷⁵ Pennington gives King Roger a prominent place in that narrative by noting that, if he is right that the Vatican version is indeed an official royal compilation of laws, this "would have preempted Frederick II's *Constitutions* as the first code of laws promulgated by a secular ruler in Europe" and been "an extraordinarily early exercise of royal legislative prerogatives."⁷⁶ He even begins his article by directly connecting the two narratives, quoting Haskins' evaluation of the Kingdom of Sicily as the "first modern state."⁷⁷ Therefore, by virtue of their legislation, the Norman Kings of Sicily claim a prominent place in a Western legal and governmental tradition extending to the present.

However, because he is only interested in the intellectual history of the *Assizes*, Pennington does not discuss whether the laws were put into practice, though this is important in the context of state building. Indeed, there is very little discussion in the scholarship of Norman

⁷⁴ Strayer, *On the Medieval Origins of the Modern State*, 24–26.

⁷⁵ Chris Wickham has criticized this narrative and Strayer's assumption of enacted law's superiority, as the "Grand Narrative of the origins and rightful supremacy of the centralized nation state." See: Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford: Oxford University Press, 2003), 7.

⁷⁶ Pennington, "The Normans in Palermo," 146, 152 Pennington is also careful to note that Roger's laws do not form a comprehensive code and were not meant to. Historians should not judge the king's achievement by modern standards.

⁷⁷ Haskins, *The Normans in European History*, 233, quoted in: Pennington, "The Normans in Palermo," 140.

royal legal culture of what royal administration actually did. Therefore, the guiding questions of this chapter (and the following) are about, on the one hand, royal legal interests and, on the other, the capacity of the royal government to act on those interests.

Content and Interests of Royal Legislation

The Norman *Assizes* are our best source for understanding royal legislative ideology and the subjects of royal legal interest. As discussed above, the text of the Vatican version is preceded by a prologue that justifies the king's legislative powers with references to the Bible, the *Codex*, and the *Digest*.⁷⁸ The text presents the voice of the king speaking directly to the nobility of the realm. He claims the ability to “reshape the ways of justice and piety where we see them to be strangely distorted” because he, with God's help, “restored peace by laying low [his] enemies.” The text presents the reasoning behind the king's legislative authority as a kind of syllogism. By offering God mercy and justice through their good rule (the peace and tranquility described by the literary sources we began with), “the office of royal authority claims for itself a certain privilege of priesthood.” Then, it goes on, “a certain man, wise and skilled in the law, calls interpreters of the law priests of the law.” So the king is a priest of the law by virtue of his offering of mercy and justice, and this in turn makes him an interpreter of the law who “obtain[s] the authority of justice and laws” and “ought to in part set them up in a better state and in part reshape them.”⁷⁹ This argument for the king's legislative authority was grounded in Roman legal concepts, especially the idea that those who interpret law were “priests of the law,” a straightforward adaptation of the Roman jurist Ulpian's words in the first section of the *Digest*.⁸⁰ This language, as Pennington argues, “establishes Roger's status as a ‘princeps,’” the prince of Justinian's

⁷⁸ Pennington, “The Normans in Palermo,” 146–50.

⁷⁹ VL *Proemio*. For Latin text and a full translation, of the prologue, refer to Appendix 1.

⁸⁰ *Digest* I.1.1.

Corpus iuris civilis, “whose authority to promulgate, abrogate, and derogate law was unlimited.”⁸¹

Following the prologue is a kind of reservation clause that gives further expression to the king’s legislative authority and defines the constitutional arrangement of the kingdom:

“We order that the laws newly promulgated by our majesty, mitigating excessive harshness through piety, in this manner encouraging pleasant things through government and elucidating obscurities, be generally observed by all. On account of the variety of peoples subject to our rule, the usages, customs, and laws (*moribus consuetudinibus legibus*) that up until now they have observed are not abrogated, unless perhaps what is in them seems very obviously contrary to our present decrees.”⁸²

This clause is framed as a separate statute in the Vatican version, but is inserted as a prologue in the Cassino version, where the text is abbreviated (but contains the same information—the Cassino compiler was, in general, a good editor).⁸³ The explicit approval of traditional legal systems shows that royal lawmakers were aware of the diversity of legal traditions within the kingdom.⁸⁴ The king reserved the right to change laws, but in practice, the legal traditions followed by the inhabitants of the kingdom continued to structure most everyday legal business.

⁸¹ Pennington, “The Normans in Palermo,” 148.

⁸² VL I, *De legum interpretatione*: *Leges a nostra maiestate noviter promulgatas pietatis intuitu asperitatem nimiam mitigantes mollia quodam moderamine exacuentes obscura dilucidantes generaliter ab omnibus precipimus observari moribus consuetudinibus legibus non cassatis pro varietate populorum nostro regno subiectorum sicut usque nunc apud eos optinuit nisi forte nostris his sanctionibus adversari quid in eis manifestissime videatur.*

⁸³ CC proemio: *Leges a nostra maiestate noviter promulgatas generaliter ab omnibus precipimus observari, moribus, consuetudine, et legibus non cassatis, nisi forte his nostris sanctionibus adversari quid in eis manifeste videatur* (We order the laws newly promulgated by our majesty to be observed by everyone, not cancelling the usages, customs, and laws unless something in our laws seems manifestly adverse to what is in them).

⁸⁴ Herbert Houben has also argued that this law indicates a certain amount of religious toleration. See: Hubert Houben, “Religious Toleration in the South Italian Peninsula during the Norman and Staufien Periods,” in *The Society of Norman Italy*, ed. G. A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 325–26.

As we have seen in previous chapters, the dominant tradition in the Salernitano, for example, was Lombard law, but there was also a tradition of a loosely defined Roman customary law, to which some women in the city and in other coastal regions adhered.⁸⁵ In short, royal law was supplemental to the Kingdom's older legal traditions, but the king retained the exclusive right to change laws that he chose.

Following the prologue and reservation clause, there are a further forty-two chapters in the Vatican version, all but one bearing a descriptive title, loosely organized into the following sections: ecclesiastical rights (II-X), public morality (XI-XVI), frauds (XX-XXV), family law (XXVI-XXXII), and crimes against persons (XXXVI-XLII). Scattered within these loose sections are laws on royal property, sovereignty, and procedural law. As scholars have long pointed out, many of the laws adapt (but never cite) Justinianic law, particularly Books 1 and 9 of the *Codex* and Book 48 of the *Digest*, but many are quite original.⁸⁶ The laws in the Cassino version and the *Liber Augustalis* that are not part of the Vatican *Assizes* are extremely varied in content. Some are about crimes like arson (CC 35 *De mordisonibus*) or theft and robbery (LA III, 54 *De furtis et latrocinis*), but most are procedural laws clarifying the roles of the kingdom's administrative officials.⁸⁷

⁸⁵ Barbara M. Kreutz, *Before the Normans: Southern Italy in the Ninth and Tenth Centuries* (Philadelphia: University of Pennsylvania Press, 1996), 129–30; Houben, *Roger II of Sicily: A Ruler between East and West*, 141–42; Drell, *Kinship and Conquest: Family Strategies of the Principality of Salerno during the Norman Period, 1077–1194*, 66–67, 75, 79–81, 94–96; It is, of course, always fraught to distinguish too much between Lombard and late Roman law. The Lombards borrowed a great deal from the Romans. The most concise discussion of this very difficult problem is: Nicholas Everett, *Literacy in Lombard Italy, c. 568–774*, Cambridge Studies in Medieval Life and Thought, 4th ser., 53 (Cambridge: Cambridge University Press, 2003), chap. 4; See also: Antonella Ghignoli and Francois Bougard, “Elementi romani nei documenti longobardi?,” in *L'héritage byzantin en Italie (VIIIe-XIIIe siècle)*, ed. Jean-Marie Martin, Annick Peters-Custot, and Vivien Prigent, vol. I, Collection de l'école française de Rome (Rome: École française de Rome, 2011), 241–301.

⁸⁶ Caspar, *Roger II (1101–1154) und die Grundung der Normannisch-Sicilischen Monarchie*, 251; Matthew, *The Norman Kingdom of Sicily*, 186; Houben, *Roger II of Sicily: A Ruler between East and West*, 142; Pennington, “The Normans in Palermo,” 153–54.

⁸⁷ LA I, 65 *De officio baiulorum*; LA I,9.1 *De castellanis*.

Protection for the Latin church and its properties is a central concern of the legislation,⁸⁸ as are issues related to family law, including the requirements of a legitimate marriage and multiple statutes about adultery and prostitution.⁸⁹ The claim to legislate on religious topics shows the wide scope of the kings' self-proclaimed authority and have been seen as evidence of the influence of a Byzantine model in which the ruler had authority over both secular and ecclesiastical law.⁹⁰ There are also many laws which define the nature of royal authority more explicitly. The laws forbidding sacrilege and treason exalt the king's authority and put him above reproach. Any dispute about the "judgements, decrees, deeds and plans or who the king has chosen or appointed as worthy" is declared to be "like sacrilege."⁹¹ The punishment for sacrilege was death, and for treason both death and confiscation of one's property.⁹²

The central concern of Roger's *Assizes*, preserved in the Vatican version, is criminal law.⁹³ Many of the laws, especially the final eight (VL XXXVI-VL XLIII) deal with violent acts or other crimes punishable by either death or the confiscation of one's goods by the court. Punishment for crimes could take one of six forms: capital punishment, mutilation or other physical punishment, imprisonment, confiscation, and, in two cases, a fine payable to the court.

⁸⁸ VL II *De privilegio sanctorum ecclesiarum*; VL V *De sanctorum reliquiarum venditione*; VLVI *De confugio ad ecclesiam*; VL VII *De privilegiis ecclesiarum non violandis*; VL VIII *De episcoporum privilegio*; VL IX *De illicitis conventiculis*; VL X *De ascriptiis volentibus clericari*; VL XVI *De indigne anelantibus ad sacerdotum*.

⁸⁹ VL XXVI *De coniugiis legitime celebrandis*; VL XXVII *De adulteris*; VL XXVIII *de eodem*; VL XXIX *De lenocinio*; VL XXX *De violatione thori*; VL XXXI *De adulterio*; VL XXXII *De desistentibus ab accusatione*.

⁹⁰ Loud, *The Latin Church in Norman Italy*, 282–84; Brandileone, *Il diritto romano nelle leggi normanne e sveve del Regno di Sicilia*; Marongiu, "La Forma Religiosa Del Matrimonio Nel Diritto Bizantino, Normanno, e Svevo," 12; Ullmann, "Roman Public Law and Medieval Monarchy: Norman Rulership in Sicily," 171-175.

⁹¹ VL XVII *De sacrilegiis: Disputari de regis iudicio, consiliis, institutionibus, factis non oportet. Est enim par sacrilegio disputare de eius iudiciis, institutionibus, factis atque consiliis et an is dignus sit quem rex elegerit, aut decernit. Multe leges sacrilegos severissime punierunt, set pena moderanda est arbitrio iudicantis, nisi forte manufacta templa dei fracta sunt violenter, aut dona et vasa sacra, noctu sublata sunt, hoc enim casu capitale est.*

⁹² VL XVIII *De crimine maiestatis*.

⁹³ Zecchino, *Le Assise di Ruggero II: Problemi di storia delle fonti e di diritto penale*, 129.

All these punishments are retributive, meaning that they punish an offender proportional to the wrong committed and that this punishment is good in and of itself. This is in sharp contrast to the tradition of Lombard law dominant on the mainland, where punishment was almost entirely compensatory in the form of fines (composition) payable both to the court and to the injured party. Compensatory punishment is intended to make an injured party whole, and in the context of Lombard law, to prevent further extralegal escalation of a dispute in the form of a feud.⁹⁴ The *Assizes*' use of retributive rather than compensatory punishments is most likely due to the influence of the Roman legal tradition, which very commonly used retributive punishments. The last section of Justinian's *Institutes* (one of the texts bound alongside the Vatican *Assizes*), dedicated to public prosecutions, contains a long list of crimes and their retributive punishments, many of which are also covered in the *Assizes*.⁹⁵

In sum, Norman royal legislation should be understood as a supplement to the traditional legal systems of the Kingdom that intervened in certain key areas, especially criminal law. Overall, the traditional legal systems of the kingdom, like the Lombard law in the Salernitano, continued to structure everyday legal practice. The evidence of the prologue suggests that the Norman kings thought of their legislative authority in Roman legal terms and saw themselves as the '*princeps*' of Roman law, capable of intervening in the law in whatever way they chose. The reservation clause (VL I and CC *proemio*) further reinforces this legislative ideology. This ideology was not only theoretical. Outside observers of Roger's legislative activity, such as the historian Romuald of Salerno, confirm that the king "established peace and good order" in his

⁹⁴ Katherine Fischer Drew, introduction to *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973), 27–29.

⁹⁵ Inst.18. Crimes in both the *Institutes* and the *Assizes*: treason, adultery, murder, poisoning, forgery, rape of virgins, and embezzlement. For a concise treatment of the development of criminal jurisdiction in Roman law, see: J. A. C. Thomas, ed., *The Institutes of Justinian: Text, Translation, and Commentary* (Amsterdam: North-Holland Publishing Company, 1975), 333–38.

kingdom by “promulgat[ing] laws which he had newly drafted and remov[ing] evil customs from their midst.”⁹⁶ The *Liber de Regno Sicilie* remarks how Roger “made efforts to administer justice in its full rigor,” in order to quell the disorder that afflicted his kingdom.⁹⁷ The Kings of Sicily used legislating as a way of projecting their power, and the subjects about which the kings chose to legislate should be seen as intentional and reflective of a certain agenda.

In the following sections, I focus on what royal legislation has to say about two subjects: legal documents and judicial administration. I chose them because, given the lack of criminal case records, these topics seem the most likely to be reflected in my documentary corpus. I argued in Part 1 that institutional change in the Salernitano manifested primarily as changes in documents and legal personnel; what does royal legislation have to say about these topics?

Legal Documents and the Royal Chancery

Roger legislated on documents, but his interest was largely confined to guarding documentary integrity. Within the corpus of royal legislation, only five chapters deal explicitly with documentary practices, mostly about the crime of forgery. In the Vatican legislation, a group of four chapters (VL XX-XXIII) cover forgery of royal letters and seals (VL XX *De falso*), the counterfeiting of coins (VL XXI *De cudentibus monetam*), unknowingly using forged documents and the furnishing of falsehoods with witnesses (VL XXII *De falso instrumento*), and the destruction or concealment of wills and public instruments (VL XXIII *De abolitione testamenti*). In the Cassino version, these same four laws are put under one title, *De falsi* (CC 14, *De falsi*). A fifth law about documents is only found in the *Liber Augustalis*, attributed to one of the

⁹⁶ Loud, “Romuald of Salerno, Chronicon Sive Annales, 1125-54,” 259; Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.C.1178)*, 225.

⁹⁷ Loud and Wiedemann, *A History of the Tyrants of Sicily by “Hugo Falcandus” 1153-69*, 58; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: prologue, pg. 6.

Williams. It declares any document including the name of an enemy or traitor of the kingdom “null as the basis for evidence in court or outside of court,” and in fact, the king “order[ed] them to be burned.”⁹⁸ Because the law is not dated, it is not clear what exactly this law is responding to, but it aligns with the other laws about forgery in its effort to protect the integrity of documents.

The statutes on forgery vary widely in scope; some seem to affect only royal documents while others are more expansive. VL XX *De falso* is explicitly about royal documents (*litteras regias*): “A person who alters royal letters, or seals what he has written with a counterfeit seal, should suffer capital punishment.”⁹⁹ However, the other laws in this section appear to be more inclusive of other documentary types. VL XXII *De falso instrumento* simply states that “whosoever uses a forged instrument (*falso instrumento*) unwittingly is not to be punished for the crime of forgery (*falsi crimine*).” It goes on to say, “whosoever will have furnished a falsehood with witnesses (*falsitatem testibus atruxerit*) is punished with the penalty for forgery (*falsi pena*).”¹⁰⁰ Being grouped with VL XX about forgery of royal documents and seals might indicate that the scope of this law was limited to the unwitting use of forged royal documents and falsehoods relating to royal documents, but the law does not explicitly say so. VL XXIII *De abolitione testamenti* is explicitly concerned with non-royal documents: it punishes someone who “removes, conceals, destroys, or alters wills and public instruments (*Amator testamentorum*

⁹⁸ LA II, 27 *De probationibus instrumentorum et testium: Rex Guillelmus. Instrumenta de donationibus aut concessionibus vel quibuscumque contractibus, in quibus nomen alicuius hostis vel proditoris nostri et generaliter cuiuslibet invasoris regni scriptum sit, cassa et inania reputantes nullam ex eis volumus in iudiciis vel extra iudicia probationem assumi, sed ea igne cremari mandamus.*

⁹⁹ VL XX, *De falso: Qui litteras regias aut mutat aut quas ipse scripsit notho sigillo subsignat, capitaliter puniatur* (A person who alters royal letters, or seals what he has written with a counterfeit seal, should suffer capital punishment).

¹⁰⁰ VL XXII, *De falso instrumento: Qui falso instrumento nescius utitur, falsi crimine non punitur. Qui falsitatem testibus astruxerit, falsi pena cohercetur.*

publicorum instrumentorum celator delator perversor)” with the punishment for forgery and specifies that if anyone “will have destroyed his father’s will, in order to succeed as though to one [who died] intestate, he is deprived of the inheritance from his father.”¹⁰¹

There is limited evidence of the royal government’s capacity to enforce this law, at least in and around Palermo where the royal court was headquartered. The *Liber de Regno Sicilie* records an incident in which a notary of the royal court, Petrus, destroyed a document he had written for some petitioners. He waylaid the men on the road outside Palermo because they had not given him what he considered an adequate gratuity and the chancellor, Stephen of Perche, to whom Petrus had appealed in hopes of getting more money, had sided with the petitioners. On the road, Petrus “snatched the royal writ (*licteras regias*) from them, broke the seal (*rupto sigillo*), and tore it up (*discerspit*).” When the chancellor heard what Petrus had done, he put him in prison until he could figure out “what kind of punishment a person ought to suffer who had so patently acted in violation of the king’s peace and had severely harmed and disgraced the king’s majesty.” Eventually, Stephen let him go, “merely banning him from exercising the office of notary in future.”¹⁰² Petrus certainly broke several royal laws in this case, most obviously VL XXII *De falso instrumento*, which forbids the destruction of public instruments (*publicum instrumentum*), but the chancellor does not punish him with death as that law prescribes. He seems to have had wide discretion in his application of the law.

In contrast to these criminal statutes on false documents, the *Assizes* do not contain clear rules about creating valid ones: it has no rules about diplomatic or the use of specific kinds of

¹⁰¹ VL XXIII, *De abolitione testamenti: Amator testamentorum, publicorum instrumentorum, celator, delator, perversor eadem pena tenetur. Si quis patris testamentum deleverit, ut quasi ab intestato succedat, patris hereditate privatur.*

¹⁰² Loud and Wiedemann, *A History of the Tyrants of Sicily* by “Hugo Falcandus” 1153-69, 163–64; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: chap. XXXVIII, pg. 113.

documents in legal contexts. By the thirteenth century, such rules about correct diplomatic were part of Frederick II's *Liber Augustalis*. It specified that legitimate documents had to be written in "common and legible letters (*ad commune litteraturam et legibilem redigantur*)"—by which he meant to abolish the unique curial scripts of Naples, Amalfi, and Sorrento—and only on parchment.¹⁰³ Specific rules about document authentication required that documents be subscribed by at least two witnesses, a notary, and a judge.¹⁰⁴ The Norman legislation does not contain any such rules. Nor does it contain rules or instructions about the use of documents.

In comparison, recall that local custom in the Salernitano had very specific rules about diplomatic. In Chapter One, I discussed a formula, enshrined in city custom, that required documents of sale to be a *chartam* containing a pledge, a suitable guarantor, a defense clause, a penalty obligation, and a judicial signature.¹⁰⁵ This formula is attested in multiple documents and clearly structured the way that documents were made in the Salernitano. The other comparanda, given the historiography, are the Norman Kingdom in England and the Fāṭimid Caliphate. England during the 1160s and 1170s was rapidly developing a system of royal writs—documents made in a specific form that initiated cases in royal courts.¹⁰⁶ The structure and uses of these writs were outlined in royal law, summarized in the text called *Glanvill*.¹⁰⁷ In contemporary Fāṭimid Egypt, documents like petitions and decrees had very specific and well-established

¹⁰³ LA I 80, *De instrumentis conficiendis*. He may also have considered the Beneventan script of southern Italy illegible. For the political and documentary implications of this, see: Maureen C. Miller, "Abbot Balsamon's Book: The Origins of Administrative Registers at Cava Dei Tirreni," *The Catholic Historical Review* 108, no. 1 (January 2022): 1–43.

¹⁰⁴ LA I 82, *De fide instrumentorum*.

¹⁰⁵ See Ch. 1, fn. 54.

¹⁰⁶ Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), 158–61; M. T. Clanchy, *From Memory to Written Record, England 1066-1307*, 3rd ed. (Oxford: Blackwell, 2013), 92–94, 275.

¹⁰⁷ Ranulf de Glanvill, *The Treatise on the Laws and Customs of the Realm of England, Commonly Called Glanvill*, ed. G.D.G. Hall (Oxford: Clarendon Press, 1965), bk. XII, chap. 25, pp. 147–48.

diplomatic structures.¹⁰⁸ The petition procedure, for example, was one of the central ways that Fāṭimid subjects interfaced with their government, and documents had to conform to specific diplomatic norms to be useful and effective.¹⁰⁹

There are echoes of similar ambitions in Norman Sicily. The royal fiscal administration in Sicily revived Fāṭimid fiscal-administrative methods from Egypt and made use of Arabic-speaking administrators.¹¹⁰ The royal chancery also issued documents in Latin, Greek, and Arabic, depending on the recipient, throughout the Norman period, though scholars' analyses of the extant royal documents suggest that the proportion of Latin documents increased steadily over time.¹¹¹ However, these administrative methods were not introduced or structured by legislation. The royal government does not seem to have had the interest or the capacity to impose a unified diplomatic on the whole kingdom in the twelfth century. Such a standardization of documentary practices is a thirteenth-century phenomenon.

There is, however, evidence that royal Latin chancery practice could be influential in certain local contexts where royal power was strong. The royal chancery was staffed by professional notaries in the southern Lombard tradition and had a stable diplomatic from the kingdom's earliest days.¹¹² Roger's chancery followed the southern Lombard custom of naming

¹⁰⁸ The work of Marina Rustow is indispensable here: Marina Rustow, "Fatimid State Documents," *Jewish History* 32, no. 2–4 (December 2019): 221–77; Rustow, *The Lost Archive*, 138–73.

¹⁰⁹ Rustow, "The Fatimid Petition," 368–70.

¹¹⁰ Johns, *Arabic Administration in Norman Sicily: The Royal Diwan*, chap. 10.

¹¹¹ Horst Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," in *The Society of Norman Italy*, ed. G. A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 120–24; Vera von Falkenhausen, "The Greek Presence in Norman Sicily: The Contribution of Archival Material," in *The Society of Norman Italy*, ed. G. A. Loud and Alex Metcalfe, The Medieval Mediterranean (Leiden: Brill, 2002), 272–74; G. A. Loud, "The Chancery and Charters of the Kings of Sicily (1130–1212)," *The English Historical Review* 124, no. 509 (2009): 792–94.

¹¹² Enzensberger, "Il documento regio come strumento del potere," 119. Enzensberger's is the best study of the Norman chancery, which remains understudied in favor of the Arabic administration of the island.

the notary in the corroboration (*corroboratio*) phrase at the end of the document, a practice which reveals that, in the first two decades of the monarchy (1130-1150), there were one or two notaries at a time making royal documents. The most prominent was a layman named Wido, whose use of the royal title (*intitulatio*) *Sicilie et Italie rex* may indicate that he came from Salerno, where that title was also used.¹¹³ Notaries continued to be named in most documents of William I (r. 1154-1166) and their numbers increased so that there are at least six working at one time.¹¹⁴ Once *mandata*, documents containing administrative instructions, became more abundant after Roger II's reign (d. 1154), it becomes more difficult to track the identity of royal notaries, since *mandata* do not name them.

This chancery was responsible for producing two kinds of documents: *mandata* and *diplomata*, each with a very different diplomatic structure. First, the *mandata*. Based on the material evidence of the sole surviving example (from 1147),¹¹⁵ they were written on small parchments and bore a wax seal. The references to *mandata* in other documents also mention that the documents being copied in were sealed with wax.¹¹⁶ When referenced in a document, royal *mandata* are often called "sacred royal documents (*sacras regias letteras*)," the same term used in VL XX *De falso* about the penalty for forgery of such documents.¹¹⁷ They had a very simple epistolary diplomatic that began with a salutation, followed by the instructions for the addressee,

¹¹³ Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 123; Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, nos. 19, 23, 24, 29, 31, 32, 36, 37, 40, 42, 43. Other notaries were Michael (no. 16); Nicolaus (nos. 28 and 30); and Gregorius (no. 46).

¹¹⁴ Horst Enzensberger, ed., *Guillelmi I. Regis Diplomata*, Codex Diplomaticus Regni Siciliae (Cologne: Bohlau, 1996). There are seven named notaries in the documents of William I: Saul (nos. 2 and 29); Ioannis (nos. 5 and 11); Robertus (nos. 6, 15, 24, and 25); Sanctorus (nos. 7 and 18); Rogerius (no. 14); Matheus (nos. 17, 22, and 27); and Riccardus (no. 33).

¹¹⁵ Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 73, pg.209–211.

¹¹⁶ Arca xxxviii 34 (1182): *cereo uiridis sigillo sigillatas*; Arca xxxix 13 (1183).

¹¹⁷ Arma Magna I 37 (1182); Arca xl 34 (1185).

and concluded with a simple dating clause including the place where the document was made. In general, *mandata* were framed as a means of communication solely among the king and royal administrators, and a method of responding to petitions, as shown by their being copied into case records.¹¹⁸ They could also be used to communicate new legislation.¹¹⁹ King William II sent a *mandatum* to the Archbishop of Trani in 1170, for example, in which he ordered his officials to stop trying cases about adultery, a crime initially covered by royal law but to which William ceded jurisdiction to the church.¹²⁰ Their short and solely administrative nature means that, as mentioned above, most are *deperdita*, lost documents. It is highly likely that many more of these were created than we have record of, and they were probably very commonplace documents.

Diplomata, on the other hand, were very valuable and formal documents. They could be made for a variety of legal and economic reasons, such as confirming older charters, donating royal property, or formalizing dispute settlement. The diplomatic structure and means of authentication for *diplomata* were fairly standardized from the kingdom's early days and changed only slightly across its history.¹²¹ They were written on parchment and generally began with an invocation similar to the one used in Salerno (*In nomini Dei eterni et salvatoris nostri*

¹¹⁸ This will be discussed more in Chapter Five.

¹¹⁹ Enzensberger, "Il documento regio come strumento del potere," 134; Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 125–31.

¹²⁰ Arcangelo Di Gioacchino, *Le carte che si conservano nello Archivio Capitolo Metropolitano della città di Trani (dal IX secolo fino all'anno 1266)* (Barletta: Tipografia Editrice V. Vecchi e Soci, 1877), 134, n.61. The laws concerning adultery: VL XXVII, *De adulteris*; XXVIII, *De eodem*; XXX, *De violation thori*; XXXI, *De adulterio*; XXXII, *De desistentibus ab accusatione*

¹²¹ Royal diplomatic structures have been the subject of study by Horst Enzensberger, in particular: Enzensberger, "Il documento regio come strumento del potere"; Enzensberger, "Chanceries, Charters, and Administration in Norman Italy"; Also: G. A. Loud, "The Chancery and Charters of the Kings of Sicily (1130-1212)," *The English Historical Review* 124, no. 509 (2009): 779–810; Julia Becker, "Charters and Chancery under Roger I and Roger II," in *Norman Tradition and Transcultural Heritage: Exchange of Cultures in the "Norman" Peripheries of Medieval Europe*, ed. Stefan Burkhardt and Thomas Foerster (Burlington: Ashgate Publishing Company, 2013), 79–97.

Ihesu Christi), followed by the royal title.¹²² Documents involving the donation of property to churches often had *arengae* that gave pious expression to royal beneficence towards the church.¹²³ Then followed the narration (*narratio*), rendered in the first person present tense (*concedimus, confirmamus*) and the penalty clause (*sanctio*), which ended the main section of the document. The *eschatocol* began with the corroboration clause (*corroboratio*), which named the notaries and contained an order (*precepimus*) by the king to seal the document with a lead (or rarely, gold) seal bearing the royal image (*et nostro cum tipario plumbea bulla insigniri iussimus*). Then followed a description of where the document had been given (*data*), the name of the royal official who had given it (*data Panormi per manus Guarini*), and finally the dating clause.¹²⁴ Some documents were signed with a *rota*, in imitation of papal practice, but most were sealed with a lead bulla (*bullae plumbeae*).¹²⁵

Certain of these diplomatic norms appear to have been adopted in at least one local context on the mainland: the *castello* of Sant'Agata in Apulia. The castle became a royal possession in 1138 during Roger II's wars of conquest on the mainland.¹²⁶ Its documents

¹²² Before 1136, Roger II's title was *Sicilie et Italie rex*, but after 1136, Roger and the chancery adopted the tripartite *intitulatio*: *rex Sicilie ducatus Apulie et principatus Capue*, which remained the royal title for the duration of the Norman kingdom's existence. Concise discussion in: Horst Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 134–41.

¹²³ Again, Enzensberger is the authority: Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 141–47.

¹²⁴ Bruhl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 36, pg. 103. In the kingdom's early years, up until about 1143, the dating clause was calculated with the regnal year (*tertio Kalendas Maii anno regni nostri quarto*). After 1143, the dating clause began to include the year from the incarnation, the month, indiction, and the king's three-part title (*anno incarnationis dominice millesimo centesimo quinquagesimo q mense Maii indictionis terciæ anno vero regni domini Willelmi Dei gratia magnifici et gloriosissimi regis Sicilie ducatus Apulie et principatus Capue quinto feliciter amen*). Horst Enzensberger, *Guillelmi I. Regis Diplomata*, vol. III, no. 8, pg. 26.

¹²⁵ Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 147.

¹²⁶ Loud, "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," bk. II.51, pg. 96; de Nava and Clementi, *Alexandri Telesini abbatis ystoria Rogarii regis Sicilie Calabria atque Apulie*, bk. II.51, pgs. 47–48; Loud, "The Chronicle of Falco of Benevento," 235; Falco of Benevento, *Cronisti e scrittori sincroni della dominazione normanna nel Regno di Puglia e Sicilia*, 243.

scarcely mention the kings until 1154.¹²⁷ By 1163, when a new notary, Alexandrius, had appeared, documents from the castle were using the tripartite royal title (*rex Sicilie ducatus Apulie et principatus Capue*) first used by the royal chancery in 1136.¹²⁸ Since we know nothing about Alexandrius' training or identity beyond his name, it is difficult to know the nature of his connection to the royal chancery, but the use of the tripartite title demonstrates at least an awareness of its practices in Sant'Agata.

More significant is that documents from Sant'Agata also used a penalty clause characteristic of the royal chancery that reserved half the required composition payment (or fine) for the king. From the earliest days of the kingdom, royal documents specified that half of any composition payment should go the king's palace (*palatio nostro*), while the other half went to the charter's beneficiary. Thus, in an 1136 royal charter of exchange with the monastery of S. Trinitatis de Mileto in Calabria, it was specified that if anyone "should presume to violate or break apart the charter of exchange, let him know that the composition (*sciat se composituram*) is ten pounds of gold (*auri libras decem*), half to our palace (*medietatem palatio nostro*) and the other half to the aforementioned monastery (*aliam medietatem predicto monasterio*)."¹²⁹ This formula was introduced in 1129, before Roger II took on the royal title in 1130, and was used by

¹²⁷ Documents from the castle do not mention the king in the dating clause at all until the death of Roger II in 1154, sixteen years after he took over the castle. William I is the first king mentioned and was given the title *dei gratia magnificus rex* by the notary at the time, Roggerius son of Maraldus: Arca xxviii 102 (1154). There is a gap in the corpus between 1154 and 1163 and in this time, a new notary, Alexandrius *notarius*, took over document production in the castle. Arca xxxi 18 (1163) is the first document of Alexandrius and the first use of the tripartite *intitulatio* in Sant'Agata.

¹²⁸ Enzensberger, "Chanceries, Charters, and Administration in Norman Italy," 136; Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 43, pgs. 119–123. Before 1136, Roger II's chancery had used the title *Dei gratia Sicilie et Italie rex*, similar to the *Sicilie et Italie rex* used by Salernitan notaries: see Ch.1, fn. 55-58.

¹²⁹ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 42, pg. 118: *Si qua vero quod absit magna humilisve persona huius nostre permutationis paginam violare vel interrompere presumpserit sciat se composituram auri libras decem medietatem palatio nostro et aliam medietatem predicto monasterio...*

the chancery until at least 1143.¹³⁰ The first appearance of the formula in Sant'Agata was in an 1145 document written by Roggerius *notarius* and signed by Maraldus *regio iussu iudex* (judge by royal order) and three other witnesses, where it is declared that the composition would go “half to the king and half to the aforementioned church (*media regis et media in predicta ecclesia*).”¹³¹ This formula was changed slightly when Alexandrius *notarius* took over c. 1163 by adding *dominus* before *rex* and using *medietatem* rather than *media*, which aligned more closely with the formula of the royal chancery.¹³² After 1163, the formula remained stable and was used until at least 1186 and perhaps longer.¹³³

The evidence of royal influence on documentary culture in Sant'Agata is unique in my corpus of documents. There is no similar evidence of influence in the Salernitano. However, unlike most of the Salernitano, Sant'Agata was part of the royal demesne and thus directly subordinate to the kings and their administration. Unlike other royal demesnes in the Salernitano, it was also a castle, and therefore a local administrative center (and had been since Lombard times, it seems).¹³⁴ The appearance of the royal composition formula in 1145 also coincides with the appearance of a judge who says he was appointed by the king (Maraldus *regio iussu iudex*). It seems possible that in places like Sant'Agata (local administrative centers that are part of the royal demesne), the royal administration was able to impose itself on local legal cultures and significantly change legal practice. Reserving half of the composition payment for the king is

¹³⁰ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, nos. 14, 19, 24, 28, 29, 30, 31, 32, 36, 37, 38, 40. In three instances, 16, 23, and 43, the composition went only to the royal palace.

¹³¹ Arca xxvi 4 (1145).

¹³² Arca xxxi 18 (1163). The phrase was therefore: *medietatem ecclesie et medietatem domino regi*.

¹³³ Arca xxxvi 103 (1179); Arca xxxvii 42 (1180). The final document I have from Sant'Agata in the corpus is Arca xli 22 (1186).

¹³⁴ The town may have been the center of a Lombard *gastaldatus* in the eleventh century, since a document from 1095 includes the characteristic phrase *Actum civitatis Sancte Agathe* that usually indicates that a place is a *gastaldatus*. See: Martin, 820–21.

certainly a significant concession to royal power and, whether the money ever actually made it to the king or not, it is evidence of royal administrative interests and ambitions.

Other evidence of similar administrative ambitions and limited capacity can be found in *diplomata* recording royal confirmation of ecclesiastical properties. In 1144, according to a formula found in four separate *diplomata*, Roger II ordered that “all privileges of churches and subjects of our kingdom” be newly confirmed by the royal administration.¹³⁵ In response, four monasteries—S. Maria di Valle Giosafat;¹³⁶ S. Nicolai de S. Marcho near Malvito;¹³⁷ S. Maria of Macchia;¹³⁸ and S. Maria de Turri.¹³⁹—came to the royal court over a two-month period (October and November of 1144) while Roger II was in the city of Messina and showed their documents to the royal officials, who recorded them in new charters authenticated by the king.¹⁴⁰ Many of the documents shown and confirmed by these monasteries and churches (all of which were in Calabria) were in Greek, so it seems the king was having his notaries and officials—writing in Latin—check and confirm what they contained. The formula itself seems to claim that this was a universal requirement for the kingdom— “all privileges of churches and subjects of our kingdom” had to be confirmed—but in practice, the order was limited to the king’s holdings in Sicily and Calabria. Jeremy Johns, in his study of this period of renewal in 1144-1145, cites thirty-three surviving charters of renewal, the majority of which were in Greek or bi-lingual

¹³⁵ The documents of confirmation all have the same formula, which appears after the invocation, outlining why the documents were being made. This formula appears in: Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II:64–67.

¹³⁶ Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 64, pg. 183–186.

¹³⁷ Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 65, pg. 187–189.

¹³⁸ Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 66, pg. 189–192.

¹³⁹ Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 67, pg. 193–197.

¹⁴⁰ Matthew, *The Norman Kingdom of Sicily*, 211; Takayama, *The Administration of the Norman Kingdom of Sicily*, 83–84; Houben, *Roger II of Sicily: A Ruler between East and West*, 151.

(Greek and Arabic).¹⁴¹ This is a considerable number of documents (the chancery was surely very busy) and it shows how competent royal administration could be in Sicily and Calabria, but the limited geographic scope should not be ignored. The king's power was limited to the local context of his demesne in Sicily and Calabria, where documents were more likely to be in Greek and Arabic, the language of his more experienced administrators. Roger's ambitions to govern the rest of the kingdom the same way (where documents were much more likely to be in Latin), as expressed in the formula, outpaced his capacity.

There appears to have been an earlier round of similar ecclesiastical confirmations in 1133, that were similarly localized and opportunistic. In October of that year, Cava went to Salerno where the king was holding a court and had a charter of confirmation made by Roger II (complete with a gold *bull*a) which confirmed all the donations and rights that they had been granted by earlier Norman rulers like the Dukes of Apulia.¹⁴² Earlier, in September of 1133, the bishop of Monopoli went to a town called "Castellum Novum" to have his bishopric confirmed;¹⁴³ later in September, another monastery, S. Maria in Brindisi, got confirmation of gifts given to them by Bohemund of Antioch and his wife Constance when the king was in Rapolla in Apulia;¹⁴⁴ a few days later, the bishop of Castellanata went to Gravina for a confirmation;¹⁴⁵ the archbishop of Taranto went the farthest (all the way to Salerno) in October to have his privileges confirmed, probably at the same court that Cava did.¹⁴⁶ All of these *diplomata* share the same *arenga* giving pious expression to the king's willingness to confirm

¹⁴¹ Johns, *Arabic Administration in Norman Sicily: The Royal Diwan*, chap. 5.

¹⁴² Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 31, pg. 87–89.

¹⁴³ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 28, pg. 79–80.

¹⁴⁴ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 29, pg. 81–83.

¹⁴⁵ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 30, pg. 84–86.

¹⁴⁶ Brühl, *Rogerii II. Regis Diplomata Latina*, vol. II, no. 32, pg. 89–91.

ecclesiastical property. It therefore seems that, as the king was moving through his new territories, churches came to him asking to have their privileges confirmed and the king granted those requests. There is no indication, like in Messina eleven years later in 1144, that the churches came in response to a general call to do so. Rather, they were opportunistically making use of the king's presence, which was not regular on the peninsula. As in 1144 the king's power was localized; the royal administration (such as it was in 1133, so soon after the foundation of the kingdom) could not compel their entire kingdom to renew its privileges. Or if they did, those documents of confirmation do not survive.

While the king's legislative attention with regards to documents was focused on criminalizing forgery and other issues of documentary integrity, the evidence of the legal documents shows ambition and capacity to impact documentary practices on a wider scale. The adoption in Sant'Agata of diplomatic elements characteristic of the royal chancery suggests a geography of power based on royal demesne land and control of administrative centers like castles. More research needs to be done on whether similar patterns of royal intervention can be discerned in other such administrative demesne centers. As it stands, the evidence suggests a limited and localized royal capacity to administer the kingdom. The confirmation of privileges from 1144 was ambitious in its scope but could only be realized locally where the king's administration was staffed by individuals who knew how to make such ambition a reality. The confirmations also betray how porous the boundary was between legal and fiscal administration. Charters of confirmation were legal acts fulfilling a fiscal purpose. A similarly porous boundary characterizes the roles of the kingdom's administrative personnel.

Judicial Administration

Over the course of the twelfth century, a royal judicial administration emerged that was staffed by three types of legal officials: justiciars, chamberlains, and *baiuli*.¹⁴⁷ Their individual remits varied, but all of them had judicial responsibilities. Unlike in the Salernitano, where the title of judge (*iudex*) clearly referred to a specific kind of legal official, judgeship is a slippery category in royal law.¹⁴⁸ In certain instances, a *iudex* appears to be a certain type of legal official under royal authority. VL XXIV *De officialibus publicis*, which punishes embezzlement (*peculatus*) by officials of the *res publica* (*officialibus reipublice*) or judges (*iudices*) with capital punishment, appears to conceive of judges and officials of the *res publica* as distinct entities, both subject to royal oversight.¹⁴⁹ Another law, VL XIX *De nove militia*, refers to judgeship as a profession that the king could regulate.¹⁵⁰ But in most cases, royal legislation uses the term *iudex* to mean anyone who judges. The *iudex* of the forgery procedure described in VL XXI *De cudentibus monetam*, for example, who “shall be in the middle between both parties, that when all the evidence finally agrees he shall impose sentence,” does not necessarily refer to an official called a *iudex*, but rather whatever official has been designated or entrusted to judge that case.¹⁵¹

Any member of royal administration could be deputized and referred to as a judge. Early in the kingdom’s history in 1133, for example, King Roger sent “Master Guarinus, our chaplain

¹⁴⁷ There is one other type of official called a constable who seem to have been in charge of some aspects of military organization, but they are not mentioned in the legislation. See: Takayama, *The Administration of the Norman Kingdom of Sicily*, 105–8.

¹⁴⁸ As discussed in Chapter Two, the title carried considerable ambiguity in twelfth-century southern Italy and Sicily more generally. It might refer to any combination of a government official, someone with knowledge of the law, an agent of a lord, a literate person with social authority, or someone imbued with legal authority by their community. See Ch. 2, fn. 12-25.

¹⁴⁹ VL XXIV, *De officialibus publicis: Qualitas persone gravat et relevat penam falsi. Officiales reipublice, vel iudicis qui tempore amministrationis pecunias publicas subtraxerint, obnoxii crimini peculatus, capite puniantur, nisi regia pietas indulserit.*

¹⁵⁰ VL XX, *De nove militia*

¹⁵¹ VL XXI *De cudentibus monetam: Ubi questio falsi inciderit, diligens inquisitio mox sequatur, argumentis, testibus, collatione scripturarum et aliis vestigiis veritatis. Non solum accusator probationibus honeretur, set inter utramque personam iudex sit medius, ut omnibus que competunt exquisitis demum sententiam ferat.*

and chancellor (*magistro Guarino nostro cappellano et cancellario*)” and “Theodorus, our admiral (*Theodoro nostro amirato*)” to Messina to investigate a case between the bishop and people of Patti. The document later refers to these royal officials as *iudices*, indicating that the latter was a general term that could encompass different kinds of officials and referred to their capacity to judge rather than an office.¹⁵² Later, in the 1150s and 1160s, the *Liber de Regno Sicilie* similarly refers to the Master Justiciars, the highest legal officials in the royal administration, as both *magistri iustitiarum* and *iudices* in the same sentence.¹⁵³

The fact is that royal legal administration was not composed of people called *iudices*, but rather new officials like the justiciars, chamberlains, and *baiuli*. Justiciars appear in local documents as early as 1135, but they are not mentioned in the Vatican version of the legislation. As Takayama has argued, their place in the hierarchy of royal legal administration, as well as their judicial remit, developed over time; royal administration was not a fully-formed set of institutions from the beginning of the kingdom.¹⁵⁴ The office may have been inspired initially by the *μεγὰς κριτής*, or “great judge,” a Byzantine official who appears in Calabrian documents from the early twelfth century into the Norman period as the highest level of judicial administration in the region.¹⁵⁵ The Latin term, *iustitarius*, was probably inspired by contemporary usage in Norman England, given the presence of certain prominent Englishmen at

¹⁵² Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 23, pg. 64.

¹⁵³ Loud and Wiedemann, *A History of the Tyrants of Sicily by “Hugo Falcandus” 1153-69*, chap. 49, pg. 174–5; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: chap. XXXIX, pg. 124.

¹⁵⁴ Jamison, “The Norman Administration of Apulia and Capua,” 302–6; Takayama, *The Administration of the Norman Kingdom of Sicily*, 77–80.

¹⁵⁵ Jamison, “The Norman Administration of Apulia and Capua,” 303; Caspar, *Roger II (1101-1154) und die Grundung der Normannisch-Sicilischen Monarchie*, 309.

Roger II's court, like the chancellor Robert of Selby or Master Thomas Brown.¹⁵⁶ Evelyn Jamison has shown convincingly that the justiciars were drawn from the middling levels of the local nobility, a group whose members probably had little to no legal training. They were instead locally-powerful members of the community with enough authority to enforce the law.¹⁵⁷ However, some of the justiciars who sat on the royal court in Palermo, like Judex Tarantinus, were certainly trained legal experts; this judge gave his extensive library of legal texts to his grandsons in his will.¹⁵⁸

The scope of the justiciars' legal power is described in CC 36 *Que sit potestas justitiarii*, which assigns them competence over a number of violent crimes: "We decree that highway robbery, breaking of houses, attacks on the highway, violence inflicted upon women, duels, homicides, ordeals, false accusations of crimes, arson, and all offenses for which one ought to be subject to the enslavement of his person and his property to the court should be judged by the justiciars."¹⁵⁹ The jurisdiction granted to them in this statute largely coincides with the crimes in the royal legislation,¹⁶⁰ and the phrase which assigns to the justiciars all cases where one's body or property was subject to enslavement by the royal court covers many others.¹⁶¹ This definition

¹⁵⁶ Jamison, "The Norman Administration of Apulia and Capua," 306; Charles H. Haskins, "England and Sicily in the Twelfth Century," *The English Historical Review* 26, no. 103 (1911): 437–43.

¹⁵⁷ Jamison, "The Norman Administration of Apulia and Capua," 308–12.

¹⁵⁸ Evelyn Jamison, "Judex Tarantinus," *Proceedings of the British Academy* LIII (1967): 467–71.

¹⁵⁹ CC 36 *Que sit potestas justitiarii: Sancimus ut latrocinia fracture domorum insultus viarum vis mulieribus illata duella homicidia leges parabiles calumpnie criminum incendia forisfacte omnes de quibus quilibet de corpore et rebus suis mercedi curie debeat subiacere a iustitiariis iudicentur...*

¹⁶⁰ VL XXXVII *De sicariis*; VL XXXVIII *De infantibus et furiosis*; VL XXXIX *De fure*; VL XL *De incendiariis*; VL XLI *De precipitatoribus*; VL XLII *De poculo*; CC 25 *De plagiariis*; CC26 *De sicariis secundum legem corneliam*; CC 27 *De incendiis*

¹⁶¹ VL V *De sanctarum reliquiarum venditione*; VL X *De ascriptiis volentibus clericari*; VL XII (untitled); VL XVIII *De crimine maiestatis*; VL XXI *De cudentibus monetam*; VL XXVII *De adulteris*; VL XXXV *De mederi volentibus*; VL XXXVI *De plagiariis*; VL XLIII *Si iudex litem suam fecerit*; CC 33 *De fugacibus*; CC 34 *De seditionariis*.

of the main royal legal officials' jurisdiction may help explain why many legal issues that are not usually considered criminal acts, like forgery or adultery, are framed as crimes punishable by death, mutilation, or confiscation in the *Assizes*. However, it is not clear when this categorization developed and whether justiciars already had this jurisdiction when the Vatican version was created—CC 36 is not in the Vatican legislation. The justiciars had formal oversight of these crimes by 1153 at the latest, one year before Roger II died, when an identical list of crimes under their jurisdiction appeared in a charter of Count Hugh of Molise.¹⁶² Whether or not (or when) the justiciars achieved a monopoly over high criminal justice throughout the kingdom as the legislation claims is a matter of considerable debate, but not one that can be solved with the evidence available.¹⁶³

The *Liber de Regno Sicilie* makes clear that the justiciars tried criminal cases in and around the cities of Palermo and Messina. After 1156, the structure of the royal court seems to have been reorganized and centralized, and many criminal cases went to the *regalis magna curia*, a standing court based in Palermo composed of three Master Justiciars.¹⁶⁴ It is not clear if there was an analogous court for the mainland. The *regalis magna curia* appears to have been the kingdom's highest court, reserved for the most important cases involving prominent people. Four of the seven major cases narrated in the *Liber de Regno* were tried in the *regalis magna curia*: the trial of Salernus, the judge from Salerno; the trial of Richard, *stratigotus* of Messina; the trial

¹⁶² Jamison, "The Administration of the County of Molise in the Twelfth and Thirteenth Centuries," 557 doc. 2.

¹⁶³ Sandro Carocci argues, based on charters of *consuetudines*, that when lords ceded rights of justice and jurisdiction to churches and monasteries, they excluded rights over the most serious crimes because the king held those exclusively. See: Carocci, *Lordships of Southern Italy*, 196–200; Fernández-Aceves, on the other hand, argues that over the course of the twelfth century, countship and royal officialdom became ever more entwined, so that there was little difference between comital rights and royal rights. See: Fernández-Aceves, *County and Nobility in Norman Italy*, 172–78.

¹⁶⁴ Jamison, "Judex Tarantinus," 479–95.

of Count Henry of Montescaglioso; and the trial of Count Richard of Molise. The Master Justiciars were the judges for each of these cases, as well as the legal experts responsible for court procedure and sentencing. They heard accusations, examined proof—which in these cases was always witness testimony—and issued sentences.

In each of these cases, the crimes committed were covered by the *Assizes*, though the full penalty outlined in the legislation was never imposed; instead, criminals tended to be imprisoned, perhaps to await execution but also for political reasons. Salernus was tried for and convicted of poisoning (VL XLII *De poculo*), had his property confiscated, and was sentenced to death, the appropriate punishment from royal legislation, but was first put in prison to try to get him to reveal his accomplices.¹⁶⁵ The *stratigotus* of Messina was charged with robbery, arson, theft, murder, destruction of vines, adultery, and judicial bribery. He was convicted, had his property confiscated, and was held in prison.¹⁶⁶ Count Henry was charged with treason (VL XVIII *De crimine maiestatis*) and Count Richard with sacrilege (VL XVII *De sacrilegiis*); both were imprisoned until the court could decide what to do with them.¹⁶⁷ The justiciars running the courts therefore had considerable discretion in how they applied the laws and could even moderate punishments. Beyond the cases narrated in the *Liber de Regno*, it is difficult to know how punishment worked in practice because there are no extant records of criminal trials in the twelfth-century Kingdom of Sicily. Accidental documentary loss or deliberate destruction both

¹⁶⁵ Loud and Wiedemann, *A History of the Tyrants of Sicily* by “Hugo Falcandus” 1153-69, 172–75; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: chap. XXXXVII-L, pg. 121–24.

¹⁶⁶ Loud and Wiedemann, *A History of the Tyrants of Sicily* by “Hugo Falcandus” 1153-69, chap. 53, pg. 183–4; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, chap. LIII, pg. 131–133.

¹⁶⁷ Loud and Wiedemann, *A History of the Tyrants of Sicily* by “Hugo Falcandus” 1153-69, chap. 53, pg. 189, 194; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, chap. LIII, pg. 137–8, 141.

medieval and modern is surely to blame, in part,¹⁶⁸ but it is also the case that, for reasons unknown, neither Cava nor any other southern Italian monastery kept records of criminal trials.

The *baiuli* were the lowest level royal officials, subordinate to the justiciars, but also the most visible in local documents. CC 36 describes the *baiuli*'s responsibility as judges of first instance or inquest: "while the complaint of the aforementioned [offenses] (meaning those belonging to the justiciar's jurisdiction) should be brought before the *baiuli*, other [offenses] are also able to be defined by them."¹⁶⁹ All criminal trials, according to this law, should have started with a complaint lodged before a *baiulus*. As judges of first instance, they were the royal officials closest to local legal contexts and most likely to interact with local populations. In urban contexts, *baiuli* were usually called *stratigoti* or *catepani*, titles of Byzantine origin that the royal administration co-opted.¹⁷⁰ There is not clear evidence of how the positions were filled, but in Salerno it was common for members of one family, the Caputi, to hold the position, so local and family traditions may have played a part.¹⁷¹

Being the first level of royal legal administration, *baiuli* were also the subject of the most royal legislation about their role, most of which came during the reigns of the Williams. The laws of the Normans referenced in the *Liber Augustalis* of Frederick II (1231) as laws "of King

¹⁶⁸ Recall the destruction of the Archivio di Stato in Naples in 1943: Filangieri, "Report on the Destruction by the Germans, September 30, 1943, of the Depository of Priceless Historical Records of the Naples State Archives."

¹⁶⁹ CC 36 *Que sit potestas justitiarii: clamoribus supradictorum baiulis depositis cetera (cetere) vero a baiulis poterunt definiri.*

¹⁷⁰ Martin, *La Pouille du VIe au XIIe Siècle*, 820–21. Martin's evidence is from Apulia. In Campania, the king refers to *tua baiulatione* when speaking to the *stratigotus* of Sarno, indicating that the two titles were interchangeable: Arca xxxix 13 (1182). Another document from Sarno in 1178 suggests that this was not always the case, though, since the *baiulus* in that document was a *dominus* Romoaldus Marchisanus, who is not *stratigotus*: Arca xxxvi 26 (1178).

¹⁷¹ The first royal *stratigotus* was Sergius Caputus, who had the position until at least 1146 (Arca xxv 40 (1146)). The position then left the family for two decades: Marius held the title in 1150 (Arca xxvii 64 (1150)) and Petrus de Riso in 1163 (Arca xxxi 32 (1163)). But in 1171, Landulfus Caputus, Sergius' brother, was *stratigotus* (Arca xxxiii 100 (1171)). Riccardus, son of Iohannes *iudex* held the position in 1178 (Arca xxxvi 32 (1178)), but later in 1182, another Caputus, Landulfus' son Rogerius, held the position (Arma Magna I 37 (1182)).

William” contain eight separate statutes with instructions for or references to the *baiuli*.¹⁷² These laws extended and clarified their role, but not in a systematic or organized fashion; rather, the laws seem to have responded to situations as they arose. Some of the statutes are corrections to bad practices that *baiuli* had adopted, such as remitting oaths given to local judges in the course of legal business in return for bribes or not being good stewards of church property that had been put in their care when a church had no pastor.¹⁷³ Others clarify the *baiuli*’s role as the officials that received information or complaints on the king’s behalf (this aligns closely with their role outlined in CC 36 as judges of inquest), a duty sometimes also assigned to the justiciars. When someone found treasure anywhere in the kingdom, for example, they were to bring it to a *baiulus* or justiciar without delay (*sine dilatione*) so as not to be accused of theft.¹⁷⁴ Similarly, when fugitive slaves (*servos et ancillas*) were seized and the lord could not immediately be found, they were to be given to a *baiulus*.¹⁷⁵

These laws of the Williams make clear that the *baiuli*’s role was not strictly legal and that the boundary between legal and fiscal administration was thin and porous in the Norman Kingdom. One law explicitly enjoined the justiciars, chamberlains, and *baiuli* to help the finance ministers of the *duana de secretis* when necessary, further blurring the boundary between the fiscal and legal.¹⁷⁶ So does the documentary evidence from the Salernitano analyzed in the next

¹⁷² LA I 37, *De officio magistrorum camerariorum et baiulorum*; LA I 59, *De sacramentalibus non remittendis*; LA I 65, *De officio baiulorum*; LA I 66 *De fure capto iustituario assignato cum re furtiva*; LA III 31, *De administratione reum ecclesiarum post mortem prelati*; LA III 34, *De hiis qui servos alienos vel pecuniam inveniunt*; LA III 35, *De thesauris inventis iustitariis vel baiulis ad opus fisci assignandis*; LA III 83, *De privilegiis ecclesiarum/De adulteriis in foro ecclesie pertractandis et clericis a laycis non iudicandis/De adulteriis coercendis*.

¹⁷³ LA I 59, *De sacramentalibus non remittendis*; LA III 31, *De administratione rerum ecclesiarum post mortem prelati*.

¹⁷⁴ LA III 35, *De thesauris inventis iustitariis vel baiulis ad opus fisci assignandis*.

¹⁷⁵ LA III 34, *De hiis qui servos alienos vel pecuniam inveniunt*.

¹⁷⁶ LA I, 37 *De officio magistrorum camerariorum et baiulorum*.

chapter; the *baiuli* only ever appear in the documents as fiscal and administrative agents, collecting port dues and other taxes on the king's behalf or trying to extend his demesne.¹⁷⁷ Even if they had legal duties related to criminal law that do not show up in the sources, they clearly had multiple jobs without clear distinctions between roles.

By the end of the Norman period, royal officials may have been at least sometimes arranged in a hierarchy. One statute from the *Liber Augustalis* indicates that the *baiuli* got their *baiulatione* or bailiwick from an official called a master chamberlain (*magister camerarius*).¹⁷⁸ How a master chamberlain differed from a standard chamberlain is not clear, but a document from the Salernitano shows that by the 1180s, *baiuli* were subordinate to chamberlains. In 1183, Alfano Ioncata, chamberlain of the lord king (*domini regis camerarius*) sent a *mandatum* to Americus Partispalle, *stratigotus* (a local term for the *baiulus*), ordering him to give Cava certain property which was “in [his] bailiwick of Sarno (*in tua baiulatione Sarni*).”¹⁷⁹ This document shows the existence of both a chain of command and an administrative district (the *baiulatione*). The legislation is not clear about where the justiciars fit into this hierarchy, the exact number or role of officials, or the boundaries of administrative districts. There is clearly a certain level of administrative structure and sophistication at work, but it is not clearly articulated or defined. Without Jamison or Takayama's hypothetical structural schemes to impose order on the chaos, Norman royal administration appears unsystematic and disorganized, especially when compared with the Kingdom's peers, like the Fāṭimids, whose petition and response procedure (only one part of a much greater administrative structure) was elaborate, sophisticated, and pervasive.¹⁸⁰

¹⁷⁷ See Ch. 5, “Administrative Power and Legal Power.”

¹⁷⁸ LA I, 65 *De officio baiulorum*.

¹⁷⁹ Arca xxxix 13 (1183).

¹⁸⁰ Rustow, *The Lost Archive*, chap. 8.

The royal legal administration in the Norman Kingdom was a superstructure imposed on top of local legal systems, many of them run by *iudices*, that continued to function beneath it as they had before the foundation of the monarchy. Royal law made no attempt to regulate these local judges. Only in the thirteenth century, in the *Liber Augustalis*, would Frederick II make explicit rules about the number and responsibilities of local judges,¹⁸¹ that they should be laymen,¹⁸² and even that they should issue all judgements as written documents.¹⁸³ Frederick's law code establishes that the exclusive source of judicial authority in his kingdom is the king; the Norman laws do not make such a claim.

Indeed, there is very little direct evidence of the kings appointing local *iudices* anywhere in the kingdom, and none at all in the Salernitano. The *Liber de Regno Sicilie* describes a situation in which there were insufficient judges and notaries to handle cases before Palermitan courts but does not say whether the kings could or did appoint more. After the young chancellor Stephen of Perche tried to carry through some legal reforms in the city to prevent "the subject population [from being] oppressed by powerful persons," the crush of happy petitioners was so great that "there were not enough judges (*iudices*) to examine all the cases and the number of notaries (*notarii*)—notwithstanding the recent increase—hardly sufficed to write out the writs."¹⁸⁴ There is limited evidence of royal judges on the mainland in the form of titles

¹⁸¹ LA I 73, *De ordinandis iudicibus et quando et quibus rebus possit peti triciesima*; LA I 79, *De ordinatione iudicum et notariorum publicorum et numero eorum*.

¹⁸² LA I 82, *De fide instrumentorum*.

¹⁸³ LA I 77, *De sentiis in scriptis ferendis*.

¹⁸⁴ Loud and Wiedemann, *A History of the Tyrants of Sicily by "Hugo Falcandus" 1153-69*, chap. 40, pg. 165; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola ad Petrum panormitane ecclesie thesaurarium di Ugo Falcando*, 22: chap. XXXX, pg. 114.

referencing the king.¹⁸⁵ Such judges were present, most notably, in the Apulian cities of Bari¹⁸⁶ and Troia,¹⁸⁷ but there is no evidence of the meaning of this title—how the judges were appointed and paid, or whether they had to report to the king. In Troia, a judge named Secundinus first appeared as a “judge of the Duke (*iudex ducalis*),” meaning Roger II, in 1130¹⁸⁸ and later as a “judge of the king (*iudex regalis*)” in 1164, suggesting that his title change was largely superficial.¹⁸⁹

Again, the most interesting evidence for the capacity of royal administration to impact local practice comes from Sant’Agata. When the king took over the castle in 1138, no changes were made to the legal personnel working there. For seven years (1138-1145) a judge named Augustaldus *iudex* worked in the castle, authenticating documents alongside three witnesses in the Apulian fashion.¹⁹⁰ Then, in 1145, a judge appeared in the castle calling himself “Maraldus, judge by order of the king (*Maraldus regio iussu iudex*).”¹⁹¹ As soon as he appears, so too does the designation of half the composition payment to the king, which strongly suggests that he introduced it.¹⁹² The formula continued in use after his disappearance in 1163 until at least 1186.¹⁹³ This is strong evidence of the capacity of royal government to shape legal practice at the local level.

¹⁸⁵ Oldfield, *City and Community in Norman Italy*, 86–87, 103–4.

¹⁸⁶ Arca xxv 2 (1140); Griso Falconis *qui supra regalis iudex* and *Regalis critis qui super* Leo de Rarza.

¹⁸⁷ Arca xxvii 117 (1151); Arca xxxi 74 (1164).

¹⁸⁸ Arca xxii 112 (1130).

¹⁸⁹ Arca xxxi 74 (1164).

¹⁹⁰ Arca xxv 70 (1143); xxv 71 (1143); xxv 74 (1143).

¹⁹¹ Arca xxvi 4 (1145).

¹⁹² See above, pg. 37-38.

¹⁹³ Arca xxxvi 103 (1179); Arca xxxvii 42 (1180). The final document I have from Sant’Agata in the corpus is Arca xli 22 (1186).

But at the same time, one could also argue that the touch of royal administration was relatively light in Sant'Agata. Maraldus did not change any other aspects of local legal practice, or at least none that leave their mark in the documentary record. Dozens of documents survive from his eighteen-year tenure (1145-1163) and all look essentially the same as those that came before his time and were authenticated in the Apulian fashion (by at least three witnesses and perhaps a judge). Nor was the influence of the king over the castle's judges steady or constant; Maraldus' successors, Grimoaldus and Riccardus *iudices*, do not reference the king in their judicial titles.¹⁹⁴ In other words, there is clear evidence of royal interest in playing a role in local institutions of judgeship, but, once again, the capacity of the royal government to maintain that interest, and perhaps institutionalize it, was limited. Royal influence, even in places directly subject to the kings, was sporadic and the kind of capillary power required to create and maintain institutions at a distance was beyond the scope of royal administration in the twelfth century.

Conclusion

The goal of this chapter was to identify royal legal interests and evaluate the capacity of royal government to act on them. The evidence of narrative sources, legal output (including legislation), and documents of practice suggests that the kings had a diverse set of legal interests, but shaping diplomatic norms in their kingdom was not among them. They did not issue laws with documentary requirements or develop administrative institutions with specific diplomatic requirements. They were able to influence local diplomatic in royal demesne centers like Sant'Agata and compel some of their subjects to have their documents confirmed by royal charter, but these instances of royal power were scattered in time and space.

¹⁹⁴ Arca xxxi 44 (1163); Arca xxxvi 103 (1179).

There is more evidence of royal interest in building new legal institutions, interest which seems to have increased over the course of the twelfth century. The earliest legislation about new royal legal institutions, probably issued by Roger II just before his death in 1154, defined the jurisdiction of the justiciars and *baiuli*. Later legislation of the Williams further defined the roles of the royal legal officials, especially the *baiuli*, as they became better established, accumulated new responsibilities, and did things that required correction. The narrative evidence confirms that royal legal administration was powerful in and around Palermo, while the evidence of royal legal power further afield suggests that officials were superimposed on existing local legal structures, over which the kings had only occasional influence. Sant'Agata is again a place where royal power seems to have been strong in the middle of the twelfth century, and the castle's judge credits the king as the source of his legal authority.

This chapter has a broader frame than those previous; it was interested in the kingdom as a whole rather than a single region. I took this broader approach in an effort to reevaluate some of the prevailing conceptions of royal power in the Norman Kingdom. Based on the evidence of royal interests and capacity examined above, it seems that royal administration in the Kingdom of Sicily was perhaps less powerful than scholars have traditionally claimed. There were certainly pockets of royal power all over the kingdom (seemingly associated with the royal demesne or royal presence), but where these were in time and space was based on contingent local factors more than a broad understanding that the king's power extended over all his subjects. There are echoes of this kind of broad-based and expansive royal power in legislation and literary sources, but the king's capacity to realize such claims was limited. The next chapter will return to the local context of the Salernitano to examine the evidence for the king's practical power there, in one of the regions that felt royal administration most acutely. So, like the Kings

of Sicily did so many times over the years, let us take ship from Palermo and make our way back to Salerno, the kingdom's other great coastal capital.

Appendices: Royal Legislation

Appendix 1: Prologue to the Vatican Version

Latin Text (from Zecchino, 1984)	English Translation (based on Loud, 2012)
Dignum et necessarium est o procures si quod de nobis et universi regni nostri statu meritis non presumimus; a largitate divina gratia consecuta recipimus; divinis beneficiis quibus valemus obsequis respondeamus ne tante gratie penitus ingrati simus. Si ergo sua misericordia nobis deus pius prostratis hostibus pacem reddidit integritatem regni tranquillite gratissima tam in carnalibus quam in spiritualibus reformavit reformare cogimur iustitie simul et pietatis itinera ubi videmus eam et mirabiliter esse distortam. Hoc enim ipsum quod ait inspiramentum (inspiramur?) de munere ipsius largitoris accepimus dicente ipso, per me reges regnant et conditores legum decernunt iustitiam. Nichil enim gratius deo esse putamus quam si id simpliciter offerimus quod eum esse cognovimus misericordiam scilicet atque iustitiam. In qua oblatione regni officium quoddam sibi sacerdotii vendicat privilegium. Unde quidam sapiens legisque peritus iuris interpret iuris sacerdotes appellat. Iure atque qui iuris et legum auctoritatem per ipsius gratiam optinemus eas in meliorem statim partim erigere partim reformare debemus et qui misericordiam consecuti sumus in omnibus eas tractare misericordius interpretari benignius presertim ubi severitas earum quandam inhumanitatem inducit. Neque hoc ex supercilio quasi iustiores aut moderatores nostris predecessoribus in condendis legibus interpretandisve nostris vigiliis arrogamus set quia in multis delinquimus et ad delinquendum procliviores sumus parcendum delinquentibus cum moderantia nostris temporibus apta conveniens esse censemus. Nam et ipsa pietas ita nos instruit dicens, Estote misericordes sicut et pater vester misericors est. Et rex et propheta, Universe vie domini misericordia et	It is worthy and proper, o nobles, if we do not presume to have merited that which concerns us and the conditions of our kingdom; we are receiving by the generosity of divine grace the following things and to the divine favors by which we are strengthened we ought to reply with obedience, lest we be entirely ungrateful for such great favor. If therefore by your mercy, Holy God, you have restored peace by laying low our enemies and by your most gracious tranquility restored the integrity of the kingdom, as much in matters of the flesh as those of the spirit, then we are compelled to reshape the ways of justice and piety where we see them to be strangely distorted. This very thing which is called inspiration we have received as a gift from His largesse, saying thus, “through me kings reign and the creators of the law discern justice.” We consider nothing to be more pleasing to God than if we simply offer to him that which we know him to be, namely mercy and justice, from which offering the office of royal authority claims for itself a certain privilege of priesthood; from this a certain man, wise and skilled in the law, calls interpreters of the law priests of the law. Therefore, by right, we who obtain the authority of justice and laws through his grace, ought to in part set them up in a better state and in part reshape them, and we who have secured mercy ought also to deal more mercifully in all things and to interpret the laws more benignly, especially where their severity exhibits some degree of inhumanity. Nor do we claim this out of arrogance as if we are more just or moderate than our predecessors in putting together or interpreting the laws through our vigilance, but because we err in many things and we are more inclined to err, we suppose that it is proper to refrain from erring with a

veritas. Et proculdubio tenebimus quia iudicium sine misericordia erit ei qui iudicium fecerit sine misericordia. Volumus igitur et iubemus ut sanctiones quas in presenti corpore sive promulgatas a nobis sive compositas nobis facimus exhiberi fideliter et alacriter recipiatis.	moderation appropriate to our times. Since the Holy One instructs us, saying, “Let you all be merciful just as your Father is merciful.” And the King and Prophet says, “All the ways of the Lord are mercy and truth.” And without doubt, we will hold that he who will do justice without mercy shall have justice without mercy done unto him. We desire, therefore, and order that you receive faithfully and eagerly the sanctions which we exhibit in the present body, whether they have been promulgated or brought together by us.
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Appendix 2: Vatican Version

Manuscript	Legislator	Number	Title
VL 8782	Roger II	I	De legum interpretatione
VL 8782	Roger II	II	De Privilegio sanctarum ecclesiarum
VL 8782	Roger II	III	Monitio generalis
VL 8782	Roger II	IV	De rebus regalibus
VL 8782	Roger II	V	De sanctarum reliquiarum venditione
VL 8782	Roger II	VI	De confugio ad ecclesiam
VL 8782	Roger II	VII	De privilegiis ecclesiarum non violandis
VL 8782	Roger II	VIII	De episcoporum privilegio
VL 8782	Roger II	IX	De illicitis conventiculis
VL 8782	Roger II	X	De ascriptiis volentibus clericari
VL 8782	Roger II	XI	De raptu virginem
VL 8782	Roger II	XII	none
VL 8782	Roger II	XIII	De apostantibus
VL 8782	Roger II	XIV	De ioculatoribus
VL 8782	Roger II	XV	De pupillis et orphanis
VL 8782	Roger II	XVI	De indigne anelantibus ad sacerdotum
VL 8782	Roger II	XVII	De sacrilegiis
VL 8782	Roger II	XVIII	De crimine maiestatis
VL 8782	Roger II	XIX	De nova militia
VL 8782	Roger II	XX	De falso
VL 8782	Roger II	XXI	De cutendibus monetam
VL 8782	Roger II	XXII	De falso instrumento
VL 8782	Roger II	XXIII	De abolitione testamenti
VL 8782	Roger II	XXIV	De officialibus publicis
VL 8782	Roger II	XXV	De bonis publicis
VL 8782	Roger II	XXVI	De coniugiis legitime celebrandis
VL 8782	Roger II	XXVII	De adulteris
VL 8782	Roger II	XXVIII	De eodem

VL 8782	Roger II	XXIX	De lenocinio
VL 8782	Roger II	XXX	De violatione thori
VL 8782	Roger II	XXXI	De adulterio
VL 8782	Roger II	XXXII	De desistentibus ab accusatione
VL 8782	Roger II	XXXIII	De iniuriis privatis personis illatis
VL 8782	Roger II	XXXIV	De iniuriis personis illatis curialibus
VL 8782	Roger II	XXXV	De mederi volentibus
VL 8782	Roger II	XXXVI	De plagariis
VL 8782	Roger II	XXXVII	De sicariis
VL 8782	Roger II	XXXVIII	De infantibus et furiosis
VL 8782	Roger II	XXXIX	De fure
VL 8782	Roger II	XL	De incendiariis
VL 8782	Roger II	XLI	De precipitatoribus
VL 8782	Roger II	XLII	De poculo
VL 8782	Roger II	XLIII	Si iudex litem suam fecerit

Appendix 3: Cassino Version

Manuscript	Legislator	Number	Title
CC 468	Roger II	[proemio]	none
CC 468	Roger II	1	De privilegiis ecclesiarum
CC 468	Roger II	2	Ut domini subiectos humane tractent
CC 468	Roger II	3	Ut regalia non minuantur
CC 468	Roger II	4	De sacrosanctis ecclesiis et episcopis et clericis
CC 468	Roger II	5	De illicitis conventiculis
CC 468	Roger II	6	Ne servi vel ascripticii clericentur
CC 468	Roger II	7	De ioculatoribus
CC 468	Roger II	8	De raptu
CC 468	Roger II	9	De apostasis
CC 468	Roger II	10	De pupillis et orphanis
CC 468	Roger II	11	De sacrilegis consiliis
CC 468	Roger II	12	De crimine maiestatis
CC 468	Roger II	13	De iniuriis curialium
CC 468	Roger II	14	De crimine falsi
CC 468	Roger II	15	De coniugiis
CC 468	Roger II	16	De crimine adulterii
CC 468	Roger II	17	De meretricibus
CC 468	Roger II	18	De accusatione adulterii
CC 468	Roger II	19	De officialibus rei publice
CC 468	Roger II	20	De furtis
CC 468	Roger II	21	De crimine lenocinii
CC 468	Roger II	22	De eodem
CC 468	Roger II	23	De vindicta adulterantium
CC 468	Roger II	24	De desistentibus de accusatione

CC 468	Roger II	25	De plagiariis
CC 468	Roger II	26	De sicariis secundum legem corneliam
CC 468	Roger II	27	De incendiis
CC 468	Roger II	28	De noxiis medicaminibus
CC 468	Roger II	29	De eisdem
CC 468	Roger II	30	De iudice depravato
CC 468	Roger II	31	De arripientibus novam militiam
CC 468	Roger II	32	De iniuriis privatorum
CC 468	?	33	De fugacibus
CC 468	?	34	De seditiariis
CC 468	?	35	De mordisonibus
CC 468	Roger II	36	Que sit potestas iustitiarum
CC 468	?	37	De intestatis
CC 468	William?	38	De excessu prelatorum et dominorum
CC 468	William	39	Rescriptum pro clericis

Appendix 4: Norman Legislation in the *Liber Augustalis*

Stürner Edition	Legislator	Book, Number (corresponding with Stürner edition)	Title
<i>Liber Augustalis</i>	William	I,6.1	De usuris
<i>Liber Augustalis</i>	William	I,21	De violentia meretricibus illata
<i>Liber Augustalis</i>	William	I, 37	De officio magistrorum camerariorum et baiulorum
<i>Liber Augustalis</i>	William	I, 45	De clericis criminaliter conveniendis et condemnandis et foro eorum.
<i>Liber Augustalis</i>	William	I, 58	Ut iustitarii non faciant vicarios loco sui
<i>Liber Augustalis</i>	William	I, 59	De sacramentalibus non remittendis
<i>Liber Augustalis</i>	William	I, 61.1+2	De officio secreti
<i>Liber Augustalis</i>	William	I, 65	De officio baiulorum
<i>Liber Augustalis</i>	William	I, 66.1	De fure capto iustituario assignato cum re furtiva
<i>Liber Augustalis</i>	William	I, 67	De quibus rebus baiuli tertiarum recipere debeant
<i>Liber Augustalis</i>	William	I, 68	De clericis conveniendis pro possessionibus quas non tenent ab ecclesia
<i>Liber Augustalis</i>	William	I, 91.1	De castellanis
<i>Liber Augustalis</i>	William	II, 27	De probationibus instrumentorum et testium
<i>Liber Augustalis</i>	William	II, 37	De campionibus
<i>Liber Augustalis</i>	William	III, 13	De statuendo dotario in feudis et castris
<i>Liber Augustalis</i>	William	III, 16	De dotariis constituendis

<i>Liber Augustalis</i>	William	III, 17	De fratribus obligantibus partem feudi pro dotibus sororum
<i>Liber Augustalis</i>	William	III, 18	De assecuratione dominorum a vassallis
<i>Liber Augustalis</i>	William	III, 19	De dominis et vassallis, in quibus adinvicem fideiubere tenentur
<i>Liber Augustalis</i>	William	III, 20	De collectis
<i>Liber Augustalis</i>	William	III, 31	De administratione rerum ecclesiarum post mortem prelati
<i>Liber Augustalis</i>	William	III, 34	De hiis, qui servos alienos vel pecuniam inveniunt
<i>Liber Augustalis</i>	William	III, 35	De thesauris inventis iustitiariis vel baiulis ad opus fisci assignandis
<i>Liber Augustalis</i>	William	III, 54	De furtis et latrociniis
<i>Liber Augustalis</i>	William	III, 55	De animalibus in pascuis affindandis
<i>Liber Augustalis</i>	William	III, 83	De privilegiis ecclesiarum/De adulteriis in foro ecclesie pertractandis et clericis a laycis non iudicandis/De adulteriis coercendis

Chapter Five: Royal Law through a Local Lens

Introduction

In August of 1178, the *stratigotus* of Salerno, Riccardus, held a court in Tusciano, a village south of Salerno on the edge of the Sele River plain. Four judges of nearby Eboli—Rao *iudex* (a familiar figure), Landulfus *iudex*, Amifredus *iudex*, and Petrus *iudex*—sat (*resideremus*) in the court, while many other honest and suitable men (*quampluribus aliis probis et ydoneis uiris*) stood alongside them (*astantibus*). Before this group of men, the *stratigotus* made a complaint on behalf of the king (*stratigotus pro parte domini regis appellationem fecit fieri*) that Cava wrongly held (*malordine tenebat*) some land that had once belonged to a certain Asclittinus of Tusciano, a man of the king (*homo domini regis*) who held his property in fief (*res eius de feudo erant*). Asclittinus had died without heirs, so Riccardus claimed that his property rightfully belonged to the king, rather than the monastery. Petrus, the *vesterarius*¹ of Cava, responded that Asclittinus had donated it to the monastery in his will—witnessed by the same Petrus *iudex* sitting in judgement—as both a repayment for a debt and also for the health of his soul. The *vesterarius* also had a document of sale for some of Asclittinus' goods to the monastery signed by Guaferius, *iudex Salerni*.

According to the *stratigotus*, these proofs were irrelevant because Asclittinus held his land in fief from the royal court (*eo quod in feudo a curia eas tenebat*) and was not permitted to give it away (*iudicare non potuit*). The monastery, on the other hand, claimed he could do this because the land had been part of Asclittinus' personal property (*patrimonio suo*); he had bought it from another Ebolitan named Gemma, daughter of Rao Tristanus, according to the usages and

¹ In most monastic contexts, the *vesterarius* was the monk responsible for the monks' clothing. At Cava, he was responsible for the administration of the monastery's properties. See: G. A. Loud, *The Social World of the Abbey of Cava, c. 1020-1300* (Woodbridge: Boydell Press, 2021), 235.

customs of the city of Eboli (*secundum usum et consuetudinem ciuitatis Eboli*). Petrus the *vesterarius*, when asked by the court if he had proof (*rationes*) of this claim, produced witnesses, who testified that the property had been part of Asclittinus' property, which he had held and possessed for a long time. They also testified to the existence of a document recording Asclittinus' purchase of the property, which the *vesterarius* then showed (*ostendit*) to the court. It had been made by Madius, priest and notary, and authenticated by Angelus *archipresbiter* and Iohannes Guandi, "who in that time in the city of Eboli exercised the office of witnessing (*qui tunc temporis in civitate Eboli testandi officium gerebant*).” All the witnesses, by the judgement of the court (*iudicio curie*), then affirmed their testimony by touching the Gospels (*iure iurando tactis sacrosanctis evangelis firmaverunt*). The court, taking counsel, decreed (*curia igitur habito consilio decrevit*) that Asclittinus was within his rights to give this property, which he held as his personal property, to the monastery of Cava. The four judges then ordered the notary to make the document for the security of the monastery and signed it. The *stratigotus*, and the king he represented, lost the case.²

This property dispute reveals the limited nature of royal legal power in the twelfth-century Salernitano. The *stratigotus* seems to have had wide administrative discretion to act on behalf of the king and aggressively pursued royal interests. However, he did so in a court over which he formally presided but did not control. The legal work—the judging of the case and the creation of the legal document recording its outcome—was handled entirely by the panel of local judges. By relying on local judges, the *stratigotus* was constrained by local customary practices and structures of power that were not necessarily sympathetic to royal interests. Much more powerful in this context were local potentates like the monks of Cava, who were able to win the

² Arca xxxvi 32 (1178).

case because of their archival power, on the one hand, and their ability to marshal support from the local people of Tusciano on the other. In comparison, royal legal administration appears weak, struggling to enforce its will on its subjects, even those, like Asclittinus, who were directly subordinate to them.

The royal administration of the Norman Kings of Sicily is not usually described as weak. As discussed in the previous chapter, there is a long historiographical tradition of characterizing the Norman Kingdom as, in Jamison's words, the "best organized state of the Middle Ages," with an exceptionally powerful and centralized royal administration. Through this administration, Roger II and his successors are said to have set out to "establish a system of government which should make the royal power a reality and a blessing, by carrying law and order into every corner of the land."³ According to Jamison's model, the mainland kingdom was divided into administrative territories from the outset. There was, for example, one district corresponding to the old Principality of Salerno (the Salernitano), another for the Principality of Capua, and one for the rest of the old Duchy of Apulia. Within these territories, a justiciar was responsible for criminal law, a chamberlain administered the royal demesne and handled civil cases with the help of subordinate *baiuli* and a constable oversaw military affairs. These officials each had their own sphere of activity so that their jurisdictions did not much overlap. In the early days of the kingdom, these officials took orders directly from the king, but after about 1156, their orders came from a new level of administrative hierarchy: the master chamberlains, master constables, and master justiciars, who were themselves connected to the royal court. This system is centralized, organized, and efficient.⁴

³ Evelyn Jamison, "The Norman Administration of Apulia and Capua," *Papers of the British School at Rome* 6, no. 6 (1913): 265.

⁴ For a summary of her main points, see: Jamison, "The Norman Administration of Apulia and Capua," 265–70.

In some respects, Jamison's picture of a centralized and powerful royal legal administration, which remains influential among historians of the South,⁵ is based on normative sources like royal legislation. Her assumption that the justiciars had exclusive criminal jurisdiction, for example, is based on the royal statute that said they do.⁶ But her system is also based on a remarkably broad set of documentary sources plucked from multiple geographic and temporal contexts. Wherever she found reference to someone with the title of a royal official, she tried to make sense of how they fit into the organizational scheme that she supposed must have existed.⁷ However, one could just as easily point to the many holes and unknowns in the system in order to argue, as Fernández-Aceves has, that "the 'royal state' as it existed at least in the peninsular provinces, consisted of the image of a recurrently absent monarch, a scattered staff of justiciars, constables, and chamberlains, and a mobile court of the king's justice...that appeared at itinerant provincial assemblies."⁸ In other words, these sources only reveal the existence of a centralized and efficient legal administration if they are read with such an organized system already in mind.

More recent work on the royal administration and its relationship to local government, like that of Fernández-Aceves, Donald Matthew, and especially Paul Oldfield, engages more with the local documentation and therefore better acknowledges the limits of royal power.⁹ But

⁵ This is especially true of Takayama: Hiroshi Takayama, *The Administration of the Norman Kingdom of Sicily* (Leiden: Brill, 1993), chap. 4.

⁶ CC 36 *Que sit potestas iustitiarum*. See Ch. Four, fn. 159-163.

⁷ Her description of the circuits of the justiciars and their administrative districts is particularly prone to this. See: Jamison, "The Norman Administration of Apulia and Capua," 336-79.

⁸ Hervin Fernández-Aceves, *County and Nobility in Norman Italy: Aristocratic Agency in the Kingdom of Sicily, 1130-1189* (New York: Bloomsbury Academic, 2020), 3.

⁹ Matthew's book is characteristically pessimistic about the power of the Norman Kings, but was ahead of its time in its sober assessment of royal power: Donald Matthew, *The Norman Kingdom of Sicily* (Cambridge: Cambridge University Press, 1992), 242-46; Fernández-Aceves' work on the counts of the mainland is an essential corrective to longstanding notions of royal control of the comital nobility: Fernández-Aceves, *County and Nobility in Norman*

even as they use more local documents, these studies still do not examine the relationship of royal and local law in depth. Donald Matthew's statement that "although the extent to which the doing of justice remained a local matter in the twelfth century cannot be examined in detail, it ought to be assumed in general" is characteristic of the scholarship.¹⁰ Most studies have approached the problem from a kingdom-wide perspective, which, given the legal-cultural diversity in the Kingdom of Sicily, makes it difficult to be specific about the mechanisms of royal legal practice at the local level.¹¹

This chapter aims to fill this gap by examining royal law in a single local context, the Salernitano, in as much detail as the sources allow. From this local documentary perspective, royal legal administration looks much less like the powerful, centralized, and well-organized system proposed by scholars like Jamison and Takayama. Instead, it appears much more in the guise of a powerful landlord eager to press claims to property and rights, but constrained by the power of local institutions, customs, and immunities.

There are three kinds of documents involving royal officials—*stratigoti*, *baiuli*, chamberlains, or justiciars—in my corpus. The least numerous are documents in which a royal official alienated land on the king's behalf. There are three of these: one grant of a fief,¹² and two

Italy, 3; Oldfield's discussion of local government remains the best available and is impressively wide-ranging, while remaining grounded in the documentary evidence: Paul Oldfield, *City and Community in Norman Italy* (Cambridge: Cambridge University Press, 2009), 99–108.

¹⁰ Matthew, *The Norman Kingdom of Sicily*, 246.

¹¹ This is especially true of Oldfield, whose command of a dizzying number of sources from multiple cities is remarkable, but necessarily means he must sacrifice detail: Oldfield, *City and Community in Norman Italy*, 103–5.

¹² The precise meaning of this word is, of course, contested. In the document itself, the *stratigotus* gives land to two brothers in exchange for 48 *tari* and some unspecified kind of service, saying only that the brothers will serve (*servietis*) in the same way as the other royal dependents in Tuscano served (*sicut alii homines de Tuscano de feudo quod a domino rege vel a parte reipublice tenent et de feudo ipso domino regi servient*). It is tempting to see this as denoting military service, but it is not clear that this is the case: Arca xxiii 70 (1134).

leases of royal land.¹³ Much more numerous are documents which record a royal official presiding over a court but otherwise being uninvolved in the court proceedings.¹⁴ These documents might record disputes, but they also record economic transactions that were, for reasons that are not always clear, done in the presence of a royal official. The final category of documents, which form the backbone of this chapter, record royal officials pressing claims to property and rights as litigants and losing the case.¹⁵ More often than not, these court cases were heard in courts over which the royal officials themselves presided, though the legal work was invariably handled by local judges.

In total, my corpus contains 34 documents from the Salernitano which involve royal officials in one of these three capacities from the beginning of the Kingdom in 1130 to the end of the Norman period in 1189. 16 of these are court cases, 9 of which (56%) are from the 1170s and 1180s. All cases are property disputes; there are no extant criminal case records from the Norman Kingdom of Sicily in the twelfth century. Given that most royal law was criminal law, as discussed in the previous chapter, the lack of criminal case records certainly affects the image of royal legal administration that the documents can reveal. Royal officials on the mainland may have been busy with criminal cases, but there are no sources.¹⁶ Additionally, of the 20 cases, only two do not involve the monks of Cava as one of the litigants, which also skews our picture

¹³ Arca xxxi 32 (1163); Arca xxxv 119 (1177).

¹⁴ Arca xxiii 71 (1134); Arca xxv 3 (1141); xxv 117 (1146); Arca xxvii 64 (1150); Arca xxviii 69 (1153); xxviii 120 (1155); Arca xxxi 85 (1164); xxxi 88 (1164); Arca xxxiv 15 (1172); Arca xxxvii 46 (1180).

¹⁵ Arca xxvi 3 (1145); Arca xxxiii 100 (1171); Arca xxxvi 26 (1178); xxxvi 32 (1178); Arca xxxvii 104 (1181); Arma Magna I 37 (1182); Arca xxxviii 34 (1182); Arca xxxix 13 (1184).

¹⁶ Scholars have long debated the extent to which royal legal officials monopolized jurisdiction of criminal cases. But since the sources relevant to the debate are uniformly prescriptive sources like *consuetudines* or other grants of immunity, and not any actual case records, the debate lies entirely in the realm of the theoretical. The justiciars *might* have controlled and issued judgements in criminal courts, but even if they did, we cannot say anything about how that worked. The most useful summary is in: Sandro Carocci, *Lordships of Southern Italy: Rural Societies, Aristocratic Powers and Monarchy in the 12th and 13th Centuries*, trans. Lucinda Byatt, First edition, Viella History, Art and Humanities Collection 5 (Roma: viella, 2018), 196–200.

of the effectiveness of royal administration in the region. Cava was uniquely positioned to win disputes, given their extensive archive of original parchments and their network of dependents throughout the Salernitano.¹⁷ The fact that in my corpus royal officials only ever lost their cases is therefore not necessarily representative of their ability to win; they may have been more successful against other, less prepared or less powerful, litigants.

Context: Salerno and the Duana baronum

Salerno was an important city in the administrative structure of the Norman Kingdom of Sicily, which makes it an ideal place to study the relationship of royal and local law. In the early years of the monarchy under Roger II, it was a loyal and reliable mainland base for the king, and he often returned there after campaigning on the mainland during the wars of pacification in the 1130s. The city's hospitality and loyalty in the face of the invasion of the German Emperor Lothar even earned them a royal charter of privileges in 1137.¹⁸ The main royal official in the city was the *stratigotus*, a position carried over from the years of the Duchy of Apulia, who handled the king's business in and around the city.¹⁹ He was the equivalent of a *baiulus* in other parts of the kingdom. After the 1170s or so, the *stratigotus* seems to have had a number of other *baiuli* subordinate to him, but the exact administrative structure is not clear.²⁰ The royal justiciars

¹⁷ While laymen and other churches could possess a considerable number of documents, Cava's archival power was unique in the region and a significant boost to their legal power. See discussion in Ch. 1, fn. 83-86.

¹⁸ Carlrichard Brühl, ed., *Rogarii II. Regis Diplomata Latina*, vol. II, Codex Diplomaticus Regni Siciliae 1 (Cologne: Bohlau, 1987), no. 46, pg. 129-131; Donald Matthew, "Semper Fideles. The Citizens of Salerno in the Norman Kingdom," in *Salerno nell XII secolo. Istituzioni, società, cultura* (Salerno: Centro studi salernitani "Raffaele Guariglia," 2004); Oldfield, *City and Community in Norman Italy*, 67-69.

¹⁹ As discussed in the previous chapter, *stratigoti* were equivalent to *baiuli* in the cities. See Ch. 4, fn. 170.

²⁰ The *stratigotus* seems to be responsible for the *baiuli* who were bothering Cava at their port in Vietri: Arma Magna I 37 (1182).

sometimes held court in the city and so did the kings themselves.²¹ Roger II held court there in November of 1147, as did William I in March of 1155.²²

The city became even more important in the royal administrative structure after 1174, when the *duana baronum*, the administrative unit responsible for the fiscal and judicial administration of the mainland provinces, took up residence in the city. This *duana* has been the subject of considerable scholarly debate as to its functions and place in the kingdom's administrative structure.²³ Takayama, now the authority on this issue, argues that it was created in 1168 as one of three main offices that governed the kingdom along with the *duana de secretis* and the *dīwān al-ma'mūr*, both of which were concerned mainly with the fiscal administration of Sicily and Calabria. The *duana baronum* was thus distinct in that it fulfilled both fiscal and judicial administrative duties on the peninsula as needed.²⁴ At first, the office seems to have been based in Palermo, and its directors were administrators associated with the royal palace there, but after 1174 it moved to Salerno and was run by the Admiral Walter of Modica. His full title was *ammiratus et magister regie duane de secretiis et duane baronum*, indicating the many administrative roles that he occupied and his prominence in the mainland administration. Working below him (or alongside him?) was a man named Eugenius, another *magister duane baronum*, who worked in the office until at least 1190, and who Evelyn Jamison claims authored the *Liber de Regno Sicilie*.²⁵ There were likely other officials as well, but they do not appear in

²¹ Arca xxv 3 (1141); Arma Magna I 37 (1182); I 41 (1183); Arma Magna L 2 (1183).

²² Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, nos. 72, 73, pg. 207–211; Horst Enzensberger, ed., *Guillelmi I. Regis Diplomata*, Codex Diplomaticus Regni Siciliae (Cologne: Bohlau, 1996), nos. 6, 7, pg. 16–23.

²³ This debate is helpfully summarized by Takayama, who is now the authority on the structure of the Norman administration: Takayama, *The Administration of the Norman Kingdom of Sicily*, 11–24, 145–46.

²⁴ Takayama, *The Administration of the Norman Kingdom of Sicily*, 153–55.

²⁵ Takayama, *The Administration of the Norman Kingdom of Sicily*, 148–50; Evelyn Jamison, *Admiral Eugenius of Sicily, His Life and Work, and the Authorship of the Epistola Ad Petrum, and the Historia Hugonis Falcandi Siculi*. (London: Published for the British Academy by Oxford University Press, 1957).

my sources. In my corpus, the *duana baronum* is mentioned only twice, both times indicating that it was headquartered in Salerno.²⁶

As discussed in the previous chapter and just above, we must be careful not to make too much of the scattered references to an administrative system or hierarchy in the Norman Kingdom of Sicily. The evidence for the functions of the *duana baronum* is slim and it continued to evolve after 1174. The most important thing about it, for the present purposes, is that it was based in Salerno. This meant that royal officials were present in the city and its hinterlands in a way that they were not elsewhere in southern Italy. If royal law was going to be influential anywhere on the mainland, it would seem best placed to be so in the Salernitano.

Administrative Power and Legal Power

In the 1178 dispute over the patrimony of Asclittinus which introduced this chapter, the royal official, Riccardus *stratigotus*, played a prominent role: he held the court in Tusciano, lodged the complaint against the monks of Cava on the king's behalf, and did his best to argue his case. In short, he did the work of a fiscal administrator, pressing the king's claim to property to maintain or extend the royal demesne. There are many other cases from the twelfth-century Salernitano where royal officials, especially the *stratigoti* and *baiuli*, pressed similar claims to property they believed should belong to the king in courts that they convened. But though they presided over these courts, royal officials did not control them in a legal sense—they rarely intervened or played a role in legal procedure, and they never made judgements or authenticated documents. These legal responsibilities were the exclusive province of the local judges. The distinction

²⁶ Arca xxxiv 106 (1174): a sale made by Landulfus Caputus, *stratigotus* of Salerno, the proceeds of which went to a man named Bartholomeus, *regius ostiarius*, for the repayment of a debt of ten thousand *tari* which Landulfus owed to the *duana*; Arca xxxvi 26 (1178): two women lodge a complaint about the chamberlain in Sarno with Walter of Modica in Salerno. The Admiral then sends a *mandatum* to the chamberlain ordering him to hear the women's case.

between administrative and legal power is the key to understanding the relationship between royal and local law in the twelfth-century Salernitano.

The administrative work done by royal officials, especially the *baiuli* and *stratigoti*, was of course legal in nature, and structured by royal legislation. The fundamental responsibility of royal officials, outlined in VL IV *De rebus regalibus*, was to protect regalian rights, so that no one would “alienate, sell, or diminish in whole or in part things pertaining to our *regalia*, with the result that the rights of royal properties be diminished or destroyed or even suffer any injury.”²⁷ Royal officials were, in theory, united in this goal, and were supposed to aid one another in safeguarding the king’s interests. A law of King William from the latter half of the twelfth century preserved in the *Liber Augustalis* says as much: “we desire justiciars, chamberlains, castellans and *baiuli* to be watchful and faithful and to impart counsel and to aid the masters of the finance bureau (*duana de secretis*), the quaestors, or other officials when it should be required for the advantage of our court.”²⁸ *Baiuli* were also specifically charged by a law of one of the Williams to deal with cases involving fiefs (*feudis*) and feudal properties (*rebus feudalibus*).²⁹ Therefore, as much as justiciars and *baiuli* were legal officials, they were also fiscal ones. The two spheres of governmental activity overlapped considerably.

²⁷ VL IV, *De rebus regalibus*: *Scire volumus principes nostros, comites, barones universos archiepiscopos, episcopos, abbates, quicumque (quodcumque) de regalibus nostris magnum vel modicum quid tenet, nullo modo, nullo ingenio, possit ad nostra regalia pertinens alienare, vel vendere, vel in totum vel in partem minuere, unde iura rerum regaliū minuantur aut subvertantur sive aliquod etiam dampnum patiantur. Also VL XXV, De bonis publicis: Qui sua negligentia bona publica deperire, vel minui permiserit, in persona propria et rebus suis, constituetur obnoxius, et hoc prospectu pietatis regie. Qui sciens furantibus (furantius) assensum prebuerit, eadem lege tenetur.*

²⁸ LA I, 37, *De officio magistrorum camerariorum et baiulorum*: *Iustitios, camerarios, castellanos et baiulos sollicitos esse volumus et devotos, ut ubi necesse fuerit pro commodis curie nostre et par doane de secretis et questorum magistrum vel alios officiales nostros extiterint requisiti, consilium et auxilium eisdem debeant impartiri.*

²⁹ LA I, 65 *De officio baiulorum*: *Locorum baiuli, qui a magistris camerariis et a curia nostra quandoque in credentiam vel in extalium baiulationes recipiunt, civiles causas omnes, personales videlicet et reales, que super feudis et rebus feudalibus minime moveantur, ad iurisdictionem suam noverint pertinere. Super minimis etiam furtis et aliis offensis, de quibus comprobati penam sui coporis vel ablationem membrorum incurrere non deberent, audientiam suam impartiri debebunt.*

In practice, royal administration's main responsibilities were maintaining and extending the king's demesne. When the kingdom was established in 1130, King Roger directly owned more land than anyone else in the kingdom. As Count of Sicily, most of the island and Calabria belonged to him, and as he conquered the rest of the mainland over the course of the 1130s, he also acquired the lands of the rulers he replaced. Whatever had belonged to the Dukes of Apulia, for example, became his when he claimed and then won the Duchy after 1127.³⁰ In other cases, places were absorbed into the royal demesne because of conquest or negotiation, like the Apulian castle town of Sant'Agata, discussed in Chapter Four, which was given to the king in 1138 by its lord, Richard, son of Hoel in exchange for another castle.³¹ Because of the piecemeal way that the king acquired these lands and the many immunities and lordships that remained in ecclesiastical and noble hands after the conquests of the 1130s, the royal demesne was fragmented, and, except in the County of Sicily, rarely made up continuous swathes of territory.

Royal officials administered demesne properties so that they were productive and occupied by men loyal to the king. In 1134, Sergius Caputus, *stratigotus* of Salerno, gave out land in Tusciano to two brothers as a fief³² and specified that "like the other men of Tusciano who held land in fief from the lord king or the government (*reipublice*)³³ and, concerning these

³⁰ Matthew, *The Norman Kingdom of Sicily*, 239.

³¹ G. A. Loud, trans., "Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily," in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 96; Ludovica de Nava and Dione Clementi, eds., *Alexandri Telesini abbatis Ystoria Rogerii regis Sicilie Calabrie atque Apulie* (Rome: Istituto Storico Italiano, 1991), bk. II.51.

³² In the context of the Kingdom of Sicily, the term fief (*feudum*) by itself had little specificity, and often referred simply to peasant tenure, having nothing to do with vassalage, or military service. The literature on fiefs and feudal tenures in the Kingdom of Sicily is frustratingly convoluted. Carocci makes a valiant effort to make sense of it: Carocci, *Lordships of Southern Italy*, 126–33; Jamison's discussion of the term in the *Catalogus Baronum* is helpful, but only refers to how it is used in the *Catalogus* itself: Evelyn Jamison, ed., *Catalogus Baronum*, vol. 101, *Fonti per la storia d'Italia* (Roma: Istituto storico italiano per il Medio Evo, 1972), XX–XXII.

³³ I have translated *res publica* as 'government' rather than 'republic' or 'state' for a few reasons. First, the modern word 'republic,' though an accurate translation, carries connotations of democracy or representation, which were not

fiefs, will serve (*servient*) the lord king...you and your heirs and descendants will serve (*servietis*).”³⁴ The exact terms of this service are not specified in the document. In other cases, the terms of working demesne land are laid out more explicitly. In 1163, Petrus de Riso, *stratigotus* of Salerno, leased out some land in Nocera in exchange for half of the chestnut (*castaneto*) produce as rent on behalf of the royal government (*pro parte reipublice*). The lease had numerous conditions, including that the tenants should “always improve the land and not despoil it,”³⁵ language which may echo royal legislation, which punished those who “allow[ed] public property to be lost or diminished through his own negligence...”³⁶ Demesne land might also be leased out for cash rents, as in 1177, when the royal chamberlain in Salerno, Iohannes de Monticello, ordered a judge Palmerius to give a piece of demesne land to his fellow judge Henricus for an annual rent of one *tari*.³⁷

Royal officials also tried to add to the king’s personal properties when they could, but they were often rebuffed. In the introductory case from 1178 discussed above, Cava was able to

at play in the twelfth-century Kingdom of Sicily. I have likewise avoided ‘state’ because of its historiographical baggage—I do not want to comment here on whether the Kingdom was a state or not. ‘Government’ best captures how the documents use the word to refer to the whole apparatus of the king’s administration, inclusive of its personnel, without making any claims about the future. In a document from 1163 (Arca xxxi 32), for example, the stratigotus of Salerno obligated himself and his successors in the office, on behalf of the *res publica*, to pay composition to the beneficiary (*et per ipsam guadiam ipse Petrus stratigotus obligavit se et eius successors et parte suprascripte reipublice...*). *Res publica* here clearly refers to the broader administrative structure of individuals, however rudimentary, in which the king’s officials existed. It does not refer to an abstract entity like the state, projected into the future, but rather the actual people who made up the king’s administration and did the work of government. In many ways, I am following Bisson in my skeptical use of the word, but I do believe it is appropriate here: Thomas N. Bisson, *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government* (Princeton: Princeton University Press, 2009), 12–17.

³⁴ Arca xxiii 70 (1134): *Sic tamen ut sicut alii homines de tusciano de feudo quod a domino rege vel a parte reipublice tenent et de feudo ipso domino regi servient, ita vos et vestri heredes de ipsa suprascripta donatione atque traditione domino regi et parti rei publice vos vestrosque heredes servietis et descendentes de vobis.*

³⁵ Arca xxxi 32 (1163): *...et sic laborent ipsam traditionem desuper et desubter sicut ipse meruerit ut semper in melius proficiat et non dispereat...*

³⁶ VL XXV, *De bonis publicis: Qui sua negligentia bona publica deperire, vel minui permiserit, in persona propria et rebus suis, constituetur obnoxius, et hoc prospectu pietatis regie.*

³⁷ Arca xxxv 119 (1177).

prevent Asclittinus' property from entering the royal demesne, despite the *stratigotus*' efforts to claim it.³⁸ A similar case occurred in the same region, around Tusciano, decades earlier in 1145. The *stratigotus* of the Principate, Roggerius of Sicignano, acting on behalf of the king (*ex parte domini regis*), claimed that a man named Solifon was illegally holding a piece of royal property with vines. Solifon denied this, saying that he had bought the land legitimately from a certain Landus, who later came to the court to corroborate Solifon's story and testify that the land was not held from the king.³⁹ In the castle town of Sarno in 1178, two women were able to win back some property that had been taken from them by an earlier *baiulus* of Sarno, Iohannes, after appealing directly to the admiral, Walter of Modica, in Salerno. The admiral sent a *mandatum* to Matheus, the *stratigotus* of Sarno, ordering him to hear the case and, after witnesses proved the women had held the land since King Roger II conquered Sarno, he was forced to overturn his predecessor's claim.⁴⁰

The *baiuli* and *stratigoti* were also responsible for collecting dues and taxes owed to the king, though they often ran into difficulty in this as well. Royal legislation does not outline a royal taxation program or fiscal regime, and the evidence for one in documents of practice differs according to the geographical context. The remnants of the fiscal administration of the Kalbids, who had governed Sicily on behalf of the Fāṭimids, continued to be used (or were reintroduced) by the royal government in Sicily and Calabria in the twelfth century.⁴¹ But outside of these regions, there is no evidence of a coherent system of royal taxation and most of the king's

³⁸ Arca xxxvi 32 (1178).

³⁹ Arca xxvi 3 (1145).

⁴⁰ Arca xxxvi 26 (1178).

⁴¹ On the Sicilian administration, see: Takayama, *The Administration of the Norman Kingdom of Sicily*, 84–87; Jeremy Johns, *Arabic Administration in Norman Sicily: The Royal Diwan* (Cambridge: Cambridge University Press, 2002), chaps. 1, 8; Annliese Nef, *Conquérir et gouverner la Sicile islamique aux XIe et XIIe siècles*, Bibliothèque Des Écoles française d'Athènes et de Rome, 346 (Rome: École française de Rome, 2011), chap. 4.

subjects continued paying customary dues to their lords.⁴² Those who lived or worked on royal the royal demesne owed dues to the king because he was their lord, not necessarily because he was the king. This is evident in the fact that when royal officials attempted to tax those who were subject to a different lord, like the monastery of Cava, that lord took them to court. In 1171, the monks successfully acquired immunity from taxes collected by royal officials for those living on their lands between the Tusciano and Sele rivers. The case was initiated when the abbot, Benencasa, lodged a complaint directly with King William II, who then sent a *mandatum* to the *stratigotus* of Salerno, Landulfus Caputus, ordering him to investigate the matter and make it right.⁴³ In a similar vein, ten years later, in 1181, the monastery successfully proved that two men living in Rocca, near Nocera, whom the royal *baiuli* had been bothering were dependents of the monastery and thus should be left alone.⁴⁴ A year later (1182), royal *baiuli* were again infringing on Cava's rights by trying to collect port dues on behalf of the king in Vietri, just northwest of Salerno. This was the monastery's port, granted to them in a sealed charter by Duke Roger Borsa in 1086.⁴⁵ The monastery again complained directly to the king, who sent a *mandatum* to the *stratigotus*, Rogerius Caputus, ordering him to respect the monastery's rights if they could prove them. They had the document, and the *stratigotus* ordered his men to stop collecting the dues.⁴⁶

In all these cases, despite their best efforts to collect dues for the king, the royal officials lost. While these losses should not necessarily be seen as representative of royal power more generally, since Cava would only keep records of cases that proved their claims and immunities,

⁴² For more on the kinds of taxes and dues the kings claimed, see the excellent discussion in: Matthew, *The Norman Kingdom of Sicily*, 234–41.

⁴³ Arca xxxiii 100 (1171).

⁴⁴ Arca xxxvii 104 (1181).

⁴⁵ Arma Magna B 39 (1086).

⁴⁶ Arma Magna I 37 (1182).

they do show that royal officials did not have a special ability to influence legal outcomes. They had a wide administrative remit and were aggressive in claiming rights on the king's behalf, but fundamentally, they were no more than the agents of a very wealthy landlord. They still had to argue their cases in courts that they did not control and thus could not easily bend to their will.

Royal officials did not attempt to bring disputes over property or everyday legal transactions like sales, donations, or leases under the umbrella of royal authority. They convened courts and could even order judges to make a judgement, but the legal work of guiding procedure, making judgements, and authenticating transactions and documents was done by the local judges. This is clear from the diplomatic. A dispute between Cava and the monastery of S. Benedict in Salerno in 1146 was adjudicated in a court presided over by the royal chamberlain Atenulfus and the *stratigotus* Sergius Caputus, who were mentioned in the invocation (*invocatio*) but played no further role in the dispute. They did not sign the document, which was narrated in the first-person plural by the judges.⁴⁷ In the 1182 case over port dues in Vietri discussed above, the *stratigotus* presided over the court, held in the Terracena palace in Salerno, and ordered the full panel of six *iudices Salerni* to be present, but this was the extent of his involvement in the case. All the legal action is narrated, in the standard way, from the judges' perspective in the first-person plural. The judges describe how they convened (*convenimus*) at the *stratigotus*' order (*eius mandato*), deliberated over the judgement (*consuluimus*), ordered (*iussimus*) the notary to write the document, and authenticated the document with their signatures.⁴⁸ In the case about the monastery's immunity from taxes levied on the lands between the Sele and Tusciano rivers from 1171, a panel of five *iudices Salerni* convened (*convenimus*) in Tusciano at the order

⁴⁷ Arca xxv 117 (1146).

⁴⁸ Arma Magna I 37 (1182).

(*precibus*) of the *stratigotus*. The judges heard the testimony of local men about local practice and inspected documents. Then, considering this evidence, they judged (*iudicavimus*) that the men of the monastery were immune from any taxes in this region, ordered (*precepimus*) the notary to write the document, and authenticated it with their signatures.⁴⁹ A case record from Sarno in 1182 records the testimony of “witnesses having been diligently and studiously examined by us the aforementioned judges,” though the court was convened and presided over by the royal chamberlain, Guilielmus Butromile.⁵⁰ Those same judges authenticated the document with their signatures.

Another case record from Sarno in 1178 affords the *stratigotus* a more prominent legal role: after hearing the testimony of witnesses, “the *stratigotus* ordered that, considering what the witnesses had said, we (the judges) should pronounce a sentence (*quo audito ipse stratigotus precepit ut super hoc quod ipsi testes dixerant sententiam dictaremus*).” The two judges, Palmerius *iudex* and Enricus *iudex*, did so, ordered (*precepimus*) the notary to make the document and authenticated it with their signature.⁵¹ Here, the *stratigotus* appears to have been actively engaged in hearing the witness testimony and made a decision—he had heard enough and therefore ordered the judges to make a decision. Instead of being simply the president of the court, he played an active role in directing the judges towards a certain legal action. This might indicate that royal officials had a more significant role in court proceedings than the diplomatic lets on. But crucially, the *stratigotus* stops short of actually making a judgement; as far as the documents tell us, only local judges had this power.

⁴⁹ Arca xxxiii 100 (1171).

⁵⁰ Arca xxxviii 34 (1182): *Qui testes a nobis suprascriptis iudicibus diligenter et studiose inquisiti...*

⁵¹ Arca xxxvi 26 (1178).

The judges were necessary because royal officials did not have the power to authenticate legal transactions or documents on their own. In the earliest royal property transaction in my corpus, from 1134, Sergius Caputus used his personal seal to authenticate the document, but this was not sufficient; the town witnesses of Eboli, Angelus *archipresbiter* and Iohannes Guandi, also signed, conforming to local institutional practice.⁵² When Petrus de Riso, *stratigotus* of Salerno, leased out royal land in Nocera in 1163, he did so in front of the local *iudex*, Sergius, who alone authenticated the document.⁵³ Likewise, when Iohannes de Monticello leased royal land in Sarno to Henricus *iudex* in 1177, Palmerius *iudex* oversaw the transaction and authenticated the document.⁵⁴ Royal officials needed local judges (or the town witnesses, in the case of Eboli) to make their transactions legitimate according to local institutional practices; whatever legal authority they may have had (as expressed in Sergius' use of his personal seal) was not enough.

The jurisdiction of royal officials did not expand significantly over the course of the twelfth century. In fact, quite the opposite occurred: after the 1160s, the Kings of Sicily began to cede jurisdiction to ecclesiastical courts. This is evident in the trial, narrated in the *Liber de Regno Sicilie*, of Robert of Calatabiano, the Master of the Sea Castle in Palermo, who was arrested by royal officials for a long list of heinous crimes sometime between 1166 and 1168. The chancellor, Stephen of Perche, because of political pressure, declined to charge him with crimes that fell under royal jurisdiction and instead limited the trial to crimes under ecclesiastical

⁵² Arca xxiii 70 (1134).

⁵³ Arca xxxi 32 (1163).

⁵⁴ Arca xxxv 119 (1177).

jurisdiction like perjury, incest, and adultery.⁵⁵ But according to royal legislation, perjury and adultery *were* under royal jurisdiction. There is a statute covering perjury in the section about forgeries and counterfeits.⁵⁶ More significantly, in the Vatican version of the *Assizes*, five of the forty-three laws (11.6%) are about the crime of adultery. This is more than any other offense in the collection.⁵⁷ The ceding of jurisdiction was made explicit when King William II sent a *mandatum* in 1170 to the Archbishop of Trani in response to his officials trying cases the archbishop believed belonged to church courts. In it, he ordered his *baiuli* and justiciars not to try cases of adultery anymore, but rather to leave them to the ecclesiastical courts, "unless the adultery was committed with insult and violence," in which case, being violent crimes, they should still be tried in royal court.⁵⁸ This *mandatum*, attributed to King William, was later taken up into the third book of the *Liber Augustalis* under the title *De privilegiis ecclesiarum*.⁵⁹

To summarize, the power of royal officials lay primarily in their administrative capacity as caretakers of the royal demesne, not in their legal power. Over the course of the early twelfth century, legal power had been concentrated in the hands of local judges all over the Salernitano and royal officials adapted to this reality. They relied entirely on local courts and judges for the mundane, quotidian legal business of resolving property disputes and authenticating economic transactions. Their jurisdiction never expanded to include this kind of legal business; in fact,

⁵⁵ G. A. Loud and T.E.J. Wiedemann, eds., *A History of the Tyrants of Sicily By "Hugo Falcandus" 1153-69* (Manchester: Manchester University Press, 1998), 167–69; G.B. Siragusa, ed., *La Historia o Liber de Regno Sicilie e La Epistola Ad Petrum Panormitane ecclesie thesaurarium di Ugo Falcando*, vol. 22, *Fonti per la storia d'Italia* (Roma: Istituto Storico Italiano, 1897), 115–18.

⁵⁶ VL XXII, *De falso instrumento*.

⁵⁷ VL XXVII, *De adulteris*; XXVIII, *De eodem*; XXX, *De violatione thori*; XXXI, *De adulterio*; XXXII, *De desistentibus ab accusatione*.

⁵⁸ Arcangelo Di Gioacchino, *Le carte che si conservano nello Archivio capitolo metropolitano della città di Trani (dal IX secolo fino all'anno 1266)* (Barletta: Tipografia Editrice V. Vecchi e Soci, 1877), 134, n.61.

⁵⁹ LA III, 83 *De privilegiis ecclesiarum*.

their remit shrank over time at the expense of ecclesiastical courts. Overall, the reliance on local judges was convenient for royal legal administration, which, as discussed in the previous chapter, operated under the assumption that judges were the basic legal functionary. But at the same time, the reliance on local judges constrained royal power by making it subject to local custom.

Local Custom and Immunities

Local custom could be decisive in property disputes involving royal officials. To return again to the 1178 case about the royal feudatory Asclittinus' patrimony that began the chapter, local custom was central to Cava's argument for their legitimate possession. The *vesterarius* Petrus, who was arguing the case on Cava's behalf, claimed that the property was "from his (Asclittinus') patrimony and from his purchase, which had been done by Ebolitani (Asclittinus as the buyer and Gemma, daughter of Rao Tristanus as the seller) according to the usages and customs of the city of Eboli," reinforcing the importance of local belonging.⁶⁰ The judges—Rao, Landulfus, Amifredus, and Petrus *iudices*, all of whom were Ebolitani⁶¹—then asked the *vesterarius* if he could prove that it had been done this way. As proof, he brought four local men to testify about Asclittinus' possession and the document of purchase by which he had acquired the property. That document was itself authenticated by the town witnesses of Eboli, an institution unique to the town.⁶² The court then decreed (*decrevit*) that "Asclittinus, according to the usages and customs of the city of Eboli, had well been able to judge to the monastery what he

⁶⁰ Arca xxxvi 32 (1178): ...*quia illud de patrimonio suo erat et de emptione sua quam ab Ebolensibus fecerat unde secundum usum et consuetudinem ciuitatis Eboli.*

⁶¹ Rao and Landulfus were the judges of another case in Eboli from 1171: Arca xxxiv 15 (1172); Petrus was the judge who succeeded them. He witnessed Rao's will and testament: Arca xxxvii 46 (1180).

⁶² As discussed in Ch. Three, fn. 89-92.

had from his patrimony and purchase.”⁶³ The local customs of Eboli, known and enforced by the town’s local judges, prevented the royal *stratigotus* of Salerno from acquiring the property of a royal fief-holder.

The knowledge of Ebolitan custom was vested in the local judges and they alone were empowered to decide whether the property in question had been acquired according to that custom. One of the judges of this case, Rao, had even stated in an earlier case from 1145 that it was the judge’s job “to guard and legally conserve the *ius proprium*,” the law particular to each place.⁶⁴ He was doing just that in Asclittinus’ case. By making a judgement that affirmed the validity and power of local custom, despite the protests of a royal official, the judges of Eboli ensured the survival and continued validity of that custom.

There is no evidence that the *stratigotus* contested this decision or tried to claim the superiority of royal rights over local custom. On the one hand, doing so would have contradicted royal law, which states that “on account of the variety of peoples subject to our rule, the usages (*moribus*), customs (*consuetudinibus*), and laws (*legibus*) that up until now they have observed are not abrogated.”⁶⁵ By the letter of this statute, the customs of Eboli were legitimate in the eyes of the king. But on the other, it is not a given that royal officials would have accepted this, since they also had a mandate grounded in royal legislation, as described in the previous

⁶³ Arca xxxvi 32 (1178): *Curia igitur habito consilio decreuit supradictum Asclitanum secundum usum et consuetudinem ciuitatis Eboli bene potuisse iudicauisse prefato monasterio quod de patrimonio et de emptione sua habuerat.*

⁶⁴ Arca xxvi 3 (1145): *Quoniam cuiusque iudices est proprium et legale officium in quantum valet unicuique ius proprium tueri et legaliter conservare...*

⁶⁵ VL I, *de legum interpretatione*: *Leges a nostra maiestate noviter promulgatas pietatis intuitu asperitatem nimiam mitigantes mollia quodam moderamine exacuentes obscura dilucidantes generaliter ab omnibus precipimus observari moribus consuetudinibus legibus non cassatis pro varietate populorum nostro regno subiectorum sicut usque nunc apud eos optinuit nisi forte nostris his sanctionibus adversari quid in eis manifestissime videatur.*

section,⁶⁶ not to allow the king's demesne to be diminished and to do what they could to extend it. In my documentary corpus, when these two imperatives collided—respecting local custom and preserving or extending the king's rights—local custom always won.

Local custom could also refer to the immunities claimed and enforced by local institutions like Cava. The monastery had, by the mid-twelfth century, built up two large lordships: one in the Metiliano Valley (between Salerno and Nocera where the monastery is located) and the other in the Cilento peninsula.⁶⁷ In charters issued by the Lombard Princes of Salerno in 1025 and 1059 about the Metiliano and the Norman Duke of Apulia in 1123 about the Cilento, the monks were formally granted many of the traditional rights of banal lordship in these places: legal jurisdiction (though the precise meaning of this is not clear),⁶⁸ the right to tax their subjects, and exemption from customary dues normally owed to political powers like the princes and dukes.⁶⁹ By the end of the eleventh century, these rights and dues were being referenced in the monastery's charters either as the common practice of its dependents or explicitly as custom. Ramseyer cites a 1090 lease from the Metiliano Valley which states that the tenant was required to pay dues "in the same way as other *coloni* of the monastery living in Metiliano do."⁷⁰ By the mid twelfth century, in 1146, the terms of a lease in the same area (this time in Balnearia) simply refer to "the custom of the place and men of the monastery (*consuetudinem loci et hominum*

⁶⁶ See above, fn. 27.

⁶⁷ See the discussion in Ch. Three, fn.12-16. Also: Valerie Ramseyer, *The Transformation of a Religious Landscape: Medieval Southern Italy, 850–1150* (Ithaca: Cornell University Press, 2006), chap. 5.

⁶⁸ See Ch. Three, fn. 53-77.

⁶⁹ Ramseyer, *The Transformation of a Religious Landscape*, 181–83.

⁷⁰ Ramseyer, *The Transformation of a Religious Landscape*, 181, fn. 98. The document is Arca xv 24 (1090).

monasterii).⁷¹ Over time, the dues owed to the monastery had become embedded in local practice and acquired the force of custom.⁷²

The grants of immunity which undergirded Cava's lordship were gifted by the Dukes of Apulia and other prominent political figures in the Salernitano in the eleventh and early-twelfth centuries. These grants were later confirmed in writing by the Norman Kings, who explicitly claimed to perpetuate the rule of the Dukes, and the monastery retained the documents necessary to prove this. As already discussed, when royal officials began collecting dues and taxes from the monastery's men living between the Sele and Tusciano rivers around 1171, Cava went to King William II to complain that they were immune from such exactions.⁷³ When the *stratigotus* of Salerno investigated the matter on the king's order, Cava produced a charter from the Count of the Principate from 1131 exempting them from any dues in this region.⁷⁴ The monks then produced an 1133 charter of King Roger II complete with golden *bull*a confirming all their rights and immunities (including the one in question)⁷⁵ and another of King William I from 1154 doing the same.⁷⁶ In the face of such overwhelming and comprehensive documentary proof, the judges ruled in Cava's favor. Documents were again decisive in the 1182 dispute over the port of Vietri when the monks were able to show the court a nearly century-old diploma of Duke Roger Borsa

⁷¹ Arca xxiii 119 (1136); Arca xxvi 36 (1146); For a longer list of documents (including these two) using these phrases, see: Ramseyer, *The Transformation of a Religious Landscape*, 191, fn. 151.

⁷² Ramseyer, *The Transformation of a Religious Landscape*, 181–83; Loud sees this same process. See: G. A. Loud, "The Monastic Economy in the Principality of Salerno during the Eleventh and Twelfth Centuries," *Papers of the British School at Rome* 71 (2003): 157–58.

⁷³ Arca xxxiii 100 (1171).

⁷⁴ Arma Magna G (1131).

⁷⁵ Arma Magna N 30 (1133); Brühl, *Rogarii II. Regis Diplomata Latina*, vol. II, no. 31, pg. 87–89.

⁷⁶ Arma Magna H 14 (1154). However, the editor of William's documents says this is a forgery. See: Enzensberger, *Guillelmi I. Regis Diplomata*, no. 1, pg. 3–6.

from 1086, with its lead seal still intact, that granted them the port.⁷⁷ The monastery's ability to preserve these documents and to brandish them in court when necessary helped them to resist the ambition of the Kings of Sicily and their officials as they tried to expand royal rights.

Royal officials did not always immediately accept Cava's claims and the monastery was sometimes required to demonstrate through witness testimony that their rights had been continuously recognized by the local community. Cava asserted their rights to some property in Sarno in 1182 by appealing to Count Robert of Caserta, Great Constable and Master Justiciar of Apulia and the Terra di Lavoro, the highest-ranking royal official on the mainland.⁷⁸ Count Robert sent a *mandatum* to the chamberlain of Sarno, Guilielmus Butromile, instructing him to hear Cava's claims to the land in a place called Tabellaria. That letter was read out in court, followed by a charter from 1125 in which Cava was given the lands by Duke William of Apulia.⁷⁹ But the chamberlain was not satisfied, perhaps because the charter was from before the establishment of the kingdom, and asked if Cava had other proof. Cava then produced three witnesses, who testified to the local judges that the land pertained to the monastery, that it had received its fruits for thirty years, and that those who collected its fruits had done so in the name of the monastery. These specific terms were meaningful, because they pertained to the Lombard custom, codified in the laws of King Grimwald, that possession of property for 30 uninterrupted years could not be challenged.⁸⁰ This witness testimony decided the case, and the judges decreed that the property belonged to Cava.

⁷⁷ Arma Magna B 39 (1086).

⁷⁸ Arca xxxviii 34 (1182).

⁷⁹ Arma Magna F 37 (1125).

⁸⁰ Grimwald 4: Katherine Fischer Drew, trans., *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973), 133; Alfredus Boretius, ed., *Liber Leges Langobardorum Papiensus Dictus*, vol. Leges IV, Monumenta Germaniae Historica (Hannover: Monumenta Germaniae Historica, 1868), 400.

Like in the case of Asclittinus' patrimony, the decisive element of this case was local custom. Once it was established that Cava not only had documents but had possessed the land for thirty years according to Lombard law and custom, the local judges decided in Cava's favor and the chamberlain was forced to recognize the monks' claim. Again, like in Eboli, the royal official in Sarno had no role in adjudicating whether local custom applied because he could not make judgements in the local court. The local judges interrogated the witnesses about the thirty-year possession, since they were the representatives of the local community and the guardians of its customs. The chamberlain relied on them to determine Cava's rights.⁸¹

The power of local custom and the immunities enjoyed by institutions like Cava further underscores the relative weakness of royal legal power at the local level. The king's officials relied on local judges to run their courts, which meant that those local judges could ensure that local customs, which were not sympathetic to royal power, were respected. Royal officials had no special legal power or remedy to overcome these appeals to customary law. Like any local landlord, the kings and their officials were limited by local custom and previous grants of immunity.

Conclusion: Parallel Tracks

Considering the evidence of local practice, I believe it is necessary to rethink the nature of royal legal power in the Norman Kingdom of Sicily. As the previous chapter argued, criminal law was the main arena of royal legal interest; it is the main topic of legislation and the subject of the court cases narrated in the *Liber de Regno Sicilie*. But because of a lack of sources, it is

⁸¹ Cava, in its characteristically careful way, made sure to get documentary proof of the chamberlain's recognition of their rights to the land in Tabellaria. They made another document a year later in 1183 in which the chamberlain, now Alfanus Ioncata, ordered the *stratigotus* of Sarno to recognize Cava's claims. The men living on the property were then also listed out to prevent any confusion about which men belonged to the monastery: Arca xxxix 13 (1183).

impossible to know how this interest translated to legal power at the local level—how criminal courts functioned outside Palermo, or their relationship to local legal practice and personnel. What we do know is that when royal legal administration is examined from the perspective of local documents of practice, all of which concern property, royal officials appear utterly incapable of or uninterested in changing local legal institutions. There is no evidence of an attempt to bring the law wholly under the umbrella of royal authority, as there was in England during this same period.⁸² The Kings of Sicily did not innovate with new legal actions, formal processes of appeal, or new methods of administering property on the mainland. Nor did royal officials try to make themselves central to the Salernitano's local institutional practices and change them in the way local judges had in the first half of the twelfth century. Royal officials were present and presiding in local contexts, but they never acquired the power to run the court, make judgements, or legitimize legal acts. They relied instead on the local judges to do this work for them.

The reliance of royal officials on local judges is essential to understanding how royal administration worked and the role (or not) of the Norman monarchy in legal change. In the historiography, there is a consistent notion that the Kings of Sicily appointed (or at least gave their imprimatur of approval to) local judges and thus brought local law, largely unchanged, under royal purview.⁸³ Such a practice would seem to align with the sentiment expressed in the

⁸² Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I* (Cambridge: Cambridge University Press, 1968), chap. VI; Susan Reynolds, "Medieval Law," in *The Medieval World*, ed. Peter Linehan and Janet L. Nelson (London: Routledge, 2003), 574; Paul Brand, "The English Difference: The Application of Bureaucratic Norms within a Legal System," *Law and History Review* 21, no. 2 (2003): 384–86; Paul Brand, "Henry II and the Creation of the English Common Law," in *Henry II: New Interpretations*, ed. Christopher Harper-Bill et al. (Boydell and Brewer, 2007), 215–41.

⁸³ Jamison, "The Norman Administration of Apulia and Capua," 267; Mario Caravale, *Il Regno normanno di Sicilia* (Milan: Giuffrè, 1966), 357–58; Matthew, *The Norman Kingdom of Sicily*, 246; Takayama, *The Administration of the Norman Kingdom of Sicily*, 75; Oldfield, *City and Community in Norman Italy*, 107.

first law in the Vatican collection, in which the king permitted local customs to persist unless they contradicted his legislation.⁸⁴ Even if the change from local to royal official was only nominal, it still signaled a general acceptance of royal administration and authority.⁸⁵

But this arrangement is misleading in two ways. First, there is very little evidence from southern Italy that the kings exercised any kind of systematic control over the appointment of local judges, and none from the Salernitano. There were no royal judges in the Salernitano, just as there is very little evidence of judges appointed by lords, as discussed in Chapter Three.⁸⁶ And second, it does not adequately capture the nature of the relationship between royal and local legal institutions. It is not enough to say that the kings “preserved” local administration⁸⁷ or that local customs “were allowed to continue.”⁸⁸ Such phrases imply that the kings had a level of control over local institutions that is not grounded in the documentary evidence. Like in the case of Carocci’s ‘lords who lose,’ we must be careful not to assume the scope of royal law’s practical power over jurisdiction or practice. In fact, as this chapter has shown, royal legal and fiscal administration in the Salernitano *could not function* without the local judges; it *relied* on them, as if they were royal officials, though they were not.

The kings had very little power to effect legal change at the local level because royal and local law were developing on parallel tracks: they had very different understandings of what was important when it came to the law. The space between them is evident in the question of judicial authority: what did it mean for royal officials to preside over courts controlled by independent

⁸⁴ VL I, *De legum interpretation*.

⁸⁵ Oldfield, *City and Community in Norman Italy*, 104.

⁸⁶ See Ch. 3, fn. 53-77.

⁸⁷ Jamison, “The Norman Administration of Apulia and Capua,” 267.

⁸⁸ Oldfield, *City and Community in Norman Italy*, 105.

local judges? For the judges, whose authority stemmed in large part from their expertise in local custom and procedure rather than appointment by a political figure, their control of legal practice was most important. Indeed, the most notable aspect of royal courts in the Salernitano from this perspective was their continuity of procedure and personnel with local courts.

But for the king and royal officials, law and legal administration was part of a larger-scale argument about government, accountability, and justice. Central to royal ideology, expressed in the prologue to the Vatican legislation, was the notion that the king was a “priest of the law” because of his offering of mercy and justice to God.⁸⁹ Part of the king’s duty to do justice was to hold courts, a fact made clear by the chroniclers of the period, who, in extolling Roger II’s commitment to justice, focused as much on the institutions and officials he created as his legislation.⁹⁰ Having royal officials preside over courts supported the argument that the Norman kings were committed to governing through the law and that their officials—who were, according to legislation, extensions of the king himself—did not act arbitrarily.⁹¹ The sensitivity of royal officials to local political and legal contexts is clear in the many instances discussed above of the monks of Cava and others appealing to the king when his officials wronged them. In

⁸⁹ VL, *Proemio*.

⁹⁰ G. A. Loud, trans., “Romuald of Salerno, Chronicon Sive Annales, 1125-54,” in *Roger II and the Creation of the Kingdom of Sicily* (Manchester: Manchester University Press, 2012), 259: “King Roger however established peace and good order in his kingdom, and to preserve that peace instituted chamberlains and justiciars throughout the land, promulgated laws which he had newly drafted and removed evil customs from their midst.”; Romuald of Salerno, *Romualdi Salernitani Chronicon (a.m. 130 - a.c. 1178)*, ed. C. A. Garufi (Città di Castello: S. Lapi, 1914), 225; Loud, “Abbot Alexander of Telesse, The History of the Most Serene Roger, First King of Sicily,” 127: “The kingdom is rightly and justly administered when it is ruled justly in both peace and wartime, when by means of laws you drive out iniquity and when you are triumphant after conquering your enemies by force of arms.”; de Nava and Clementi, *Alexandri Telesini abbatiss Ystoria Rogerii regis Sicilie Calabrie atque Apulie*, 90; Loud and Wiedemann, *A History of the Tyrants of Sicily By “Hugo Falcandus” 1153-69*, 58: “He made efforts to administer justice in its full rigor...”; Siragusa, *La Historia o Liber de Regno Sicilie e la Epistola Ad Petrum Panormitane ecclesie thesaurarium di Ugo Falcando*, 22:6.

⁹¹ VL XXXIV, *De iniuriis personis illatis curialibus: ipsis autem facta iniuria non ad ipsos dumtaxat set etiam ad regie dignitatis spectat offensam*.

the context of the king's commitment to justice, the fact that a royal official presided over a court, even without influencing how it worked, was therefore very significant.

Justice, in the royal understanding, did not extend to controlling legal procedure, personnel, or the nature of law. The legislation does not mention local procedure or documentary practices and royal officials made no effort to change them. Frederick II legislated about these topics in the thirteenth century,⁹² but his and his government's understanding of what was important legally should not be retrojected onto the twelfth century. Legal power became concentrated in the hands of independent local judges in the Salernitano just before or at the same time that the kings and their officials were attempting to build a royal legal administration there in the 1140s and 1150s. The kings had no role in that process of change because it had already largely happened by the time they took power. The two processes were on parallel tracks.

The consolidation of legal power in the hands of the judges of the Salernitano at just this moment was certainly fortuitous for the kings. Royal legislation, as discussed in the previous chapter, assumes that the law should be controlled by judges, even if it is vague about the exact nature of their duties or how they should be chosen. It also privileges the use of documents, which were already important to the legal culture of the Salernitano. There was therefore a general alignment of assumptions and expectations for how the law should work between royal government and the local institutions of the Salernitano after 1140 or so. At an administrative level, as this chapter has shown, the concentration of power in the hands of the local judges made it relatively simple for royal legal administrators to convene courts for the settlement of disputes. Everywhere that royal officials went in the Salernitano in pursuit of the king's rights, they could

⁹² Royal control of judicial appointments: LA LXXIII; requirements of legitimate documents: LA LXXX, LXXXII

expect to find a local judge whom they could rely on to know customary practices, run courts, and authenticate royal legal business so that it was legitimate in the eyes of the local population. This arrangement was also useful for the local judges, who, for their part, extended their exclusive power to make judgements and legitimize legal acts to cases presided over by royal officials. They even wielded local custom to rule against the king in some cases, which must have bolstered their authority among the local population.

The significance of these parallel tracks lies in their relationship to narratives about state formation, legal change, and the role of monarchy in those processes. In the traditional narrative, stated most influentially by Joseph Strayer, the drivers of legal and bureaucratic change in the twelfth century were kings and rulers.⁹³ Their demand for new, more efficient, and more rational methods of bureaucratic governance were both stimulated and satisfied by a supply of eager young legal professionals, trained primarily in the emerging schools of Roman and canon law in Bologna.⁹⁴ As these university-trained legal professionals filtered back into European society and took up positions in governments, they changed the way those governments worked, organizing them with Roman legal principles in mind and promoting the use of written documentation.⁹⁵

But the story of legal change in the Salernitano is different, even if the result looks similar. A new group of eager legal professionals emerged in the early twelfth century, not to

⁹³ Joseph R. Strayer, *On the Medieval Origins of the Modern State* (Princeton: Princeton University Press, 1970), 35–36; I return often to the remarkably clear and concise summary of this traditional narrative found in: Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford: Oxford University Press, 2003), 6–7.

⁹⁴ Strayer, *On the Medieval Origins of the Modern State*, 23–26; Charles H. Haskins, *The Renaissance of the Twelfth Century* (Cambridge: Harvard University Press, 1927), chap. 7; Anders Winroth, “The Legal Revolution of the Twelfth Century,” in *European Transformations: The Long Twelfth Century*, ed. John Van Engen and Thomas F. Noble (Notre Dame: University of Notre Dame Press, 2012), 346–49.

⁹⁵ The debates about the role of bureaucracy in either producing or responding to the production of increased volumes of documentation in the twelfth century is vast. Most importantly: M. T. Clanchy, *From Memory to Written Record, England 1066-1307*, 3rd ed. (Oxford: Blackwell, 2013); Adam J. Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200*, Cambridge Studies in Medieval Life and Thought, 4th ser (Cambridge: Cambridge University Press, 2001).

work in the bureaucracy of a monarch, but rather to meet the needs of local communities that were demanding legal expertise and new kinds of legal documents. The institutions of judgeship and documentary production the local experts created were based on a Lombard Salernitan model, not Roman or canon law. This is not to exclude those legal traditions as possible sources of inspiration or influence, but it is to say that the model of the new institutional practices was local and not derivative of the Roman or canonical traditions, nor the result of new personnel of varied origin staffing the royal and ecclesiastical courts. When the Norman Kingdom of Sicily was established in 1130, the local judges became legally indispensable to the royal government, which relied on them to know and handle all the intricacies of legal procedure and documentary authentication needed to administer and expand royal property at the local level. To put it simply, the kinds of legal-institutional change usually associated with the rise of royal bureaucracies happened at the local level in the Salernitano before the monarchy existed. The royal government benefitted from those changes, but it did not cause them.

Conclusion

This dissertation began with two documents of sale from Nocera and a series of questions about the legal change evident in them. The first document, from 1089, to use terminology from Chapter One, was a traditional *memoratorium*, a probative legal document narrated by the seller and signed by witnesses. The second, from 1143, was a dispositive judicial *chartule* made in the Salernitan style in which the judge narrated the legal act and authenticated it with his signature. The core concern of the preceding chapters was to understand how we got from one to the other: the process of legal change that turned variable and less-structured community-based institutions into consistent and formalized ones controlled by professional legal experts. The answer revealed by the sources is that an institutional model developed in the city of Salerno, which remained stable throughout the Norman period, spread across the Salernitano in the early twelfth century and replaced traditional Lombard institutions. As Chapter Three argued, the nature of this change, which happened mostly in silence, varied from context to context; the documents generally do not reveal the agents responsible for effecting it or a unified program of reform imposed from above. Limited evidence from the castle town of Eboli suggests that the local judges there consciously sought to change its institutions, but there is no evidence of an organized plan. What is clear is that there was a local demand for legal expertise where there had not been before.

Despite a historiographical tradition that has identified the Kings of Sicily as the source of legal change in the Norman Kingdom, they do not seem to have structured or brought about this demand for experts. If anything, the development of the Norman royal administration can perhaps be seen as another manifestation of the same demand. Royal government did not appoint or control the local judges of the Salernitano. In fact, there is no evidence in the many sources

related to royal law—literary, legislative, administrative, or documentary—that the kings or royal administration sought to impose any kind of diplomatic or judicial institutions on local legal cultures. In general, the ambitions and interests of royal law either outpaced the administration's capacity to effect change throughout the kingdom or were concerned with a different set of problems than were local legal institutions. As Chapter Five argued, royal officials in the Salernitano did not try to take over local law; instead, they relied on local judges to run courts, make judgements, and authenticate legal acts. The concerns and interests of royal law largely did not intersect with those of local institutions of judgeship. The two legal cultures instead relied on and reinforced each other.

Traditionally, narratives of state-building and the rise of monarchy in the central Middle Ages have focused on how kings and their officials centralized legal power at the expense of local communities. But the Kings of Sicily did not replace the local legal systems already functioning throughout their kingdom with a royal system of justice. Royal legal administration was a superstructure that allowed the legal systems functioning below it to develop in response to local demands and pressures while still using those local legal systems to do justice in the name of the king. Such a method of rule offers a new lens through which to evaluate monarchical power in the twelfth century. Indeed, through this lens, the legal landscape of southern Italy looks much more similar to that of the North, where a powerful sovereign (the German Emperor) also ruled over a number of largely independent legal cultures (those of the communes) that developed according to local demands and needs.

Local legal institutions in the Salernitano changed to meet the needs of local communities demanding expertise, and the model of expertise that they preferred was firmly rooted in the local context of the Salernitano. But how unique was the Salernitano? Did other local legal

cultures in other regions of the Kingdom change in similar ways? Is there a connection between a city's history as the center of a Lombard principality and its legal institutions? Do Benevento and Capua, for example, have similar judicial or documentary institutions as Salerno? What was the role of cities and urban government in shaping these processes of legal change more generally? Little work has been done about local legal change in the South as of yet, and more is certainly required to understand the broader picture and causes of legal change in the Norman Kingdom. It is my intention to pursue this research.

The evidence of royal influence in Sant'Agata discussed in Chapter Four, which suggests a geography of royal legal power connected to the royal demesne and perhaps strategic administrative centers like castles, is another promising avenue of research. By identifying and examining other similar places in the Kingdom where there was a combination of royal demesne and an administrative center, it might be possible to develop a new and more sophisticated understanding of the nature of royal power. If royal legal power was essentially limited to the king's demesne, this would reshape our understanding of the nature of Norman royal administration and its administrative purview.

The most pressing direction of future research is in Sicily and Calabria. The historiographical consensus is that these regions were ruled much more directly and intensively than the mainland provinces, but it is not always clear what this meant in practice. Some hints of the different scale of royal capacity appeared in my discussion of royal *diplomata* and charters of confirmation above, where the kings were able to compel a sizeable amount of people and churches to reconfirm their privileges in 1144-1145. But what were the goals, capacities, and rhythms of administration outside of great occasions like 1144? What were royal officials' legal and fiscal responsibilities at the local level? Did Sicily and Calabria have or develop a tradition

of judgeship like Salerno did? The evidence related to the office of *κριτης* (judge) in Calabria offer a promising avenue of research. The Greek and Arabic documents suffer from a poor edition, but this may soon be remedied by Jeremy Johns.¹ In any case, difficult sources are an opportunity for research as much as they are a barrier. A better understanding of Norman royal fiscal and legal administration in Sicily and Calabria would also greatly expand our knowledge of administration in the twelfth century Mediterranean more broadly. Since the Normans imported officials from contemporary Fāṭimid Egypt, understanding how they worked aids our knowledge of the Egyptian context as well.

There is obviously still a great deal of work to be done on the legal history of the Norman Kingdom of Sicily, at which this dissertation only makes a start. In many ways, the Norman Kingdom's legal history is *terra incognita*, the most exciting sort of *terra*. Southern Italy and Sicily were remarkably dynamic and fascinating places in the twelfth century that lie at the confluence of multiple currents of cultural, religious, intellectual, legal, and economic change. On these currents were borne people both extraordinary and mundane: Roger II, Most Glorious King of Sicily and Italy and founder of the Norman Kingdom, and Iohannes the priest, whose family sold some land to Petrus, son of Littus, in Nocera in 1089. Both men, in their own way, were important parts of the story of legal change told in the previous chapters. Both contributed to the dynamic legal and human landscape of the South that so fascinated me when I first encountered it in the archive and to which I am eager to return.

¹ Salvatore Cusa, ed., *I diplomi greci ed arabi di Sicilia* (Palermo, 1868); Jeremy Johns, "Arabic Sources for Sicily," in *Byzantines and Crusaders in Non-Greek Sources, 1025-1204*, ed. Mary Whitby (New York: Oxford University Press, 2007).

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