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Lotharius of Cremona

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Lotharius of Cremona

Although Lotharius of Cremona taught Roman law at Bologna in the last two decades of the twelfth and the early thirteenth century, following a career that did not normally lead to advancement in the Church, he became bishop of Vercelli in 1205 and was elected archbishop of Pisa sometime before December 1208.¹ He is one of the few exceptions to the rule that civilians did not become bishops.²

Pope Innocent III sent two decretals to Lotharius while he was bishop of Vercelli that were later included in decretal collections. The first was the famous *Licet ex suscepto* in which he instructed him that citizens of Vercelli could appeal to the pope only if the consuls of the city did not render appropriate justice to them.³ The second letter, written in February, 1206, arose from a complaint of the bishop of Novara. Lotharius had, it seems, been conducting an investigation of the church at Novara. Innocent, however, received complaints that he was not following the prescribed rules of judicial procedure as he carried out his duties. If these reports of judicial improprieties reported to the curia were correct, Innocent exhorted him to adhere henceforth to rules, lest injury arise from the birthplace of laws.⁴ From the language Innocent used, Lotharius had been accused of taking procedural shortcuts.⁵

¹ Lotharius was, according to C. Eubel, *Hierarchia catholica medii aevi* (2 vols. Monasterii 1913-23) I 399, 520, bishop of Vercelli, 1205-1208, and then, archbishop of Pisa from 1208, until he was translated to the Patriarchate of Jerusalem in 1218. Lotharius never became the patriarch of Jerusalem, see G. Fedalto, *La Chiesa latina in Oriente*, 2: *Hierarchia latina orientis* (Studi Religiosi 3; Verona 1976) 133-35. The connection between the bishop of Vercelli and archbishop of Pisa is certain. Innocent III mentioned that Lotharius, archbishop of Pisa, had been bishop of Vercelli in a letter to the bishop-elect of Novara: 'Ex litteris ven. fratris nostri patriarchae Antiocheni', Potth. 4095, PL 216.320-22. I can find no reason for giving Lotharius the family name 'Rosarius'. No contemporary source gives Lotharius this family name.

² J. Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert: Zur sozialen Stellung und politischen Bedeutung der gelehrten Juristen in Bologna und Modena* (Forschungen zur neueren Privatrechtsgeschichte 21; Köln-Wien 1974) 65, cites two professors of Roman law at Bologna who became bishops: Guilielmus de Cabriano, Patriarch of Ravenna and Lotharius.

³ 3 Comp. 2.2.1 (X 2.2.10), Potth. 2785, June 1206.

⁴ 3 Comp. 5.1.4 (X 5.1.17), Potth. 2672. 'ne inde nascantur iniuriae, unde iure nascuntur'.

⁵ Ibid. 'Si uero qualibet occasione pretermisistis eundem, ne leui compendio ad graue dispendium ueniatur, adhuc ipsum ordinem tempore oportuno volumus obseruari'

Lotharius of Cremona, the jurist, has left few traces. He wrote only scattered glosses preserved in the margins of a few manuscripts.⁶ His name appears in only a few documents. After the consuls of Bologna had promised that they and their successors would never force him to hold classes or restrict him in the future, Lotharius swore an oath to the commune of Bologna in 1189 that he would not teach outside of the city.⁷ He was an 'accessor cause' at Modena in 1197.⁸ Phillip Augustus of France called upon Lotharius for an opinion ca. 1202, in a case in which a 'vicedominus' was accused of plundering episcopal possessions at the death of the bishop of Châlons.⁹ Sarti published a document of 1204 in which 'Dominus Lotharius Cremonensis' was present at court when Johannes, cardinal deacon of S. Maria in Cosmedin rendered a decision.¹⁰ These scattered bits of evidence create no biographical coherence.

Odofredus, the garrulous civilian, is the only near contemporary source who gives us a glimpse of the man. He recounted a story of Lotharius's encounter with Emperor Henry VI and Azo with his typical love of exaggeration and detail. Henry had summoned Azo and Lotharius, who were teaching in Bologna, to settle an affair. As he rode with the two scholars one day, he posed the question: 'To whom does "merum imperium" belong?' 'You tell me', Azo arrogantly asked Lotharius. He declared that 'merum imperium' belonged to the emperor and to no one else. Lotharius, explained Odofredus, was the better knight, but Azo was more learned in our law (Roman law). Further, he told his students, Lotharius loved many woman and looked on them with pleasure. Finally, Odofredus noted that when Lotharius was elected archbishop of Pisa, Pope Innocent III sent the decretal Si

⁶ G. Dolezalek lists two manuscripts with glosses of Lotharius: London, B. L. Harley 5117 and Bamberg, Staatsbibl. Jur. 20; *Repertorium manuscriptorum veterum Codicis Justiniani* (2 vols. Repertorien zur Frühzeit der gelehrten Rechte, Ius commune, Sonderhefte 23; Frankfurt am Main 1985) 128 and 258. Annalisa Belloni prints a text from Vienna, Nat. Bibl. 2077 in which an opinion of Lotharius is reported in *Le questioni civilistiche del secolo XI: Da Bulgaro a Pilio da Medicina e Azzone* (Ius commune, Sonderhefte 43; Frankfurt am Main 1989) 49.

⁷ Maurus Sarti and Maurus Fattorini, *De claris Archigymnasii bononiensis professoribus a saeculo XI usque ad saec. XIV*, ed. C. Albicinius and C. Malagola (2 volumes; Bologna 1888-1896) II 25 and also mentioned in a document dated 30 December, 1198, *Chartularium Studii Bononensis: Documenti per la storia dell'università di Bologna dalle origini fino al secolo XV* 1 (Bologna 1909) 9. For the interpretation of these oaths see Fried, *Entstehung des Juristenstandes* 120-25.

⁸ Fried, *Entstehung des Juristenstandes* 64, n. 26.

⁹ Edgard Boutaric, *Actes du Parlement de Paris (1254-1328)* (2 vols. Paris 1863-1867) 1.cxcviii-cxcix. See Meijers, Review of Calasso and Mochi Onory, TRG 20 (1952) 122.

¹⁰ Sarti and Fattorini, *De claris Archigymnasii bononensis professoribus* I 95. On Johannes, a relative of Innocent III, see W. Maleczek, *Papst und Kardinalskolleg von 1191 bis 1216* (Publikationen des Historischen Instituts beim Österreichischen Kulturinstitut in Rom, Abhandlungen, 6; Vienna 1984) 136-37.

diligenti to him.¹¹ Odofredus is the only source that links the jurist and the archbishop.

Several historians have doubted Odofredus's testimony, to protect Lotharius the bishop from the accusation of unseemly behavior.¹² One would, in fact, have good reason to doubt that Lotharius the jurist and the archbishop were the same. The most important objection would not be Odofredus's accusations of impropriety, but the rarity of a civilian's gaining high ecclesiastical office. However, Odofredus's identification of the lawyer and the bishop seems to be confirmed by legal documents from Pistoia and Florence that are edited in an appendix of this paper.

In the consilium from Florence, Ranuccinus, a judge in Pistoia, asked two jurists and the archbishop of Pisa for consilia in a dispute between Rainaldus and Nicholas and in a related question between Rainaldus and two other donors, Thomasius and Ildebrandinus.¹³ In both cases Lotharius's opinion is reported in detail and given precedence. The other two jurists simply confirmed his decision. This is good, if indirect, evidence that Lotharius was a respected jurist. Further, one of the signatories, Bandinus de Gaetano, was the same man who had been witness, along with Lotharius, to an oath that Bandinus Familiatus made to the city of Bologna in 1198. Bandinus de Gaetano confirmed Lotharius's opinion in both parts of the Florentine consilium.¹⁴ His association with Lotharius could hardly have been by chance and confirms the archbishop's Bolognese past.

¹¹ Odofredus, *Lectura super Digesto* to Dig. 2.1.3 (Imperium), (2 vols. Lyon 1550-1552; repr. Bologna 1967-1968), Florence, Biblioteca nazionale (Grandi formati 39), Magliabecchiano Cl.xxix.27, fol. 34r: 'Vnde dominus imperator Henricus pater domini Frederici minoris qui regnabat modo sunt xl. <sexaginta Ed.> anni tunc temporis: dominus Azo et dominus Lotarius docebant in ciuitate ista et imperator uocauit eos ad se pro quodam negocio, et dum <deinde Ed.> una die equitaret cum eis fecit eis talem questionem: 'Signori dicatis mihi cui competit merum imperium.' Dixit Azo domino Lotario, 'Dicatis mihi', et licet dominus Lotarius esset melior miles, tamen dominus Azo fuit melior in iure nostro, et debetis scire quod dominus Lotarius diligebat multum dominas et libenter eas uidebat, licet postea fuerit factus archiepiscopus Pisanus, et propter eum fuit facta decretalis, extra. de foro compet. c. Si diligenti <X 2.2.12 and 2.26.17>' In chapter I of *The prince and the law, 1200-1600: Sovereignty and rights in the Western legal tradition* (Berkeley-Los Angeles 1993) I have argued that the encounter between Azo and Lotharius is not true but arose from a corruption in the text of Azo's *Summa super Codice*.

¹² Sarti and Fattorini mention several historians who believed that the jurist and the archbishop could not have been the same person, but rejected their arguments; op. cit. I 95-96.

¹³ Archivio di Stato, Firenze, Dipl. Pistoia (Città), 12— nr. 8, first cited by L. Chiappelli, 'Maestri e scuole in Pistoia fino al secolo xrv', *Archivio storico Italiano* 78 (1920) 160-214 at 163.

¹⁴ *Chartularium studii Bononiensis* I 9: 'domino Bandino Gaettani filio... domino Lothario legum perito'

The Pistoia document reports the outcome of a case that Lotharius heard in August, 1215. Pope Innocent III had delegated a dispute between a certain Sodus and the monastery of St. Michael in Forcale in Pistoia to Lotharius. He decided the matter in favor of the monastery and rejected Sodus's claims.¹⁵ Once again, Bandinus de Gaetano was among the witnesses. We can conclude from this evidence that Lotharius brought 'iurisperiti' with him from Bologna to Pisa. Bandinus was a citizen of Pisa, and Lotharius gave him a position at his archiepiscopal court.

His curia must have been noted for its legal learning. The consilium — whose survival is relatively rare for this period — indicates that judges from other cities turned to Pisa for legal advice. Since his predecessor was certainly not a lawyer, perhaps we may attribute some of the sophisticated organization of the archiepiscopal law court to Lotharius. Within a few years the court's activities were being regularly recorded in a register, a fragment of which has been discovered and edited by Gero Dolezalek.¹⁶

The rest of Odofredus's information is either not correct or cannot be confirmed, and it is difficult to decide what facts about Lotharius may be extracted from the details of his story. Since Lotharius died sometime before 1218 and had become bishop of Vercelli in 1205, Odofredus had probably not known him personally. His claim that *Si diligenti* had been addressed to Lotharius is false. Innocent had sent the decretal to Hubaldus, Lotharius's predecessor, in May, 1206.¹⁷ The firm dressing down that Innocent had given Hubaldus in the decretal was a subtle part of Odofredus's story. He knew, and most of his audience undoubtedly remembered, that Innocent had rebuked the archbishop for not knowing canon law in *Si diligenti*.

Hubaldus had written to Innocent asking whether a cleric could submit himself to the judgment of a layman in temporals. He cheerfully informed the pope that he maintained a cleric could and that he had held this opinion for some time.¹⁸

¹⁵ Pistoia, Archivio di stato, Dipl. S. Michele in Forcole, 1215, July 21.

¹⁶ *Das Imbreviaturbuch des erzbischöflichen Gerichtsnotars Hubaldus aus Pisa, Mai bis August 1230*, edited by G. Dolezalek (Forschungen zur neueren Privatrechtsgeschichte 13; Köln-Wien 1969).

¹⁷ Hubaldus was still archbishop of Pisa in a document dated July 1, 1206; see *Le carte arcivescovili pisane del secolo XIII, I: (1201-1238)*, ed. N. Caturegli (Regesta Chartarum Italiae 37; Rome 1974) nr. 42, p. 72. Lotharius was first mentioned on December 20, 1208; *ibid.* nr. 45, p. 77.

¹⁸ 3 Comp. 2.2.12 (Reg. 9.63, PL 215.875-82; Potth. 2769). The inscription of the papal registers, the *Collectio Romana* of Bernardus Compostellanus, and 3 Comp. read: 'Pisano archiepiscopo'. 'Super eo autem admiramur plurimum et movemur quod, cum te reputemus virum providum et discretum et iuxta debitum pontificis officii sanctorum patrum statuta ignota tibi esse non debeant et iurisperitorum copiam habere noscaris, asseruisti te usque ad hec tempora tenuisse et habere pro certo quod licitum sit cuilibet clerico renunciare saltem in

Odofredus explicitly told his student-audience and the readers of his *Lectura* that Lotharius was not as learned as Azo in Roman law and subtly informed them implicitly that he knew no canon law as well, because the recipient of *Si diligenti* was manifestly not a jurist. Further, happily combining Lotharius's scholarly ineptitude with moral turpitude, Odofredus blackened his portrait by declaring that Lotharius was a womanizer, an accusation he repeated at two other places in his commentary.¹⁹

The following documents are the strongest pieces of evidence that Lotharius of Cremona was first a professor of Roman law at the law school of Bologna and later the archbishop of Pisa. Only one very tenuous piece of evidence would undermine the connection between the jurist and the bishop. A document in the Archivio capitolare in Pisa, dated 14 August, 1196, describes a conflict between Archbishop Hubaldus and his chapter. A certain 'Magister Lotterius de Clemona' is mentioned in the text. The first editor of the text, Antonio Felice Mattei changed 'Clemona' to 'Cremona', presumably because the thought 'Clemona', a small town in Friuli-Udine, was an unlikely reading.²⁰ The original document reads 'Clemona', and the next editor, Natale Caturegli, restored the reading of 'Clemona' when he reedited it.²¹

Although in the case of this word he faithfully adhered to the reading in the document, Caturegli's edition is not very reliable. In the five lines following Lotterius's name he left seven words out of his edition that appear in the manuscript. Caturegli seems to have done little more than mechanically change Cremona to Clemona and did not explore the implications of the change that Mattei had made. In any case, Lotterius of Clemona never reappears in the sources.

If Clemona is a mistake for Cremona, then the jurist and the bishop are very likely not the same man. Since Lotharius of Cremona (Clemona) and others were appointed to the cathedral chapter in order to perform pastoral duties, he could not have been a teacher at Bologna during the same time. Consequently, if we follow this very speculative line of thought, we might deduce that Lotharius of this document, a second Lotharius of Cremona, was not a jurist, became bishop of Vercelli, and was then elected archbishop of Pisa.

temporalibus causis iuri suo, et sibi laicum iudicem constituere, presertim ubi aduersarii voluntas accedit'. Antonio Felice Mattei, *Ecclesiae Pisanae historia* (Lucca 1768-72) I 254-55, discusses the problems that *Si diligenti* raises for deciding whether Lotharius the bishop and Lotharius the jurist were the same man, but did not realize that the decretal predated his episcopal office at Pisa.

¹⁹ Dig. 4.8.49 and Cod. 3.1.15. Savigny, *Geschichte* IV 385-90, is inclined to believe Odofredus. See also M. P. Gilmore, *Argument from Roman law in political thought 1200-1600* (Cambridge, Mass. 1941) 18-19.

²⁰ *Ecclesiae Pisanae historia* I 65-68.

²¹ *Regesto della chiesa di Pisa* (Regesta Chartarum Italiae 24; Rome 1938) 476.

However, unless other evidence surfaces, the following documents provide the best evidence that the jurist and the archbishop were the same person. Lotharius taught Roman law at Bologna before he became bishop and established his episcopal court in Pisa as a significant juristic forum for central Italy in the early thirteenth century. In spite of Odofredus's assertions that Lotharius was not a first-rate lawyer, these documents demonstrate that his judgment was sought and respected in the early thirteenth century. Odofredus may have had a sharp tongue and a dull sense of truth.

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TEXTS

I.

Florence, Archivio di Stato, Dipl. Pistoia (Città), 12—, nr. 8 (After October 4, 1209).

In nomine Domini amen. Cum Ranuccinus iudex Pistor. petuisset consilium a domino Lottario Pisano archiepiscopo de causa Rainaldi et Nicholay, ideo archiepiscopus, uisis et auditis confessionibus et allegationibus utriusque partis et dictis testium intellectis, dixit et enim consuluit Nicholaum fore condempnandum Rainaldo ad prestationem annui afficti xxx. denariorum g. et ad restaurationem detenti asserens quod ius obligationis non pertinet ad donatarios, immo pertinet ad Rainaldum. Datum fuit hoc consilium apud plebem de Auana in Valle Sereli. Dominus Bandinus de Gaetano Pisanus ciuis iurisperitus consuluit idem. Henrigus Sexmundi ciuis Lucanus iurisperitus consuluit idem.

Item in causa que est inter Rainaldum et donatarios consuluit idem archiepiscopus Rainaldum fore absoluendum a petitione dictorum Tomasii et Ild<ebrandini> donatariorum, uisis et auditis prius confessionibus et allegationibus et dictis testium utriusque partis <dicens quia> minor xxv. annis non potest donare et quia donatio non est contractus, cum contractus <obligatio est inter utro> citroque. Item dixit Bandinus predictus.

Ego Benentendus inuictissimi Ottonis Romanorum imperatoris iudex ordinarius prefatis cum domino Ranuccino iudice interfui ideoque scripsi.

Otto of Braunschweig was crowned emperor on October 4, 1209, which provides the terminus ante quem for document. Benintendus was a doctor of laws in Bologna.

II.

Pistoia, Archivio di stato, Dipl. S. Michele in Forcole, 1215, July 21.

In nomine patris et filii et spiritus sancti Amen.

Ego Lotharius Dei gratia ecclesie Pisane archiepiscopus ex delegatione domini pape cognitor litis que uertebatur inter presbyterum Sodem capellanum ecclesie Sancti Marci de Pistorio pro ipsa ecclesia ex una parte et presbyterum Siluestrum monachum et sindicum monasterii Sancti Michaelis de Furculis pro ipso monasterio

ex altera ipsam litem sic diffinio. Petebat namque supradictus presbyter Sodus a supradicto presbytero Siluestro monacho et sindaco supradicti monasterii Sancti Michaelis pro ipso monasterio libras septuaginta quinque denariorum Pisane monete pro expensis trium precedentium annorum et, ut omnia massaria ei ab ipso monasterio prestarentur quam diu in supradicta cappella Sancti Marci maneret, que omnia sibi deberi dicebat ex conuentione quam fecerat cum abbate quando ipse uenit ad iam dictam cappellam. Petebat etiam unum antifanarium diurnum et unum par ceroferariorum et alia que erant in monasterio pertinentia ad cappellam suam.

De quibus omnibus dictus presbyter Silvester monachus et syndicus dicti monasterii dicebat monasterium suum omnino non teneri. Econtra idem Silvester syndicus nomine monasterii sui petebat a supradicto cappellano nomine ipsius cappelle ut tam ipse donec ibidem fuerit cappellanus quam successores ipsius singulis diebus quando maiores misse cantantur in monasterio interesse debeant ipsarum celebrationi. Item in duabus festiuitatibus Sancti Michaelis et in natiuitate et assumptione Beate Virginis, nec non in festiuitate Sancte Lucie, in uigiliis etiam supradictarum festiuitatum tam in <die qua>m in nocte intersint diuinis officiis in supradicto monasterio et celebrent ibidem cum monachis, ita, scilicet, ut apud cappellam supradictam nulla celebrent diuina in supradictis festiuitatibus uel uigiliis earum, neque pulsent campanas, neque celebrari seu pulsari faciant uel permittant, et ut crucem portari faciant ante corpora defunctorum parrochianorum supradicte cappelle quando ad ipsum monasterium efferentur. Item quando corpora defunctorum aliunde portantur ad monasterium sepellienda ipsi cappellani eant pro ipsis cadaueribus efferendis. Petebat insuper ut idem cappellanus Sancti Marci alio secum assumpto cappellano ante fores monasterii recipiat letanias ciuitatis cum incenso et aqua benedicta. Petebat etiam centum oia annua que ab ipsis cappellanis dictis cappelle ipsi monasterio prestari debere dicebat in Pascha. De quibus omnibus tam petitorio quam possessorio iudicio agebat, asserens monasterium suum longo tempore fuisse in quasi possessione omnium predictorum. De quibus omnibus supradictus cappellanus se uel suos successores dicebat non teneri, licet aliquando fuissent facta uel prestita ex consensu.

Visis igitur confessionibus et attestationibus utriusque partis et examinatis earum allegationibus diligenter, pronuncio monasterium de Furculis esse in quasi possessione omnium eorum que a sindaco ipsius petita fuerunt, et in ipsa possessione debere defendi, eo excepto quod de celebratione diuinorum officiorum et pulsatione campanarum in cappella Sancti Marci non facienda in festiuitatibus supradicti monasterii et uigiliis earum, ut dictum et petitum est, salua questione iuris seu proprietatis, si eam cappellani Sancti Marci aliquando mouere uoluerant. De libris uero septuaginta quinque quas supradictus presbyter Sodus petebat et de alimentis que sibi dicebat in futurum esse prestanda, cum propter absentiam ipsius presbyteri qui legitime requisitus uenire contempsit, mihi de ipsa questione plene liquere non potuerit, supradictum syndicum pro monasterio de Furculis et ipsum monasterium ab obseruatione iudicii mei absoluo. In ceteris autem petitionibus hincinde factis utramque partem inuicem ab alterius petitione absoluo.

Datum et receptum in plebe de Cascina.

Presentibus domino Rainerio priore Sancti Fridani Lucane, magistro Rainerio Pisano canonico et magistro Johanne priore Sancte Marie de Forisporta Lucane

ciuitatis et presbytero Bruno plebano de Cascina, et comite Ramone et Leonardo quondam Alberti Adaldi et Bandino Gattani iurisperito et Salceto de Cascina et Guilielmo Guidotti et Vgolino Grilli et aliis plebanis.

Anno dominice incarnatione mccxv. indictione ii. xii. Kal. Augusti.

Ego Silvester filius quondam Boni, domini Henrigi Romanorum imperatoris iudex et notarius, hanc sententiam a supradicto domino archiepiscopo iudice in supradicta causa delegato me presente datam ipsius parabola et mandato scripsi et firmaui.