Law, Liturgy, and Sacred Space in Medieval Catalonia and Southern France, 800-1100

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Abstract

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With the collapse of the Visigothic kingdom, the judges of Catalonia and southern France worked to keep the region's traditional judicial system operable. Drawing on records of judicial proceedings and church dedications from the ninth century to the end of the eleventh, this dissertation explores how judges devised a liturgically-influenced court strategy to invigorate rulings. They transformed churches into courtrooms. In these spaces, changed by merit of the consecration rite, community awe for the power infused within sacred space could be utilized to achieve consensus around the legitimacy of dispute outcomes. At the height of a tribunal, judges brought litigants and witnesses to altars, believed to be thresholds of Heaven, and compelled them to authenticate their testimony before God and his saints. Thus, officials supplemented human means of enforcement with the supernatural powers permeating sanctuaries. This strategy constitutes a hybridization of codified law and the belief in churches as real sacred spaces, a conception that emerged from the Carolingian liturgical reforms of the ninth century. In practice, it provided courts with a means to enact the mandates from the Visigothic Code and to foster stability. The result was a flexible synthesis of law, liturgy, and sacred space that was in many cases capable of harnessing spiritual and community pressure in legal proceedings.

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Dedication

To my parents

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CSCV	José Rius Serra, ed. *Cartulario de Sant Cugat del Vallès*, 3 vols. (Barcelona, 1945-1947).
DBarcelona	Àngel Fàbrega i Grau, ed., *Diplomatari de la Catedral de Barcelona: Documents dels anys 844-1260* (Barcelona, 1995).
DOliba	Eduard Junyent i Subirà, ed., *Diplomatari i escrits literaris de l'abat i bisbe Oliba* (Barcelona, 1992).
Dotalies	Ramon Ordeig i Mata, ed., *Les dotalies de les esglésies de Catalunya, segles IX-XII*, 3 vols. (Vic, 1993-2004).
DVic	Eduard Junyent i Subirà, ed., *Diplomatari de la Catedral de Vic, segles IX-X* (Vic, 1980-1996).
HGL	Claude de Vic and Joseph Vaissette, *Histoire générale de Languedoc*…, new ed. (Privat), 16 vols. (Toulouse, 1872-1904).
JRCCM	Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval: Col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018).
Lézat	Paul Ourliac and Anne-Marie Magnou, eds., *Cartulaire de l'abbaye de Lézat*, 2 vols. (Paris, 1984-87).
LV	Karl Zeumer, ed., "Liber iudiciorum sive Lex Visigothorum," in *Leges Visigothorum*, MGH Legum, sectio I (Hanover, 1902, reprint, 1973), 33-456.
LFM	Francisco Miquel Rosell, ed., *Liber feudorum maior: Cartulario real que se*

	conserva en el Archivo de la Corona de Aragón. 2 vols. (Barcelona, 1945-47).
LIP	Jesús Alturo i Perucho et al., eds., *Liber iudicum popularis, ordenat pel jutge Bonsom de Barcelona* (Barcelona, 2003).
OR	Michel Andrieu, ed., *Les Ordines Romani du haut Moyen-Âge*, 5 vols. (Louvain, 1931-1961).
PNar	Edmond Martène, ed., *De antiquis Ecclesiae ritibus libri quatuor*, 2nd ed. (Antwerp, 1736), II: 733-47.
PRod	Josep Romà Barriga Planas, ed., *El sacramentari, ritual i pontifical de Roda. cod. 16 de l'arxiu de la Catedral de Lleida, c. 1000* (Barcelona, 1975).
Vic *Ordo*	Miquel Gros i Pujol, ed., "El pontifical Romà de Vic: Vic, Bib. Episc. ms. 103 (XCIII)," *Miscel·lània litúrgica catalana* 15 (2007), 187-272.

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Introduction

The use of sacred space in the legal world of the Province of Narbonne

For Countess Ermessenda (d. 1058), 1018 was the first year of her sole rule of the counties of Barcelona, Girona, and Osona. Her husband and political partner, Count Ramon Borrell, had died suddenly the year before, leaving his widow with a son still in his minority, an uncertain frontier with Islamic Spain, a political landscape pockmarked with rival counts (her husband's cousins), and a magnate class that was growing restless. It did not take long for opponents to avail themselves of the moment of transition. In August, Ermessenda was approached by Count Hug I of Empúries (d. 1040) who demanded she turn over property at a place called Ullastret, near the coast and east of her powerbase at Girona.[1] The countess had no such inclination, ensuring conflict. By the end, however, it would not be a force of arms that would bring a final resolution, but the invocation of supernatural power within a church. Facing Count Hug's demand for immediate transfer, Ermessenda, an experienced litigant and tribunal president,[2] proposed that they settle the matter in court. Hug had no interest in this path forward

[1] Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018), doc. 178. For select evaluations of the case, see Ramon d'Abadal i de Vinyals, "L'Abat Oliba i la seva època," in *Dels Visigots als Catalans*, ed. Jaume Sobrequés i Callicó, 2 vols. (Barcelona, repr. 1989), II: 216-19; Santiago Sobrequés i Vidal, *Els grans comtes de Barcelona* (Barcelona, 1985), 23-24; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 51-52; and Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 107-08, 110-11.

[2] Jeffrey Bowman, "Countesses in Court: Elite Women, Creativity, and Power in Northern Iberia, 900-1200," *Journal of Medieval Iberian Studies* 6 (2014), 54-70, shows how Countess Ermessenda was an especially adept tribunal president who took an active role in proceedings.

and instead challenged her to trial by combat. The countess, however, flatly refused citing prohibition of such combats in the Visigothic Code.[3]

Ermessenda was quite right; the old law code of the long defunct Gothic kings prohibited trial by combat.[4] However, other options within the bounds of law were available. The disputants lived in a literate society that stressed the legal value of documentation. With Ermessenda in possession of a record of the land's sale, Hug doubted any proceedings would see him victorious. Rejecting the countesses' counter-proposal, he seized Ullastret by force. With the situation escalating, Bishop Oliba of Vic (d. 1047) and Count Bernat I Tallaferro of Besalú organized a formal tribunal to be run by three judges, including the renowned Ponç Bonfill Marc (d. 1040). Count Hug realized that a showing at the assembly was necessary and sent his mandatory (*assertor*) to argue his cause.

Under Ponç Bonfill Marc's leadership, the judges reviewed the evidence from both sides and found that the countess' tenure was lawful owing to her record and witnesses. They declared Hug's occupation illegal. Basing their ruling on the code, the judges ordered the property to be returned to Ermessenda and her son, Berenguer Ramon I (d. 1035).[5] With the countess poised to win, Count Bernat, a political ally of Hug, suddenly interjected. This copresident of the court demanded that Judge Ponç and his colleagues themselves swear at the altar of Sant Genís d'Orrriols concerning the validity of their acceptance of Ermessenda's submitted testimony.

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[3] Karl Zeumer, ed., "Liber iudiciorum sive Lex Visigothorum," in *Leges Visigothorum*, MGH Legum, sectio I (Hanover, 1902, repr. 1973), 33-456.

[4] *JRCCM* 178: "lex gotica non iubet ut per pugnam discutiantur negocia."

[5] *JRCCM* 178: "Iudices autem cum illis patuit causa tante veritatis, apertis codicibus legum gotorum, iudicaverunt quia hec possessio cum omnibus suis pertinentiis et adiacentiis reverti debebat in potestate Berengarii comitis predicti et matris sue iamdicte et omnem potestatem quam ante ibi habuerunt recuperare debebant."

Despite the unprecedented nature of this request, and the fact that they likely saw it for the delay tactic it was,[6] the judges readily did so. Beyond this, however, there was little Bernat could do within the region's established legal norms to assist his friend. Indeed, Hug's mandatory was left in an uncomfortable position. Wishing the matter settled, the judges rounded on him. They demanded that he declare whether he would accept Ermessenda's witnesses or not. The advocate stated that "he did not wish to receive them." And then, "bringing forth empty and superfluous excuses, he withdrew himself from the assembly without the permission of the court."[7] This disregard of the tribunal's authority left the assembly in a state of peril; Hug's representative had refused to accept witness testimony, departed without permission, and publicly rejected the proceedings.

Yet, this legal culture was not without a failsafe for such circumstances. With Hug's mandatory having abandoned the proceedings, the judges decided to secure the testimony of Ermessenda's witnesses with an oath. Oath-exaction was not an empty procedural gesture, but a powerful act solemnly performed at an altar. The swearing of testimony was a means by which the legitimating power of God, channeled by the saintly denizens of sacred spaces, could fortify rulings based on the Visigothic Code in times of emergency. Therefore, the six men with knowledge of the Ullastret affair joined the judges at the cathedral of Girona, just to the west of the disputed estate. Gathering the witnesses in the sanctuary, the judges had them swear an oath over the altar to authenticate their testimony. At the heart of that oath, they announced the power they sought to invoke: "We the witnesses swear by God, the creator of all things, and on the altar

[6] Kosto, *Making Agreements*, 51-52.

[7] *JRCCM* 178: "At ille noluit recipere eos, et proferens inanes et superfluas excusationes, absque consilio iudicum abstraxit se a iuditio."

of the most holy Sant Joan, which is located in the church of the blessed Virgin Maria, in the see of Girona."[8] The remainder of the record of this tribunal, written by Judge Ponç Bonfill Marc himself, presents a detailed defense of Ermessenda's tenure and the judges' actions with multiple citations to the Visigothic Code. These references to codified law, taken together with the supernatural power invoked at the altar, afforded the court a means to reconstruct the authority and legitimacy damaged by the departure of Hug's representative. It also provided the synthesized power, built from law and ritual force, that Bishop Oliba could use to placate the aggrieved count of Empúries.[9]

This final stage of the case illustrates judges utilizing a legal action I call the *condiciones* strategy. While it was a longstanding aspect of the dispute culture in this part of Europe, unlike other local strategies, it represents the incorporation of principles that did not emerge wholly from the Visigothic legal tradition. Rather, the *condiciones* strategy marks a creative synthesis of codified law, liturgical ritual, and consensus beliefs that churches were places where humans could commune with divine power. This study is an exploration of the strategy's origins, application, and evolution between 800 and 1100.

0.1. The setting for the *condiciones* strategy

The *condiciones* strategy, like much of the legal culture of which it was a part, was a unique feature of a region called the ecclesiastical Province of Narbonne. This title refers to those bishoprics that were subject to the archdiocese of Narbonne after the early eighth-century

[8] *JRCCM* 178: "Iuramus nos testes per Deum factorem omnium rerum et per altare et sacramentum Sancti Iohannis quod fundatum est in ecclesia Beate Marie Virginis que sedes Gerunde est."

[9] For discussion of Oliba's role in effecting an end to the conflict, see Kosto, *Making Agreements*, 52.

collapse of the metropolitan see of Tarragona (reconstituted in the twelfth century).[10] Today the region constitutes southeastern France and Catalonia. These geographic zones, though separated by the Pyrenees Mountains, share a common medieval history.

Map 1. The Ecclesiastical Province of Narbonne, ca. 1000, with emphasis on counties[11]

[10] This appellation is principally used by Élisabeth Magnou-Nortier, *La société laïque et l'Église dans la province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle* (Toulouse, 1974) and Bowman, *Shifting Landmarks*, 16-29.

[11] This disposition of county boundaries is based on the work of Jordi Bolòs and Víctor Hurtado, *Atles del comtat de Barcelona, 801-993* (Barcelona, 2018), 9.

0.1.1. The history of the Province of Narbonne

From the fifth century to the early eighth, the region was part of the Visigothic Kingdom. After that polity's collapse in 711 there was a period of Muslim rule until the establishment of the Spanish March by Charlemagne and his successors around the turn of the ninth century. This Carolingian annexation saw a series of frontier counties established as a zone that historians term Old Catalonia before further expansion in the twelfth century.[12] To the south was Al-Andalus, an Umayyad polity centered at Córdoba. Power holders in the Province of Narbonne maintained a complex relationship with their Muslim neighbors, defined by periods of cooperation, exchange, and conflict. This varied dynamic prevailed both before and after the splintering of Al-Andalus into the Taifa states during the first half of the eleventh century.[13]

In 878, many of the counties south of the mountains came under the control of Guifré the Hairy (d. 897). His descendants dominated regional politics well past the end-date of my study and ascended to the Crown of Aragon in the twelfth century. From the foundation of Guifré's power in the region until the close of the tenth century, scholars have traditionally argued the region's counts were gradually distancing these lands from Frankish rule, but the reality, scope, and significance of this separation remains subject to debate.[14] The eleventh century has garnered

[12] Flocel Sabaté i Curull, *El territori de la Catalunya medieval: Percepció de l'espai i divisió territorial al llarg de l'edat mitjana* (Barcelona, 1997), 23-59, discusses the position of the counties as territorial units.

[13] David Wasserstein, *The Rise and Fall of the Party-Kings: Politics and Society in Islamic Spain, 1002-1086* (Princeton, 1985); and Jonathan Jarrett, "Caliph, King, or Grandfather: Strategies of Legitimization on the Spanish March in the Reign of Lothar III," *The Medieval Journal* 1 (2011), 1-22.

[14] Catalan language scholarship, particularly represented by Ramon d'Abadal i de Vinyals, *Els primers comtes catalans*, 3rd ed. (Barcelona, 1980), 291-341, and Josep M. Salrach i Marés, *El procés de formació nacional de Catalunya, segles VIII-IX* (Barcelona, 1978), 115-16, characterizes the period following Guifré the Hairy's death as a push for independence and the emergence of regional identity. Michel Zimmermann, "Hugues Capet et Borrell: À propos de l'indépendance de la Catalogne," in *Catalunya i França meridional a l'entorn de l'any mil*, ed. Xavier Barral i Altet et al. (Barcelona, 1991), 59, 64, tempered the identity aspects of this thesis, though ultimately endorsed the significance of Guifré's and his successors' consolidation of power and rejection of royal oversight.

attention as a time of socio-political change in the province, particularly the period between 1020 and 1060, with some seeing the death of Countess Ermessenda's husband, Ramon Borrell in 1017 as an inflection point in the disintegration of traditional comital authority.[15] As the story goes, by the end of this process, new interpersonal relationships based on the fief and agreement were the hallmarks of power in the region. While these narratives, and their associated historiographies, are important to keep in mind as we progress, they are not the focus of my study. I will reference them to offer context as they become relevant to the discussion of the *condiciones* strategy.

Although the term "Catalonia" will appear in this work as a geographic indicator of the areas south of the Pyrenees Mountains, it is technically anachronistic to this period. Therefore, I will endeavor to maintain focus on the Province of Narbonne. The great benefit of the latter appellation is that it allows for the recognition of the rich political, economic, religious, and intellectual exchange that transcended the Pyrenees during this period. Most importantly for the purposes of this study, however, the lands of the province shared a similar appreciation for the Gothic legal inheritance grounded in the law code called the *Forum iudicum*/*Liber iudiciorum*, or simply the Visigothic Code. The legal practices that emerged from adherence to this code prevailed in the region throughout our period before it faced challenges and decline during the later portion of the eleventh century.

This position has been most forcefully challenged by Cullen Chandler, *Carolingian Catalonia: Politics, Culture, and Identity in an Imperial Province, 778-987* (Cambridge, 2019). Most recently, Adam Kosto, "Un diplôme inédit de Hugues Capet, a. 991: Un nouveau dernier diplôme royal franc pour les comtés catalans?" *Journal des Savants* (2020), 539-61, shows the possibility that correspondence continued past the traditional watershed date of 988.

[15] Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76) sparked significant debate about the nature and periodization of change in the region. The contemporary work of Magnou-Nortier, *La société laique*, stands as a stark contrast to Bonnassie's view of emergent feudalism. For a summary of the responses to Bonnassie and Magnou-Nortier, see Kosto, *Making Agreements*, 12.

0.1.2. The judicial system and its record production

The practice of law and documentary production in the Province of Narbonne has been the subject of intensive research.[16] While there was room for significant flexibility and innovation—as this study will show—legal activities often unfolded according to norms that were well understood by the parties involved. Enough structure and consensus is discernable to see this as a legal system. The tribunal proceeding (*placitum*) was at the heart of this system, and the participating parties could be expected to advance their cases from positions of legal and documentary literacy.[17] Courts often insisted that all parties conform to rules defined in the Visigothic Code, as we saw Countess Ermessenda admonished Count Hug in the Ullastret affair above. These norms conditioned expectations and helped structure proceedings. In court, disputants and their legal advisors (*mandatarii*, I will refer to them as mandatories) appeared before tribunal presidents who were often counts, viscounts, and bishops. Indeed, joint presidencies of multiple such figures were common.[18] The presidents, though occasionally assuming an active role, most frequently deputized tribunal management to professional judges. These men were sometimes assisted by court officers called *saiones* (sing. *saio*). A less defined group of counsellors, the *boni homines*, or "good men," appear to have served in an advisory

[16] Notable treatments include: Bonnassie, *La Catalogne*, I: 183-204; Magnou-Nortier, *La société laique*, 263-91; Aquilino Iglesia Ferreirós, "La creación del derecho en Cataluña," *Anuario de historia del derecho español* 47 (1977), 99-424; Roger Collins, "*Sicut Lex Gothorum continet*: Law and Charters in Ninth- and Tenth-Century León and Catalonia," *English Historical Review* 100 (1985), 489-512; Marie Kelleher, "Boundaries of Law: Code and Custom in Early Medieval Catalonia," *Comitatus* 30 (1999), 2-11; Kosto, *Making Agreements*, 45-52; Bowman, *Shifting Landmarks*, 33-115; and Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 19-43.

[17] Adam Kosto, "Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia," *Speculum* 80 (2005), 44-74.

[18] Bowman, *Shifting Landmarks*, 100-108, also stresses the assistance of important lords, the *optimates*. The image of court presidencies in the Province of Narbonne is one of a collaborative effort.

capacity.[19] Importantly, many tribunals were well attended assemblies.[20] Common court scenes include: scrutinizing evidence, recovering lost documents, requesting recesses, establishing property claims, walking property boundaries, and authenticating testimony with oaths. The influence of the judicial ordeal, both its proposal and enaction, was limited.[21] Records more regularly show concern for strict adherence to procedure and high standards for different forms of proof in court.

Courts produced documentation to commemorate proceedings and provide litigants with records. At least in the ninth century, tribunals often generated three document types: (1) the judgment explaining the dispute's outcome, (2) the quitclaim (*professio/evacuatio*) detailing the losing party's submission, and (3) the document noting the oath sworn by witnesses. Often only one of these records survives, raising the question as to whether the other two were lost or perhaps never made. Roger Collins notes the possibility that late tenth-century courts conflated

[19] For the role of *boni homines*, see: Bonnassie, *La Catalogne*, I: 187; Paul Ourliac, "Juges et justiciables au XIe siècle: Les *boni homines*," *Recueil de memoires et travaux publié par la société d'histoire du droit et des institutions des anciens pays de droit écrit* 16 (1994), 17-33; and Bowman, *Shifting Landmarks*, 111-15.

[20] Adam Kosto, "Reasons for Assembly in Catalonia and Aragón, 900-1200," in *Political Assemblies in the Earlier Middle Ages*, ed. Paul Barnwell and Marco Mostert (Turnhout, 2003), 139-43.

[21] While actual performance of the ordeal was rare, it was more common to propose forms of the ordeal (including combat between untested youths, though technically beyond the permission of Gothic law). It was considered secondary to other forms of compurgation. For staging the ordeal, see Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), 26; Stephen White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050-1110," in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas Bisson (Philadelphia, 1995), 93. For a discussion of the ordeal in Catalan contexts, see Bowman, *Shifting Landmarks*, 136; and Adam Kosto, "The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert," *Viator* 47 (2016), 88-89. For examples of the ordeal's performance in the Province of Narbonne, see *JRCCM* 256, 422. Some instances provide hazy detail, making it difficult to discern if the action was performed. This is the case with the judicial combat referenced in Paul Ourliac and Anne-Marie Magnou, eds., *Cartulaire de l'abbaye de Lézat*, 2 vols. (Paris, 1984-87), I: 409 and 410. For a discussion of this case, see Adam Matthews, "Within Sacred Boundaries: The Limitations of Saintly Justice in the Province of Narbonne around the Year 1000," *Journal of Medieval History* 46 (2020), 13-19.

the judgment and oath document forms into the *professio*.[22] A general understanding of the patterns and documentary types comprising the system is an important prerequisite for appreciating efforts toward innovation. My specific focus is one such effort: the *condiciones* strategy.

0.2. Defining the *condiciones* strategy

The *condiciones* strategy was not a feature of the law that judges and litigants actively discussed. No scribe ever used this title or explained it as a unified concept. It is a term I apply to a sequence of linked ritual actions that court records show were performed together at a church altar. Taken as a unit, this sequence constituted a subroutine of law that played a role within the system, not dissimilar to the operation of a subroutine in a computer program.[23] The reality that its use or omission was carefully balanced against the circumstances of a dispute and the power differentials between litigants underscores its strategic value for courts. For this reason, I term it a "strategy."

In practice, the *condiciones* strategy allowed officials to apply ritual frameworks modeled on liturgical practices in order to fulfill ill-defined strictures found in the Visigothic Code. It was a synthetic application of these intellectual traditions to challenging legal situations. For example, *LV* II.4.2 required oaths to validate testimony, but provided no procedural instructions concerning just how that was to be accomplished. The *condiciones* strategy, as a liturgically-influenced lens through which to interpret the code's mandates, offered ritual norms for oath

[22] Roger Collins, "*Sicut Lex Gothroum continet*," 492-94. For the tribunal Collins uses as an example, occurring in 843, see *JRCCM* 6, 7, 8 (dated to 842 in this edition).

[23] In the broad sense of the word, a subroutine is a set of contingency actions performed sequentially within a program to accomplish a specific task. This concept—common to the field of computer science—translates well to historical understandings of the procedures that judges devised to fulfill vaguely defined legal requirements mandated in the Visigothic Code and to address anomalous court circumstances.

collection. It emphasized location in a church, patterned ritual, and even suggested the correct responses for defeated litigants. Between the early ninth century and close of the eleventh century, this supernaturally-focused practice existed in tandem with respect to codified legislation and other procedural strategies.

Most commonly invoked by judges, the *condiciones* strategy featured the court capitalizing on the spiritual power of churches in order to compel adherence to rulings. At the height of a tribunal, commonly once a victor had become apparent, judges led witnesses and the defeated party to the altar. There they had witnesses repeat testimony using an oath formula called the "publications of oaths" (*condiciones sacramentorum*), which were words more commonly associated with testamentary publications and documentary recoveries. The *condiciones* strategy takes its name from this formula dating to Visigothic times.[24]

Obeying instructions in the church chancel, witnesses extended a document recording their oath over the altar with each witness touching it. They reported their knowledge of the case to God and often the saintly intercessors dwelling at these structures, entities upon whom they relied for their salvation. At these altars—conceived as spaces otherized during a church consecration rite (see Chapter 1)—judges entreated the losing litigant to "receive" that oath

[24] For the history of the *condiciones sacramentorum* oath structure as a feature of testamentary publications, see: Nathaniel Taylor, "Medieval Catalonian Wills: Family Charter Evidence in the Archives," in *Discovery in the Archives of Spain and Portugal: Quincentenary Essays, 1492-1992*, ed. Lawrence McCrank (London, 1994), 117-18; Nathaniel Taylor, "The Will and Society in Medieval Catalonia and Languedoc, 800-1200" (PhD diss., Harvard University, 1995), 103-17; and Roger Collins, "*Sicut Lex Gothorum continet*," 494-95. The structure's two earliest iterations date to a sixth-century slate tablet, see Isabel Velázquez Soriano, ed., *Las pizarras Visigodas: Entre el latín y su disgregación. La lengua hablada en Hispania, siglos VI-VIII* (Burgos, 2004), 39:210-19, and an entry in the so-called *Formulae wisigothorum*. See Eugène de Rozière, ed., "Conditiones sacramentorum," in *Formules wisigothiques inédites, publiées d'aparès un manuscript de la Bibliothèque de Madrid* (Paris, 1854), 27-28. Michel Zimmermann, ed., "Un formulaire du Xème siècle conserve à Ripoll," *Faventia* 4:2 (1982), 81-82, shows a standardization of the *condiciones sacramentorum* as part of the Ripoll formulary of the middle tenth century. Zimmerman, *Écrire et lire en Catalogne, IX*e-*XII*e *siècle*, 2 vols. (Madrid, 2003), I: 26, explains that the documentary use of the formula became less regular in the middle of the eleventh century.

sealing their defeat. Officials hoped that such a display within sacred space would trigger anxiety in both the witnesses and the disgruntled litigants, compelling their honesty and urging them to leave cases closed. Crucially, all this was publicized to the broader audience of the assembly. This helped to communicate the power imbued in the proceedings and the ruling to potential community enforcers. Appreciating the role of such normative pressure on litigants, witnesses, and observers is critical to understanding the place of the *condiciones* strategy in the dispute culture of the Province of Narbonne. That guaranteeing force had once been provided by the Visigothic kings (along with their officers), the presence of which, mandated by the code, had been erased after the collapse of the kingdom in 711. Such authority was poorly replaced by the Carolingians following the establishment of the Spanish March at the turn of the ninth century.

In essence, the *condiciones* strategy constitutes a synthesis of codified law, liturgical ritual, and what I will define as "community belief in a sacred space." The strategy was used to invigorate and stabilize courts during times of political insecurity. I argue that this process of hybridization, first visible in the early ninth century (though marking a re-conceptualization of earlier practices), showcases the inherent malleability of the region's legal epistemology in the hands of judges. It was a mentality open to the melding of different intellectual traditions that could tap into sources of legitimating authority. That synthesis helped contribute to the emergence of a dispute culture between ca. 800 and 1100 that attributed some legal functions to supernatural entities, calling on them to help guarantee proceedings held in sacred spaces.

There is some evidence that this strategy was less inchoate in the minds of judges than may first appear. In a court document, the jurist Bonhom (d. ca. 1025) described the central oath-exaction act using the *condiciones sacramentorum* formula as the Rite of the Guarantor (*ritum*

fideiussoris).[25] While Bonhom is the sole scribe to use this term, and did so only in this one instance, he gave name to a legal ceremony common to virtually all episodes of the *condiciones* strategy from the early ninth century through the eleventh century. At least by the moment of Bonhom's usage in 1002, Barcelona's premiere jurist saw the act as a rite (*ritum*). It existed in the realm of liturgy by merit of ritual performance at a church altar. Looking back on the preceeding two centuries—with special attention to the regularity and structure afforded by courts to oath exactions—we may, with due care, extrapolate Bonhom's interpretation of the Rite of the Guarantor to earlier periods.

0.3. Sources for the *condiciones* strategy

Any effort to understand the *condiciones* strategy requires a foray into the unusually rich documentary world of the Province of Narbonne. The *Catalunya Carolíngia* project,[26] first begun under the direction of Ramon d'Abadal, accounts for approximately 6,000 records (of various diplomatic genres) up to the year 1000. Adam Kosto estimates that inclusion of the eleventh century may raise the total to over 20,000 before 1100.[27] From among this massive assortment of records, my study draws on two far smaller pools: (1) records of legal action that feature a use of the *condiciones* strategy and (2) documents commemorating church dedication events, known as *dotalia*. A grasp of both, contextualized with supplementary sources, is

[25] *JRCCM* 143.

[26] Ramon d'Abadal i de Vinyals et al., eds, *Catalunya Carolíngia*, 7 vols. (Barcelona, 1926-2019).

[27] For a discussion of the overall corpus and efforts to collect documents into editions and databases, see Adam Kosto, "Versatile Participants in Medieval Judicial Processes: Catalonia, 900-1100," in *Judicial Processes in Early Medieval Societies: Iberia and its European Context*, ed. Isabel Alfonso, José Andrade, and André Evangelista Marques (Leiden, forthcoming), 1-3 n. 4.

necessary to underscore the significance of the courts' use of churches as locales for adjudication. We may address each in turn.

0.3.1. Court disputes featuring the *condiciones* strategy

I identify 97 records that feature the *condiciones* strategy in land disputes between the late eighth century and 1100 (see Appendix A).[28] These examples—some documentary originals, others cartulary copies—emerge from a larger pool of 560 records that detail disputes or judicial actions that contributed to a resolution. The great majority, 557 records, come from the collection edited under the direction of Josep Salrach, as part of *Justícia i resolució de conflictes a la Catalunya medieval* (*JRCCM*). I have added three additional cases.[29] This grouping is distinguished from the broader collection of 1,174 overall judicial actions from the period, as reported by the "Procesos judiciales en los reinos del norte peninsular, ss. IX–XI" (*PRJ* I) database,[30] many of which are non-contentious. That separation from the broader collection of surviving legal records, more than twice the number found in *JRCCM*, has important implications for my study (discussed below).

A significant proportion of the documentation included in *PRJ* I records episodes of testamentary publication or execution and less targeted forms of documentary recovery.

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[28] Many of the records in my sample have been the subject of extensive study. Therefore, Appendix A, in addition to constituting a list of cases, also provides a works cited list for the cases discussed in this dissertation. Note to reader: at present, this works cited section of Appendix A is still under development.

[29] *JRCCM*, at 13, notes that the edition contains 552 numbered cases. The editors added five additional *bis* cases for a total of 557 entries. I add three additional cases outside of *JRCCM*: Cros-Mayrevielle, *Histoire du comté et de la vicomté de Carcassonne* (Paris, 1846), doc. 3; *Lézat*, docs. 409 and 410; and Gaspar Feliu i Montfort and Josep M. Salrach i Marés, eds., *Els pergamins de l'arxiu comtal de Barcelona de Ramon Borrell a Ramon Berenguer I*, 3 vols. (Barcelona, 1999), II: doc. 505. A collection based on the *JRCCM* edition cannot be considered exhaustive. Salrach targets surviving records pertaining to the Catalan counties. Although the lands of southern France do appear frequently in this collection, and despite my efforts to add subsequent cases, further effort is necessary to better integrate counts from the northern areas of the Province of Narbonne into the discussion of dispute culture during this timeframe.

[30] Isabel Alfonso et al., "Procesos judiciales en los reinos del norte peninsular, ss. IX–XI" [prj.csic.es] (*PRJ*).

Regardless of the cause for the hearing commemorated in the record, such publications/recoveries were non-contentious. A great many feature the *condiciones sacramentorum* oath structure (given that *LV* II.4.12 mandated oaths to validate testaments), and indeed feature legal action conducted in a church.[31] Despite sharing a ritual core with episodes of the *condiciones* strategy, I have not included these records in my study because doing so obscures one of the fundamental qualities of the *condiciones* strategy: it was a means of conflict resolution. Key research questions in this study target how common the subroutine was in disputes and how useful it was to those who invoked it. The inclusion of all testamentary publications and documentary recoveries in my overall count would distort the frequency of the *condiciones* strategy in courts. This would inhibit conclusions about the strategy's efficacy. The fact that testaments and recoveries using the *condiciones sacramentorum* formula are so numerous does, however, underscore the importance of ritual in a church as a central feature of the region's legal culture.

This decision to exclude publications and recoveries, however, requires mention of some exceptions. Select documentary recoveries do merit inclusion. A discussion of why allows us to address the two broad contexts for use of the *condiciones* strategy. The first, as outlined above, saw an oath exacted in support of evidence during a contentious tribunal. The other context in which a synthesis of law and liturgy was used appeared in non-contentious hearings. These cases, constituting moments of documentary recovery, either showcase judges on a defensive footing, fretting over the risk of an impending dispute, or mark proceedings that themselves

[31] Taylor, "The Will and Society," 106; Taylor, "Medieval Catalonian Wills," 117-18, argues that the use of churches for testamentary authentication is most common after 800. However, the requisite formula is present on one of the Visigothic slates from as early as the sixth century. For further discussion and placement of the *condiciones sacramentorum* in a broader Iberian context, see Roger Collins, "*Sicut Lex Gothorum continent*," 489-512. See Chapter 2 for discussion of the slate and other early sources.

triggered a dispute. These instances stand apart from other recoveries/testaments because they show judges reflecting on the risk of conflict and what options were open to courts seeking to forestall it. These select hearings of the second context constitute a hazy outer boundary of the strategy. They showcase the strategic complexities inherent to the synthetic nature of the *condiciones* strategy. When such an ambiguous case arises in the discussions to come, I will endeavor to explain its inclusion.

0.3.2. Church dedication records: *Dotalia*

Records of church dedication, *dotalia*, are the second corpus of documents considered. These sources, from across Catalonia, have been edited by Ramon Ordeig i Mata and number 276 records before the twelfth century, though the collection in its entirety extends to 1200.[32] *Dotalia* provide accounts of the dedication event in which communities gathered to witness a bishop consecrate the building and organize the endowment that would ensure the structure's upkeep. Scholars have explored the cultural significance of churches using *dotalia*, but more may be done to underscore how these records convey nuanced conceptualizations of sacred space in the region. Worship centers were viewed as empowered, intercessional spaces in which saints dwelled. They were locales of especial gravity. A grasp of this consensus understanding shows what made churches attractive adjudicatory venues for judges. Officials understood that appeal to community belief enabled vulnerable courts to cultivate community consensus surrounding rulings and help to leverage social pressure to make enforcement a more realistic possibility. Thus, our consideration of the appearance of churches in tribunal records is greatly enhanced by study of the *dotalia*.

[32] Ramon Ordeig i Mata, ed., *Les dotalies de les esglésies de Catalunya, segles IX-XII*, 3 vols. (Vic, 1993-2004).

0.4. The frequency of the *condiciones* strategy and a judge-centered approach

Date range	782-849	850-899	**Ninth century total**	900-949	950-999	**Tenth century total**	1000-1049	1050-1100	**Eleventh century total**	Total for entire period
All judicial cases	14	34	**48**	27	64	**91**	173	250	**423**	562
Disputes featuring the *condiciones* strategy (with percentages of above column)	6 (43%)	13 (38%)	**19 (40%)**	5 (18%)	12 (19%)	**17 (19%)**	39 (23%)	22 (9%)	**61 (14%)**	97 (17%)

Figure 0.1. The frequency of the use of the *condiciones* strategy

A count of the *condiciones* strategy's invocation in disputes reveals that between 800 and 1100 the strategy was used in only 17% of tribunal proceedings. When broken down by century, percentages are similar, with the ninth-century—qualified by its distorted source base—constituting an outlier, at 40% (see Fig. 0.2).[33] In general, a trend emerges: officials used the *condiciones* strategy in only a minority of tribunals. Rather than an automatic application, the decision to invoke sacred space in this way was carefully considered. Some records show judges actively avoiding it. Such reticence owed to the often ambiguous value the strategy held for courts and how its performance might be perceived by various parties when invoked. The numbers noted above may be explained by the fact that not all disputes lay bare the challenge of garnering sufficient authority, and also, the reality that such an application of sacred space, even when appropriate, could backfire on courts (see Chapters 2-5). In short, contrary to the

[33] Jonathan Jarrett, "Comparing the Earliest Documentary Culture in Carolingian Catalonia," in *Problems and Possibilities of Medieval Charters*, ed. Jonathan Jarrett and Allan Scott McKinley (Turnhout, 2013), 90, 93, 96, shows that the loss of important archives, the prioritization of certain documentary genres over others, and greater levels of preservation in Pyrenean counties have together contributed to a significant distortion of ninth-century documentary sources from the region. Moreover, many of the most important records from this period exist as cartulary copies of later centuries, sometimes heavily interpolated (see Chapter 2 for further discussion).

invocation of supernatural forces in non-contentious testamentary publications, use of the *condiciones* strategy was a last resort. It often corresponded to circumstances in which a judge found his assembly in a moment of weakness. As I will argue, such conclusions about the state of the legal system become clearer when considering the identities of the disputants and their political strength vis-à-vis the tribunal presidents.

It is necessary to stress that the *condiciones* strategy appears in a very small percentage of the broader documentary corpus. This raises the question as to what implications this infrequency has for how historians can evaluate its place in the legal system. I focus on a subset of dispute records that feature a certain practice. The fact that the practice was rare is itself significant. It illustrates the strategy's position as a carefully considered choice. I seek to elucidate the factors surrounding that choice.Thus, rather than mining large swaths of records to comment on the frequency of one action or another, my approach involves detailed narration of individual cases, highlighting (1) stages of legal action, (2) when and why officials deviated from procedural norms, and (3) how invocations of supernatural forces changed the disposition of the parties to the case once introduced.

In each case, I devote special attention to the perspective of judges, an analytical focus I term the judge-centered approach. Of course, judges often wrote the records in question, dictated them, or signed off on their contents. My approach, however, is not merely to stress a scribal perspective. Instead, I consider the positionality of judges in specific tribunals, in the legal system generally, and in the broader political atmosphere of elite competition that so often spilled into dispute proceedings. With this judge-centered positionality in mind, we can peer past what at first look like formulaic reports of *placita* assemblies to find judges making choices about the application of procedure, how citations of the Visigothic Code would be presented, and

evaluating potential outcomes. Frankly, in a world where respect for rulings and enforcement were never guaranteed, we find them strategizing.

This method adds a layer of complexity alongside the interpretive challenges of working with formulaic documentary genres, forgeries, and creative rememberings of events.[34] It illustrates that judges, even under the thumb of strong-willed presidents, had significant control over courts and proved adaptable. Law in this region may have relied on formulaic action, yet it was not necessarily predictable. It is through the eyes of figures like Judges Bonhom, Ponç Bonfill Marc, and even less well-known figures of this class, that we may better see which circumstances (within the contentious and non-contentious contexts discussed above) were attractive for applying the *condiciones* strategy, why doing so was considered valuable (and to whom), and when procedural norms could be altered or ignored. Not all cases reveal the same level of detail. Focusing on this subset shrinks the pool of evidence, particularly for the ninth and tenth centuries, to the size of a raindrop. I cannot, therefore, argue convincingly that these cases are representative of prevailing sentiments affecting all instances of dispute. But, what I can do is show that, when we consider these otherwise odd cases in sequence and in a broader political context, they help define a previously underappreciated epistemological corner of dispute culture in the Province of Narbonne. When considered as a unit, these 97 cases are sufficiently numerous to prove a specific integration of law, liturgy, and sacred space that was an important feature of conflict management in this region between 800 and 1100.

[34] For an evaluation of these issues within the context of this region, see Jonathan Jarrett, "A Likely Story: Purpose in Narratives from Charters of the Early Medieval Pyrenees,"in *Beyond the Reconquista: New Directions in the History of Medieval Iberia, 711-1085,* ed. Simon Barton and Robert Portass (Leiden, 2020), 123-42; and Jonathan Jarrett, "Ceremony, Charters and Social Memory: Property Transfer Ritual in Early Medieval Catalonia," *Social History* 44 (2019), 275-95.

0.5. The *condiciones* strategy as a means for connecting scholarly discourses

The *condiciones* strategy provides a means of connecting scholarly discourses on (1) medieval dispute settlement, (2) the use and meaning of ritual in documentary cultures, and (3) conceptions of sacred space. Considering these first three themes together through the lens of the *condiciones* strategy allows us to understand the practice's significance to a more region-specific debate: the scale and scope of socio-political and legal changes in the Province of Narbonne between 800 and 1100.

0.5.1. Dispute culture

Early work on medieval law focused on the so-called "barbarian law codes" (*leges barbanorum*). The *Historische Rechtsschule,* in particular, argued that these codes faithfully conveyed the legal practices of early medieval peoples. More recent study, best exemplified by Wendy Davies' and Paul Fouracre's landmark collection, *The Settlement of Disputes*, has questioned the value of these *leges* as accurate descriptors of judicial systems. Legal historians now seek to discern the norms of dispute resolution and courts through analyses of charter records and narrative sources.[35] This broader effort has been particularly fruitful for historians working on the Province of Narbonne. The joint analysis of the region's documentary corpus and

[35] For a synthesis of the conclusions of the *Rechtsschule*, see Heinrich Brunner, *Deutsche Rechtgeschichte* (Leipzig, 1906). For examples of the broad range of studies drawing on documentary/narrative sources for disputing and critiquing the prescriptive value of the *leges barbanorum* across various regions of Europe, see: Wendy Davies and Paul Fouracre, eds., *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986); William Ian Miller, *Feud, Law, and Society in Saga Iceland* (Chicago, 1990); Patrick Wormald, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London, 1999); Patrick Wormald, "The *Leges Barbarorum*: Law and Ethnicity in the Post-Roman West," in Regna *and* Gentes*: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, ed. Hans-Werner Goetz, Jörg Jarnut, and Walter Pohl (Leiden, 2003), 21-53; Thomas Bisson, ed., *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe* (Philadelphia, 1995); Warren Brown and Piotr Górecki, eds., *Conflict in Medieval Europe: Changing Perspectives of Society and Culture* (Burlington, 2003); and Robin Chapman Stacey, *Dark Speech: The Performance of Law in Early Ireland* (Philadelphia, 2007). For a summary of the history of the field and a reconsideration of the importance of the *leges barbanorum* to European intellectual culture, see Thomas Faulkner, *Law and Authority in the Early Middle Ages: The Frankish* leges *in the Carolingian Period* (Cambridge, 2016), 1-8.

strictures found in Visigothic Code (one of the few *leges* to receive consistent citation in documentary records) has provided scholars a window into the tribunal system reviewed above.

Early work on the region's legal culture characterized a system that was disinclined to ritual action and supernatural references when compared with the northern assemblies. This absence has been attributed to a persistent *romanité* underwriting the Visigothic Code. Jeffrey Bowman remains the strongest voice against this interpretation, showing that any Roman inheritance did not preclude the influence of supernatural belief in dispute practices.[36] I argue that the *condiciones* strategy, as an analytical lens, permits Bowman's thesis to be taken further by reflecting anew on supernatural invocations in *plactia* records and contextualizing such references with what we know of the region's liturgical culture. A close reading of cases—well known to specialists—reveals that ritual activity was not only at the center of some tribunal strategies, but it also constituted a well-understood discursive register in which officials, litigants, and witnesses used forms of speech resembling those evident in liturgical rites.

0.5.2. Documentary ritual

Historians have shown that across Europe, including the lands of the Province of Narbonne, it was common to deposit documents of donation to religious houses and other forms of transaction atop altars for saintly inspection. These parchments contained religious invocations and curse clauses; some were even stored with important liturgical objects at altars.

[36] For the *romanité* underwriting the law, see: Jean-Pierre Poly, *La Provence et la société féodal, 879-1166: contribution à l'étude des structures dites féodales dans le Midi* (Paris, 1979), 45, 360; Magnou-Nortier, *Société laïque*, 111, 145, 203, 207; P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972), 29; and Jean-Pierre Poly, Martin Aurell, and Dominique Iogna-Prat, "La Provence," in *Les société méridionales aux alentours de l'an mil: répertoire des sources et documents commentés*, ed. Michel Zimmermann (Paris: 1992), 331. In contrast to these studies, Bowman, *Shifting Landmarks*, 56-80, demonstrates that curse clauses and excommunication were powerful tools that bore particular weight in cases. He shows that the province has more in common with northern ritual practices than had previously been considered. For a broader call to better integrate study of the documentary and legal practices pertaining to Iberia and northern Francia in this period, see Wendy Davies, *Windows on Justice in Northern Iberia, 800-1000* (London, 2016), 252-54.

In this sense, charters of various diplomatic genres became ritual objects.[37] Dispute records from the province, however, suggest that authentication practices were not universal. Of the legal actions reviewed for this study, the explicit step of validating records or exacting a probative oath by extending a document over an altar occurred in just one fifth of cases surviving from 800 to 1100. Specialists of the region have discussed these instances in disputes, but have ultimately grouped them alongside other records presenting the *condiciones sacramentorum* formula, representing a massive collection dominated by testamentary publications and straightforward documentary recoveries.[38] This grouping has belied the relative rarity of the oath structure and documentary presentation ritual in disputes. My separate classification helps explain this infrequency.

It was not a rule that tribunals were to be convened at churches, but rather, a choice. The majority of cases present circumstances under which ritual action was unnecessary, and any legal matters could be handled alongside other affairs irrespective of where the court happened to

[37] For notable examples of the ritual involvement of documents, see: Arthur Giry, *Manuel de diplomatique, diplomes et chartes* (Paris, 1894), 562-67, 855-58; Harry Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 2nd ed. 2 vols. (Leipzig, 1912-1931), II: 56, 77; Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century*, trans. Howard Clarke (Ithaca, 1974), 56; Michael Clanchy, *From Memory to Written Record: England, 1066-1307*, 3rd ed. (Malden, 2013), 256-62; Patrick Geary, "Humiliation of Saints," in *Saints and their Cults: Studies in Religious Sociology, Folklore, and History*, ed. Stephen Wilson (Cambridge, 1983), 123-40; Stephen White, *Custom, Kinship, and Gifts to Saints: The* laudatio parentum *in Western France, 1050-1150* (Chapel Hill, 1988), 32; Emily Zack Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (Chapel Hill, 1988), 120-34; Barbara Rosenwein, *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny's Property, 909-1049* (Ithaca, 1989), 40, 128; Janet Nelson, "Literacy in Carolingian Government," in *The Uses of Literacy in Early Medieval Europe*, ed. Rosamond McKitterick (Cambridge, 1990), 286-87; Lester Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca, 1993), 52-59, 221-22, 228-29; Arnold Angenendt, "*Cartam offerre super altare*: Zur Liturgisierung von Rechtsvorgängen," *Frühmittelalterlichen Studien* 36 (2002), 133-58; Hartmut Beyer, "Urkundenübergabe am Altar: Zur liturgischen Dimension des Beurkundungsaktes bei Schenkungen der Ottonen und Salier an Kirchen," *Frühmittelalterliche Studien* 38 (2004), 323-46; and Ellen Arnold, *Negotiating the Landscape: Environment and Monastic Identity in the Medieval Ardennes* (Philadelphia, 2013), 123-24.

[38] Magnou-Nortier, *Société laïque*, 263-67; Jesús Alturo i Perucho et al., eds., *Liber iudicum popularis, ordenat pel jutge Bonsom de Barcelona* (Barcelona, 2003), 50-51; and Salrach, *Justícia i poder*, 31-32. Taylor, "The Will and Society," 105-08, provides a list of a dozen non-testamentary uses of the *condiciones sacramentorum*. This list includes the oath structure's appearance in contentious tribunals.

meet. Bowman shows that proceedings commonly unfolded at comital/episcopal palaces or other residences.[39] However, a quantitative study of venues remains a challenge, considering that scribes so frequently provided no mention of a court's location. Unlike other documentary statements, such as the protocol for dating the record (the *datum*), mention of an action in a church was not incidental. It signaled that the court had taken, or was prepared to take, an important judicial step: ritual action.

Scribes commemorating episodes of the *condiciones* strategy took great care to explain the church's location, the saint to whom it was dedicated, and which saint's altar within the sanctuary was used for oath-exaction. The infrequency of the *condiciones* strategy does not suggest disinterest in legal ritual. It highlights the opposite. However, when judges used sacred spaces for adjudication or questionable document recoveries, the desired benefits came with associated risks. Tribunals were vulnerable moments for the prestige of the judicial system and could be unpredictable. Thus, the force imbuing sacred spaces was not deployed lightly. This study urges scholars to question monolithic documentary categories and use close readings to better identify the exact contexts surrounding certain diplomatic practices.

[39] Bowman, *Shifting Landmarks*, 101, highlights how judicial proceedings were part of broader assemblies addressing a range of affairs. They often occurred at comital or episcopal residences, but he also acknowledges churches as potential locales: "The counts and countesses of Barcelona most often presidedover these assemblies in the comital palace in Barcelona. The great gatherings of comital courts took place at least two or three times a year and lasted several days. These assemblies probably discharged a range of military, fiscal, and diplomatic functions, but surviving records describe only the lawsuits that were adjudicated. Just as Abbot Guitard brought complaints to Barcelona's comital court, other disputants sought justice at the courts of the counts and countesses of Urgell, Cerdanya, and Carcassonne. Disputants often sought justice at the count's residence or bishop's palace, but even well-established courts were quasi-itinerant. The counts and countesses of Barcelona presided over assemblies in Barcelona's cathedral, at the cathedral church of Saint Peter in Vic, and at Sant Cugat. Occassionally, hearings took place at or near disputed properties." It is important to stress that Bowman's review here presents prevailing circumstances around the year 1000. The issue of location is less certain for earlier centuries, though there is no immediate reason to conclude circumstances would have been markedly different.

One issue concerning ritual remains. Can reports of these performances be trusted? Philippe Buc, noting the broad appeal of anthropological theory among twentieth-century medievalists, argues that efforts to ascribe functionalist social meaning to reports of ritual are futile. The concept of ritual is a construct crafted in a *longue-durée* intellectual process extending from the Reformation to the entrenchment of social scientific theory in medieval historiography. He asserts that we are incapable of overcoming the literary quality of sources limited by authorial agendas.[40] Buc's thesis engendered extended debate in the field.[41] While Buc advances helpful warnings, pursuit of real experience in accounts of ritual remains possible.

By drawing on multiple source types, noting variation between reports, and stressing context from elsewhere in society, Louis Hamilton's work on the rite of church consecration in eleventh-century Italy provides an instructive approach for how to study ritual while remaining cognizant of the associated challenges.[42] Though less focused on ritual, Jonathan Jarrett provides a useful model for how to read dubious documentary reports, including the ones featuring the

[40] See Philippe Buc, *The Dangers of Ritual: Between Early Medieval Texts and Social Scientific Theory* (Princeton, 2001), 1-12, for an outline of his argument. His discussion of the evolution of ritual as a construct is the dominant theme of Part II (at 159-247).

[41] For notable responses to Buc's thesis, see Janet Nelson, "Review of *The Dangers of Ritual*, by Philippe Buc," *Speculum* 78 (2002), 847-51; Alexandra Walsham, "Review of *The Dangers of Ritual*, by Philippe Buc," *Past & Present* 180 (2003), 277-87; and Geoffrey Koziol, "The Dangers of Polemic: Is Ritual still an Interesting Topic of Historical Study?" *Early Medieval Europe* 11 (2002), 367-88. Koziol's response was the most critical. He asserts that Buc weakens his thesis by the polemical nature of his approach and misreading of much of the anthropologically-inspired work medievalists have produced, his own *Begging Pardon and Favor: Ritual and Political Order in Early Medieval France* (Ithaca, 1992) included. Noting important studies, Koziol asserts that scholars have long been exercising just the sort of caution Buc calls for. Philippe Buc, "The Monster and the Critics: A Ritual Reply," *Early Medieval Europe* 15 (2007), 441-52, responds to this criticism (and that of others). He emphasizes that his book was less iconoclastic than some reactions assumed (at 442-43), stressing that if scholars wish to continue using ritual as a heuristic, they must do so with caution and an awareness of the long intellectual tradition from which the idea emerged.

[42] Louis Hamilton, "Les dangers du ritual dans l'Italie du XIe siècle: Entre texts liturgiques et témoignages historiques," in *Mises en scène et mémoires de la consécration de l'église dans l'occident médieval,* ed. Didier Mehu (Turnhout, 2008), 159-88, and Louis Hamilton, *A Sacred City: Consecrating Churches and Reforming Society in Eleventh-Century Italy* (Manchester, 2010).

oath structure at the heart of the *condiciones* strategy. He shows that even brief narrative elements in charters display formulaic language, raising questions about authorial intent and scribal choice of how to convey information. Narrative asides made by scribes in charters—when considered in the context of the affair that the document records—are often revealed to be performing a purpose. Exploring that purpose in each instance grants us a window into much about author and audience expectations and agendas. Such narrative elements may not tell us, as Jarrett puts it, a "micro-history," but rather "macro-histories connecting the circumstances of the transactions to frames of collectively-agreed reference that enabled new actions."[43] We may learn from them and the norms they communicate. This sort of positional reading is central to drawing cultural and social meaning from problematic sources, including ritual descriptions.

In light of this debate, and given that the following chapters are replete with formulaic descriptions of ritual action, comment on the larger issue as it pertains to my work is necessary. Buc's warning merits caution. However, I proceed with confidence that a core practice—and the impressions different parties had of that practice—are to an extent discernable. Borrowing Hamilton's and Jarrett's approaches, I argue we may study the judicial function of the *condiciones* strategy by noting variation between different descriptions of its ritual performance. That variation is often not found in stock phrasing (indeed such phrasing is quite stable during my period of investigation). Instead, it is evident in other, less formulaic parts of a document: in reports of the reactions to ritual by both the parties to a dispute and to the officials. Courts did not always proceed smoothly, and by noting markedly different ways participants reacted to unexpected turns, we begin to piece together a core practice. Further optimism arises when

[43] Jarrett, "A Likely Story," 123-42 (quotation at 139).

evaluating this range of reactions alongside the political, religious, and economic realities of the Province of Narbonne during these centuries. And finally, even if some of the reactions are themselves fictitious, they still tell us much about the cultural attitudes within the judicial system. They provide invaluable context to better understand more trustworthy examples.

0.5.3. Sacred space

This historiography of Christian sacred space has prioritized the ideas of early Church writers and later liturgical commentaries from Insular, Carolingian, and papal circles. The general narrative resulting from this focus is that there was a gradual transition from an understanding of the church building as a metonymic stand-in for the broader gathering of the faithful to a more complicated ninth-century landscape. Understandings of saint relics as sacred matter and novel exegetical approaches to the liturgy, principally represented by the writings of Amalarius of Metz (d. 850), had invigorated perceptions that consecrated churches were real sacred spaces. Church councils, theological treatises, *ordines*, and liturgical commentaries have been central to building this narrative.[44] While these sources convey the impressions of elites, they do not reliably reveal those of village communities concerning consecrated churches.[45] *Dotalia* allow scholars studying the Province of Narbonne to more closely examine prevailing patterns in the expressions of people from all walks of life, though such an effort often requires reading past formulaic language and scribal control of narratives. As Michel Zimmermann,

[44] Dominique Iogna-Prat, *La Maison Dieu: un histoire monumentale de l'Église au moyen âge, v. 800-v. 1200* (Paris, 2006), 29-103; Karl Shoemaker, *Sanctuary and Crime in the Middle Ages, 500-1500* (New York, 2011), 16-18; and Samuel Collins, *The Carolingian Debate over Sacred Space* (London, 2012), 1-13.

[45] Hamilton, *A Sacred City*, parses interpretations for the consecration rite using various source types, beyond just *ordines* for the consecration ritual. Narrative sources and commentaries, while facing interpretive challenges of their own, can help to afford context for liturgical instructions and how rites were received by the various audiences gathered.

Dominique Iogna-Prat, Michel Lauwers, and others have shown, these documents convey central beliefs about the nature of churches in this region.[46]

My work takes that line of research further to define a community belief in sacred space. I show how this consensus that churches were real sacred spaces of intercessional value transcended boundaries of class, clerical status, and education. As numerous records show, it was an understanding that judges too appreciated. Recognizing the prominence and stability of this community belief between the ninth and eleventh centuries offers a new lens through which to examine the ritual legal actions in churches. The more traditional sources for the study of sacred space remain of value, but scholars of widely circulated liturgical sources stand to learn much about patterns of regional reception by looking at them alongside documentary sources like *dotalia*.

0.5.4. Regional change

In the hands of historians, the *condiciones* strategy is a lens with which we may explore legal and political transformations occurring over the course of the ninth, tenth, and eleventh centuries, a stretch of three hundred years that scholars have seen as a period hosting numerous dramatic changes, both across Europe and particularly within the lands that made up the

[46] Michel Zimmermann, "Les actes de consécration d'églises: Construction d'un espace et d'un temps chrétiens dans la Catalogne médiéval, IXe-XIIe siècle," *Cahiers d'études Hispaniques médiévales* 15 (2003), 29-52; Iogna-Prat, *La Maison Dieu*, 334-50; and Michel Lauwers, *"*Consécration d'églises, réforme et ecclésiologie monastique: recherches sur les chartes de consécration provençales du XIe siècle," in *Mises en scène et mémoires de la consécration de l'église dans l'occident médieval,* ed. Didier Mehu (Turnhout, 2008), 93-142. Other analyses of sacred space in the Province of Narbonne have centered on the so-called *sagrera*, or thirty-pace inviolate zone surrounding churches, that emerged around 1000 and is evident in various documentary genres. For a summary of the relevant literature, see Pierre Bonnassie, "Les *sagreres* catalanes: la concentration de l'habitat dans le 'cercle de paix' des églises, s. XIe," in *L'environnement des églises et la topographie religieuse des campagnes médiévales: Actes du IIIe Congrès international d'archéologie médiévale*, ed. Michel Fixot and Elizabeth Zadora-Rio (Caen, 1994), 68-79; Sabaté, *El territori de la Catalunya medieval*, 82-87; and Victor Farías Zurita, "La proclamació de la pau i l'edificació dels cementiris: Sobre la difusió de les sagreres als bisbats de Barcelona i Girona (segles XI-XIII)," in *Les sagreres a la Catalunya medieval*, ed. Víctor Farías, Ramon Martí, and Aymat Catafau (Girona, 2007), 13-84 (esp. at 49-56, and 63-72).

Province of Narbonne. By charting how the circumstances of the strategy's application expanded in reaction to political vicissitudes within the region, scholars stand to gain a tool with which to reflect anew on much discussed socio-political transformations and well studied sources. The manner in which judges cultivated the *condiciones* strategy is pertinent to debates surrounding the (1) influence of Carolingian rulership south of the Pyrenees in the ninth century; (2) the de facto autonomy of the comital successors of Guifré the Hairy (d. 897) from their Frankish sovereigns in the tenth century; (3) the faltering of "public" authority after the millennium; and (4) the early processes that led to a new "feudal" conception of socio-political power and legal arbitration in the late eleventh century.[47] The region's legal system has long been a point of focus in each of these debates. An appreciation of the *condiciones* strategy, however, encourages scholars to consider how the dynamics of these changes affected the course of individual tribunals and how judges crafted responses to novel circumstances as they arose. This is especially so given the challenges the above-noted changes presented anew for legal officials: how could courts source and implement an adequate degree of authority to make enforcement a more realistic prospect and keep settlements closed? The *condiciones* strategy stands as a helpful tool allowing us to answer this question.

0.6. The *condiciones* strategy: structure and "ideal" practice

While there is danger in placing too much stock in ideal types, defining what a judge might have reflected on as an effective invocation of sacred space in law, and defining the structure of the *condiciones* strategy as a subroutine within tribunal proceedings establishes a

[47] For a summary of the extensive historiography surrounding the development of political, economic, and identity aspects of Catalonia during the ninth and tenth centuries, see Chandler, *Carolingian Catalonia*, 151-88. Adam Kosto, *Making Agreements*, 9-16, provides a concise overview of the region's place in discussions of social and political transformation in the eleventh century.

framework for comparison. This depiction will be useful as a reference point as the following chapters present atypical examples and instances in which the use of sacred space was less successful. While the outer boundaries of what constitutes a *condiciones* episode are host to some odd cases, the majority of *placita* documents featuring this subroutine present a rough pattern. I address that pattern here with two case studies. The first example strips away the political detail of its parent tribunal to isolate the ritual core of the *condiciones* strategy—the Rite of the Guarantor—in one of its more sophisticated depictions. We will return to the full scope of that case in Chapter 4. With that context, I turn to the second case, which neatly portrays the steps found in most disputes featuring the strategy. Grasp of such "ideal" cases provides the contrast necessary to study episodes, like that of the 1018 Ullastret dispute discussed above, where the utility of the *condiciones* strategy encountered hurdles. In each, it is important to note how the synthesis of law, liturgy, and sacred space is evident in the steps taken.

0.6.1. The Rite of the Guarantor, 1002

A high-profile dispute over the castle of Queralt occurred in 1002. The tribunal—opening under the presidency of Count Ramon Borrell, Countess Ermessenda, and the bishops of Barcelona and Vic—pitted Bishop Sal·la of Urgell (d. 1010) against a principal magnate from the county of Osona, Sendred de Gurb-Queralt (d. 1015).[48] The administration of the court itself was given to a group of judges, led by the jurist, Bonhom. This judge, whom we encountered above, also served as the court's scribe, granting us a direct window into how he articulated the proceedings and envisioned the role of the *condiciones* strategy in finding a settlement. Judge

[48] *JRCCM* 143. Albert Benet i Clarà, *La Família Gurb-Queralt 956-1276. Senyors de Sallent, Olò, Avinyó, Manlleu, Voltregà, Queralt i Santa Coloma de Queralt* (Sallent, 1993), 45-49; Kosto, *Making Agreements*, 60-61; and Jonathan Jarrett, *Rulers and Ruled in Frontier Catalonia, 880-1010* (Woodbridge, 2010), 125-26. Issues surrounding the authorship of the record associated with this case will be discussed in Chapter 4.

Bonhom provides one of the clearest articulations of the ritual action at the heart of the strategy, an action he termed the Rite of the Guarantor (*ritum fideiussoris*).

At an initial tribunal session, Bishop Sal·la attempted to prove his case by recounting a story about how Queralt's previous owner had given him a ring symbolizing the transfer of tenure over the castle. The judges, led by Bonhom, found the story to be an insufficient form of evidence. They granted the prelate a recess to find stronger proofs. Before the next meeting, Sal·la sought individuals "who would legitimately testify on his behalf to that which he was asserting."[49] When the court reconvened, it did so in the church of Santa Maria la Rodona, in the town of Vic. Sal·la produced three men to stand as witnesses. In the text of the document, Bonhom immediately provided their testimony, explaining they were those "who in one voice professed to have seen the tradition of the ring transferred and the aforementioned castle given into the power of Bishop Sal·la and justly into the possession of the see of Urgell."[50]

The judges accepted these men as witnesses. Bonhom explains that they commanded them to perform a *rite* in which they would repeat their testimony as solemn oaths, alongside a guarantor,

> And then the stated judges ordered those men at hand to profess by speech the Rite of the Guarantor (*ritum fideiussoris*), so that they may provide oaths, just as the laws of the Goths instruct, since those witnesses who are without oaths cannot be believed. So the next day, namely the Sabbath, those who gave a guarantor, Cheruso (of) Cerdanya, delivered that which they were professing as a publication of oaths (*condiciones sacramentorum*).[51]

[49] *JRCCM* 143: "Qui legitime testificassent illi hoc quod asserebat."

[50] *JRCCM* 143: "Qui uno ore professi sunt vidisse per tradicionem anuli tradere vel donare prenotatum kastrum in potestate supra meminiti episcopi Sallani ad proprio iure supradicte Sedis Orgellitane."

[51] *JRCCM* 143: "Et tunc pretaxati iudices ordinaverunt illos iuxta ritum fideiussoris ut quod ore profitebantur sacramenta preberent, quemadmodum docent leges gothorum quod testes sine sacramento credi non possunt. Qui dederunt fideiussorem, id est Cherucium Cerdaninesem, ut in crastinum diem videlicet sabbati agerent per condicionem sacramenti quod profitebantur." It is likely, given the context of this passage, that the measure Bonhom

It is worth reflecting on this passage before proceeding to the text of the oath itself, as these are among the most important lines of the broader corpus for our understanding of the *condiciones* strategy: they explain why oaths and this specific mode of exaction were necessary. This is the only moment in which a judge-scribe—here Bonhom himself—articulated an aspect of the strategy as a firm concept bearing a title: the "Rite of the Guarantor" (*ritum fideiussoris*). Certainly, *ritum* indicates the performance of a ritual action. The title's second word, is more ambiguous. *Fideiussoris*, meaning "of the guarantor," is clarified by Bonhom's reference to the law's requirement that testimony should be authenticated: "those witnesses who are without oaths cannot be believed." Under this framework, a guarantor would be an individual affirming testimony by an oath. Bonhom's phrasing does not suggest that the term, as used here, indicates an oath-helper (an individual who swears in support of a primary witness).[52] Rather, it references those offering the original testimony, as Sal·la's witnesses were about to do. However, the word appears under a different context in the very next sentence, when the witnesses indeed name a guarantor (*fideiussorem*) to act alongside them in the rite, or perhaps commit to assert the witnesses' honesty in the future. In the subscription list, Bonhom designates each witness as *testis* before giving them a collective voice: "We are the witnesses (*testes*) and together as one swear this oath."[53] The guarantor (or oath-helper) called Cheruso of Cerdanya appears grouped with a different party, as one among seventeen named subscribers "who saw this oath sworn" (distinct from the *auditores* elsewhere in the list, each of whom were great magnates or bishops).

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notes with the statement, "just as the laws of the Goths instruct," is *LV* II.2.5. This measure explains rules for how judges must require and navigate the exaction of testimony for both sides.

[52] Bowman, *Shifting Landmarks*, 166.

[53] *JRCCM* 143: "Sig+num Guillelmus testis. Sig+num Odone testis. Sig+num Arnallo testis. Nos testes sumus et hoc sacramentum iuramus pariter in unum."

These designations, the flexible meaning of *fideiussor*, and Bonhom's lack of firm explanation of Cheruso's role are important caveats in seeking to understand the Rite of the Guarantor.

To begin, reading this statement in conjunction with the judge-scribe's preceding lines, we see officials display a clear distinction between (1) the act of providing testimony and (2) the formal swearing of an oath to authenticate that testimony. Bonhom offers a detailed explanation of how that second, confirmatory action was conceived within the legal system, and how it fit into *placitum* proceedings. He saw the *condiciones sacramentorum* oath structure at an altar, what I underscored above as the central component of the *condiciones* strategy, as a formal rite. The word *ritum* firmly places the ceremony in the realm of liturgical ritual. It was almost certainly the address to God at an altar that re-coded a mandate from codified law (likely, *LV* II.2.5) as a religious action. What Bonhom shows us in this moment, is the hybridization of dual traditions—one legal, one liturgical—defining the core of the *condiciones* strategy.

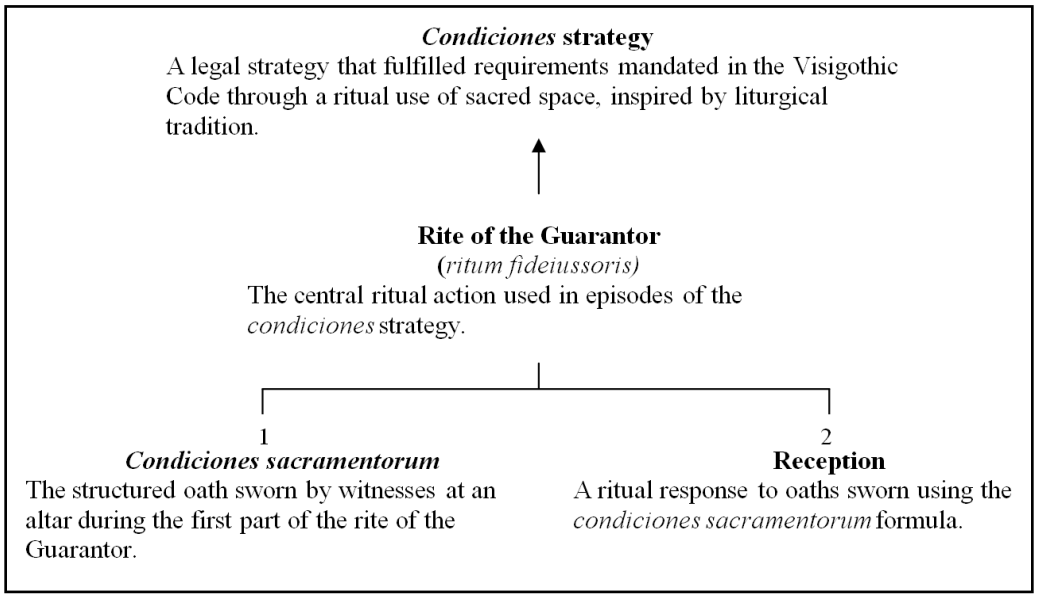

Figure 0.2. Relationship between terms used

Before continuing, it is necessary to emphasize a distinction to ensure clarity in future case studies. The document does not equate *ritum fideiussoris* and *condiciones sacramentorum* as synonyms, though—considering the absence of other appearances for the phrase *ritum fideiussoris*—it is possible that other scribes might have more readily done so. The latter term, *condiciones sacramentorum*, as the name of a particular oath form, was a component of the *ritum fideiussoris*. The judges "ordered those men at hand to profess by speech the Rite of the Guarantor, so that they may provide oaths."[54] In other examples of what Bonhom terms as a rite, we see that the formal "reception" of the *condiciones sacramentorum* oath by the opposing party and associated quitclaim were additional components of a broader ceremony here named the Rite of the Guarantor (see Fig. 0.3). While Bonhom alone uses the title, it is unlikely that he simply fabricated a name for such a long-standing dispute practice. The jurist needed any terminology used to be intelligible to his eight peer judges, the numerous tribunal presidents, and parties subscribing to the document. Thus, it is reasonable to attribute the title to this central aspect of the *condiciones* strategy, a component that had been practiced with a realtively stable structure since the outset of the ninth century. Remembering the term's 1002 origins, it is possible to use the "Rite of the Guarantor" as a shortand in coming chapters without risking anachronism.

Despite the terse nature of records, judges orchestrated the rite with care. Bonhom displays such reverence. Officials did not immediately exact the oath, despite the necessary parties already standing assembled in the church. Rather, they waited for the next day, the Sabbath (*ut in crastinum diem videlicet sabbati agerent per condicionem sacramenti quod profitebantur*). This delay suggests that judges believed the liturgical consideration of time and

[54] *JRCCM* 143. The full clause reads: "Et tunc pretaxati iudices ordinaverunt illos iuxta ritum fideiussoris ut quod ore profitebantur sacramenta preberent."

the significance of the Sabbath were relevant for how courts ought to proceed. Further evincing the influence of liturgical tradition on disputing, this respect of time marks a theme absent from the code's oath mandates. It represents an aggregated practice that could have come only from observation of norms surrounding the celebration of mass, the daily officies, and other liturgical actions .[55] This articulation of oath exaction as a rite that required adherence to behavioral norms endemic to worship practices is further confirmed by the presence of clerical personnel in most disputes featuring the *condiciones* strategy.[56] While judges directed affairs in sacred space under the watchful eyes of ritual experts. The code specifies no defined role for clerics in tribunal procedure. Their participation was a later addition as courts considered how to fulfill the law's strictures. With the scene set and the relevant parties in position, we may now turn to the oath itself.

The *condiciones sacramentorum* formula, in many of its iterations, shows how courts perceived the operability of forces they summoned in sacred spaces. This is well exhibited here.

> We the aforementioned witnesses together as one give testimony. We swear first by God the omnipotent father and by Jesus Christ his son and the Holy Spirit, the one and true God, and by this place of veneration of the holy Virgin Maria, whose basilica is located next to the house of Sant Pere in the see of Vic, above whose most holy altar we extend these publications (*has condiciones*) with each of us touching them in order to swear. Because we the above-written witnesses know well, truly understand, were present, and saw with our eyes when the Guadall, son

[55] John Harper, *The Forms and Orders of the Western Liturgy from the Tenth to the Eighteenth Century: A Historical Introduction and Guide for Students and Musicians* (Oxford, 1991), 49-53, explains the complex ranking of days and seasons within liturgical calendars. Not only are different periods during the year distinguished, but the days of the week are as well. Although calendar stipulations for the importance of certain days varied depending on the time of year, Sundays in a normal week ranked as *festal* or commemorative days, while the others were *ferial* or ordinary. *JRCCM* 228, from 1029, presents another case in which the court allowed for the rescheduling of an oath to correspond with the Sabbath.

[56] Judge Ervig Marc composed a *dotalium* in which he stressed the connection between Aaron (*sacer*) and Moses (*iudex*). This is an association with which Ervig Marc himself was well acquainted in his own uses of the *condiciones* strategy. See *Dotalies* 108; and *JRCCM* 139. For further discussion of Ervig Marc's statements, see Chapters 1 & 4.

> of Trasoar, handed over and gave the said castle of Queralt, with its boundaries and limits and with everything which rightly pertains to the said castle, into the power and jurisdiction of the abovenoted Bishop Sal·la, investing him with a gold ring for the lawful ownership of the presaid church of Santa Maria de Urgell. We saw all this without any objection. And that which we say, we testify and also swear rightly and truthfully by the above effort of swearing to the Lord.[57]

The grammatical construction of this oath, particularly Bonhom's use of the preposition *per*, merits attention. The witnesses swear (*iuramus*) by (*per*) a series of hierarchical authorities whom they address in turn: the forces that proffer the legitimacy their words assume during the oath. I argue, particularly in light of context gathered from the broader corpus, that neither this statement nor its structure were meant as empty language included for mere flourish. In a mentality contrasting with modern Western worldviews, the witnesses' statement was *becoming true* by merit of the rite channeling God's power, if not already intrinsically true as demonstrable fact. As revealed by another case, a documentary recovery from 1000, truth was one byproduct of the rite.[58] Thus, the witnesses' words uttered in this context were not only a confirmation, but also a transformation. In some instances, this may have been a chief factor recommending use of the *condiciones* strategy. It is why some litigants when faced with particular circumstances—ones we shall have occasion to address in time—were eager to have their witnesses validated through oath exaction in a church. Indeed, in a handful of such instances, it was judges who had

[57] *JRCCM* 143: "Nos prenotati testes unum damus testimonium, iuramus in primis per Deum patrem omnipotentem et per Ihesum Christum filium Sanctumque eius Spiritum, qui est in Trinitate unus et verus Deus, et per hunc locum veneracionis sancte Marie Virginis cuius baselica sita est iusta domum Sancti Petri sedis Vico, supra cuius sacrosancto altario has condiciones manibus nostris continemus vel iurando contangimus, quia nos suprascribti testes bene scimus et in veritate sapemus et de presente eramus et occulis nostris vidimus quando predictus Guadallus filius quondam Trasoarii tradidit ac donavit predicto kastro Cheralto, cum fines et termines suos et cum omnia que ad iuss pertinet de predicto kastro, in potestate et dictione supradicti episcopi Sallani, cum uno anulo aureo revestivit eum ad iure propio de predicte ecclesie Sancte Marie Sedis Orgellitane, nos videntes absque aliqua obiectione. Et ea que dicimus recte et veraciter testificamus atque iuramus per super hanc nixum iuramentum in Domino."

[58] *JRCCM* 137. For a discussion, see Chapter 4.

to hold these requests at bay, lest the strategy actually be used against the court.[59] These examples, especially when factored alongside context derived from church consecrations, reveal an important facet of the Rite of the Guarantor: at the altar, the entities invoked in the oath played an active role; they infused the testimony with the interconnected qualities of legtimacy, authority, and truth through their supervision and scrutiny of the proffered proofs. This was not some cheap imitation of a liturgical rite. The words used were selected purposefully, accomplished a specific task, and were intended to be heard by the gathered assembly.

The first authority cited in the oath was the Trinity: "We swear first by (*per*) God the omnipotent father…" The Son and the Spirit followed, and were also introduced by a single *per*. The reappearance of *per* after the Trinity indicates the continuation of the grammatical construction stemming from *iuramus*. Intriguingly, the witnesses swear by (*per*) the very location in which the rite takes place, the church of Santa Maria, rather than simply the saint herself. They state, "*by this place* of the holy Virgin Maria's veneration" (*et per hunc locum veneracionis sancte Marie Virginis*). When contextualized with the invoked persons of the Trinity, we see that the witnesses granted sacred space a degree of personality in this line and made it an agent that, together with the other actors, generated legitimacy, authority, and truth.

Of course a sanctuary's identity was also bound to relics, resting on or entombed within an altar. Indeed, it was common, particularly in the records pertaining to the cathedral of Barcelona, to conceptualize the sanctuary as a "house" in which a saint "slumbered" (*domum Sancte Crucis et Sancte Eulalie martyris, qui ibidem requiescit*).[60] This leads us to a second

[59] *JRCCM* 185, 242, 244, 246. For a discussion of these examples, see Chapter 4 and Chapter 5.

[60] Àngel Fàbrega i Grau, ed., *Diplomatari de la Catedral de Barcelona: Documents dels anys 844-1260*, 1 vol. to date (Barcelona, 1995), 54: "In nomine Domine. Ego Domenico donator domum Sancte Crucis et Sancte Eulalie martyris, qui ibidem requiescat, que est sita in ciutate Barchinona." The documentary collection from the cathedral

takeaway. In contrast to other *condiciones sacramentorum* statements, the witnesses in Bonhom's document mentioned neither relics nor altars. The inaccessibility of the Virgin's relics (given the Assumption) is a possible reason for the witnesses' omission, although secondary relics of this saint existed at this time.[61] However, we can hypothesize a different reason why the witnesses (and also Bonhom) omitted mention of relics. Rather than the presence of sacred matter alone, it was progressive human activity in the church that mattered in this particular context.

As select documents of church consecration reveal, worship continuously invigorated the power grounded in the building during the rite of consecration. Bishops sanctified the church at dedications so that the faithful might seek salvation at "a doorway to Heaven." This conclusion is supported by looking at the coin from the other side: the *absence* of human action or missteps in a sanctuary jeopardized the delicate sacrality of the space. The faithful at Vic worshiped at this church and cared for the space; the court trusted its operation as an intercessional space. The oath's structure emphasizes that operability. The witnesses' reference to the building as a power itself alludes to the ideal of human community and its bilateral discourse with God in transformed space. As I will address at length in Chapter 1, this conception of community was an active ingredient of real sacred space: community welfare incentivized the deity to empower the place of veneration in this legal context and make it a font of authority, legitimacy, and truth. As the coming chapters reveal, this reading of *per hunc locum veneracionis sancte Marie Virginis* fits into the broader mentality conveyed in episodes of the *condiciones* strategy.

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of Barcelona reveals this as a common opening for documents of donation during the tenth century. This cited example dates to 959.

[61] *JRCCM* 59, 79*bis*, are cases of the *condiciones* strategy that features oaths sworn over the relics of Maria.

In light of Bonhom's title for this practice of exacting the oath featured in the *condiciones sacramentorum* formula, why might we still wish to use the term "*condiciones* strategy?" The Rite of the Guarantor stands as the core component and clearest articulation of the themes expressed under the strategy's above definition. Yet, not all deployments of the strategy show the same structure seen here in the 1002 Queralt case. Some instances reveal one or more parties' engagement with a legal strategy born from the same synthesis of law and liturgy that was inherent to the Rite of the Guarantor, but do not feature the execution of that ritual itself. The present study does not chart the course of a single ritual practice, but rather how a broader epistimological synthesis of Gothic law and reform era liturgy became operable for judges reacting to crises of accessible human authority in the court system. With this in mind, the term, *condiciones* strategy reminds us to recognize the inherent flexibility of this hybridized system and underscore the breadth of circumstances in which it proved useful.

0.6.2. Testimony and oaths at Vilanant, 1018

This case allows us to contextualize the Rite of the Guarantor within the broader tribunal proceedings themselves.[62] This case, dated to 1018, the same year as Ermessenda and Hug's dispute over Ullastret, features one of the clearest outlines of the steps involved in dispute tribunals; features that scribes often took for granted. It also displays a more pronounced description of the "reception" stage. The picture that emerges is that of an ideal use of the strategy; everything went according to plan for the judge and the use of sacred space was successful in placating all parties. Yet, as we will see in coming chapters, the outline defined

[62] *JRCCM* 175.

below was challenged by atypical cases and litigants who sought to turn the power of the strategy against the courts.

The case records a conflict that unfolded in two stages. The court first met in the presence of Count Bernat I Tallaferro (d. 1020) in the comital castle at Besalú. Like the case over Queralt, it includes an oath drawing on the *condiciones sacramentorum* formula (indeed, the unnamed scribe opened the document with those words). The judge in this case, a comital official called Sunifred, was mindful of procedural balance and was observant of the code's mandates. He was particularly interested in determining which of two pools of witnesses could be best trusted. This was a standard challenge for all cases that included parties offering conflicting evidence, but this document, more clearly than most, associates that effort closely with a clearly explained utilization of sacred space. It is a practice that was likely common throughout the corpus of cases presenting the *condiciones* strategy, even though many scribes did not find it remarkable enough to merit extended comment.

At the castle, one Esteve (representative of the lord's estate—*dominicatura*—of the fief at Moncanut) appeared before the comital court and challenged two men, Sendred and Guadamir, over service he believed they owed for two parcels of land at Moncanut. While Count Bernat presided, it was Judge Sunifred who navigated the course of the tribunal. The two defendants gave guarantors (*fideiussores*) in the castle, before the count.[63] With this testimony collected, the court looked to Esteve. Could this plaintiff produce counter-witnesses? Everyone agreed that if he could not, the court would likely rule in favor of his opponents. As was not uncommon, the judges gave him time to collect evidence. The court decided that, after a recess,

[63] Again, we find the word *fideiussores* used to describe witnesses.

the proceedings would resume at a church, the church of Santa Maria in the village of Vilanant (just west of Figueres).

When the parties reconvened, Esteve brought forth his witnesses to be interviewed first, out of earshot of those of his opponents', "as was custom."[64] This meant that Sendred's and Gaudamir's witnesses would not have knowledge of what their opponents' had said once their turn came. The judge asked them what they knew of the rents and service owed on the two land plots. They said that they had heard kinsmen claim that the land belonged to the lord's estate (*dominicatura*). Yet, the judge interrupted them with a second question. He asked more pointedly if any rent or service had ever been demanded. Perhaps they could demonstrate that it was held as a fief (*pro feo*) or by right of a document (*per scripturam*). The scribe took care to write their response verbatim: "We are not able to testify fully to anything except what we have said and what we heard."[65] The implication was clear. They could not prove that a specific arrangement had been established. Thus, the crux of Esteve's claim went unsupported and his case began to unravel. Before continuing, however, it is important to highlight that this was a simple deposition of witnesses, mere probing for the truth. Nothing was decided. The judge requested no oath from these men; he was exercising caution before moving to ritual action. As Bonhom showed in the previous case, the acts of testifying and swearing were different stages in a dispute. That distinction is also pronounced in this episode.

Whether they were asked to leave or compelled to remain silent, Esteve's witnesses were excused and played no further role. Now, those of Sendred and Guadamir were called into the

[64] *JRCCM* 175: "Primus profert suprascriptus vicarius Stephanus sua testimonia separatim, sicut mos est."

[65] *JRCCM* 175: "Responderunt: 'Amplius non possumus testificare nisi quod dictum abemus, quod audivimus dicere'."

church. After providing their names, the scribe explains that they swore on the altar that no rent or service had ever been exacted during the past thirty years. Of note, their *testimony* is missing from the document. It is likely that our scribe was hurrying along his composition, conflating the exaction of the testimony and oath, given that he knew the outcome. We may be confident that Judge Sunifred addressed the same questions to this second group of witnesses and, determining that they were more credible, ruled in Sendred's and Gaudamir's favor. He then ensured that they swore.

> We the witnesses swear by the triune and one true Lord and by the relics of Sant Joan the apostle, in whose honor a house is founded in the village of Vilanant, next to the house of Santa Maria, above whose holy altar we extend this publication (*hanc conditione*) and each touch with our hands in order to swear, that we the witnesses, for thirty years and fully, saw that the above-stated lands were held as the private alod of those men, notably between Amelio and Riculf and in their posterity, as a legitimate alod, without any royal rent to be paid, and without any support that they thence may have made to those men of Mont Canudo, which was located in that *dominicatura*. And we the witnesses who say this correctly and with veracity testify and swear through the aforementioned oath in the Lord.[66]

This oath resembles that recorded by Bonhom in 1002. It conveys the familiar image of the witnesses gathered around the altar, extending the document for divine approval. There is also a similar use of *per* in listing the authoritative entities invoked. The church is defined by its housing of Sant Joan's relics. Yet, it is the altar above which the witnesses swore. The implications of a conceptual distinction between these two types of matter must wait until

[66] *JRCCM* 175: "Nos suprascripti testes iuramus per trinum et unum verum Dominum et per reliquias sancti Ioannis Apostoli, in cuius honore domus fundata est in villa Bundanti, iuxta domum Sanctae Mariæ, supra cuius sancto altario hanc conditione manibus nostris continemus et iuramus, contangimus, quod nos suprascripti testes triginta annos et amplius vidimus predictas terras tenere pro illorum proprio alode, inter Amelio presbitero et Riculfo et illorum posteritate, per legitimum alodem, sine ullum censum regalem et sine ullo adiutorio quod exinde fecissent ad ipsos homines de Monte Canudo, qui in ipsa domnicheria steterunt. Et nos testes ea que dicimus recte et veraciter testificamus et iuramus per supradictum iuramentum in Domino."

Chapter 2. At this moment, however, what is important is that we have yet another stable episode of the Rite of the Guarantor (though the scribe did not use that term).

Yet, the rite was not over, and Judge Sunifred had not dismissed Esteve. The vanquished litigant had a further role to play. Turning to the subscription list, we see that role clearly defined. Accompanying his name, he explains: "I the abovementioned Esteve litigant (*petitor*) faithfully received those oaths (*sacramenta*), and concerning the aforementioned petition and the now-stated alod, I quitclaimed it, because I was in no way able to prove my position *pro feo*."[67] It was not the opposing witnesses' testimony (*testimonia*) that Esteve received; it was their oaths (*sacramenta*). This distinction was often explicit, though not universal. Many cases feature a reception of both: "*recepto hoc testimonio atque sacramento*."[68] The distinction communicates the belief that oath swearing was a necessary additional step that gave testimony the weight of authority by divine sanction. Moreover, some form of reception was necessary for oaths to stand firm and be ritually complete actions. The stylized nature of reception in many cases suggests that it was a ritual action taken in response to the oath statement under the framework of the rite. As will be seen throughout this study, significant indirect evidence suggests that the context of

[67] *JRCCM* 175: "Et ego suprascriptus Stephanus petitor, istos sacramentos fideliter recepi, et de suprascripta peticione et de iamdicto alode me evacuavi, quod in nullo modo pro feo hoc probare non potui."

[68] Numerous cases differentiate between testimony and oaths, with litigants and judges sometimes even receiving both, thereby indicating a distinction. A notable example comes at the conclusion of a dispute from 1034: *JRCCM*, 251, dated to 1034. Following his ruling and the exaction of the witness oath, one Judge Adalbert stated: "*Recepto hoc testimonio atque sacramento*." His distinction between the two concepts is common up to the middle of the eleventh century, but thereafter becomes confused in many documents (along with many other details that help give shape to diplomatic genres). The transition is gradual and appears to correlate to how strictly individual scribes during these decades wished to adhere to long-held diplomatic standards. Cases such as *JRCCM* 204, from 1023, reveal a transitional moment in the breakdown of form pertaining to the distinction between testimony and oaths. The judge, rather than the losing party, receives the witnesses (*testes*) themselves rather than their oaths (*sacramenta*) *or* testimony (*testimonia*): "Et ego namque Guifredus iudex recepi hos testes cum Guiberto grammatico et ideo sic consigno et confirmo iamdicto alaude in potestate prefato Isarno ad suum proprium." The first instance of reception of *testimonia*, distinct from *sacramenta*, comes in *JRCCM* 222, from 1028: "S+m. Ego Guascha, femina, que hos testes ad testimonium recepi, et ad hanc intentionem extinguendam nominis mei signo corroboravi."

Pere and Enric's reception constituted a norm. There was great value in coding this action as a ritual one. It occasioned Esteve admitting his defeat before Santa Maria and God. Most importantly for officials, those were commitments the community—in the form of the gathered assembly—saw Esteve establish. To see him reverse course in the future would be to betray that commitment to entities of unquestionable authority. Beyond the specter of divine sanction, Esteve risked his reputation. Reception constituted an additional layer of protection. Thus, the case ended and Sunifred could report back to the count that the community was appeased, the witnesses were acknowledged as honest men by God and a saint, and the defeated party was unlikely to cause further trouble. The use of sacred space and the Rite of the Guarantor had served their purposes.

The value of this case study is that it allows us to establish a rough outline of how ideal episodes of the *condiciones* strategy unfolded.

Step	Action taken in the case
1	The court proceedings open and the president, the judges, the other court officers, and the parties to the case are named.
2	The plaintiff presents a complaint, outlining the issue before the court.
3	The defendants provide a counternarrative to the complaint.
4	The judges request both parties submit proofs.
5	The plaintiff presents witnesses.
6	The judge asks the defendant to do the same (should they be incapable of doing so, then they ought to accept their opponent's witnesses).
7	The defendants ask for time to gather witnesses and the judge grants a recess.
8	The court reconvenes at a church.
9	The judge deposes the plaintiff's witnesses, asking for clarification when needed.
10	The defendants' witnesses are then asked to enter the church and are deposed with the same questions.
11	The judge determines the defendants' witnesses are more credible.
12	Having so decided, the judge asks the defendants' witnesses (those of the plaintiff having been dismissed) to swear on the altar to validate their testimony before the assembly, the saint, and ultimately God.
13	The judge asks the losing side (in the above case, the plaintiff's) to receive the oath at the altar.
14	The ritual activity ends and the judge closes proceedings.
15	The parties gather to validate the document and the document is completed.

Figure 0.3. Steps to the cases using the *condiciones* strategy in sacred space[69]

This graphic representation of the Vilanant tribunal as described in the record presents the order of events, both mundane and ritual. Steps 12 and 13 constitute the exaction and reception of the oaths sworn by Sendred's and Guadamir's witnesses. While certainly not every tribunal presented each of these steps, or always in the same order, they stand out as the procedural

[69] Salrach, *Justícia i poder*, 30-38, provides a detailed summary of this process.

priorities for many judges. As we will find when we encounter more ambiguous cases, the structure could vary. What is key, for the moment, is noting the structured organization of the tribunal proceedings and Judge Sunifred's care to afford all parties the same procedural opportunities before turning to ritual action.

0.7. Chapter organization

This study unfolds in five chapters. Together, they explaining the impetus for the origins and history of the ritual practice that I define as the *condiciones* strategy. Chapter 1 uses a comparative analysis of *dotalia* and key concepts evident in regionally available consecration *ordines* in order to outline the parameters of the community belief that fueled the *condiciones* strategy. After reviewing literature detailing the evolution of Christian conceptions of the worship centers—beginning in Late Antiquity and extending into the ninth-century reform debates—I showcase a detailed exegetical reflection found in a *dotalium* dated to 972. This text shows the presence in the Province of Narbonne of the understanding of churches as real sacred spaces. It highlights just how these structures were infused with revelatory and intercessional power by merit of the consecration rite. Stressing themes common to a majority of *dotalia*, we find that this interpretation was broadly popular across the region. The chapter closes by emphasizing judges' appreciation of that belief. It was an understanding of sacred space and ritual power that these officials shared. By citing specific examples, I argue that their presence at dedication events, participation in the consecration ritual, personal funding of new constructions, and theological reflection on the rite help define their conception of churches as zones of salvation and as a direct commune with heavenly forces. This adds an important layer of context in order to appreciate their adaptation of these intercessional places for adjudication.

Chapter 2 concentrates on the influences for and emergence of the *condiciones* strategy. I begin by exploring the Visigothic origins of the oath structure that became central to the strategy, the *condiciones sacramentorum* formula. The first part of the chapter studies how sources from before the Islamic conquest—such as a slate document and entry in the Visigothic Formulary—feature a connection of altars with other forms of sacred power invoked in legal affairs. I compare these sources with legislation about altars found in the Visigothic Code. Analyses of these sources reveal that the earliest uses of the formula are distinct from its function in the Rite of the Guarantor. Next, I posit that ninth-centry shifts in conceptions of sacred space (evident in *dotalia*) permeated the province and helped to re-code the *condiciones sacramentorum* oath connecting it to the social power associated with the community belief in sacred space. That social power of liturgical space gave judges a tool to compensate for the often absent royal power, which I argue once provided oversight of the legal system. By looking at the first cases of the *condiciones* strategy, and placing them in the context with the political dynamic of the time, I suggest that judges drew on the strategy as a replacement for a practical system of royal appeal. The disputes in which judges used sacred space are defined by a relative equivalence between the litigants as dueling magnates. The strategy gave judges a degree of control over proceedings. Closing the chapter, I pause on a particularly intriguing documentary recovery that shows both the utility and the limitation of the strategy. It could not serve as a universal solution to legal troubles.

Chapter 3 turns to the novel circumstances of the *condiciones* strategy's invocation as the political dynamics in the region changed after 900. With the waning of Frankish royal influence, comital power (or a relatively stable sort) came to dominate political life and the management of religious institutions. Judges faced new tribunal challenges resulting from this transformation.

Documents continued to exhibit courts' desire for balanced settlements that would foster stability. Yet, consolidation of regional power under the successors of Guifré the Hairy saw dramatically imbalanced tribunals in which great lords and their ecclesiastical allies faced off against small-holders. During the first part of the century, when possible, judges used the strategy as a tool to help rebalance proceedings. The second half of the century, however, saw such efforts grow less feasible as emerging competition between the descendants of Count Guifré and politically-involved bishops fostered an increasingly turbulent and uneven power-landscape across the lands of Old Catalonia. This time of uncertainty helped forge closer partnerships between judges and counts. The chapter concludes with a look at how judges used the *condiciones* strategy to support the legal and political position of the counts as they react to the earliest episodes of withdrawal/non-appearance.

Chapter 4, focusing on the first thirty years of the eleventh century, shows the intensification of many problems arising after 950. Cases from these decades indicate judges' growing comfort with their service to counts, regardless of the level of concern such lords showed for the overarching efficacy of the judicial system. I present cases that reveal officials using the *condiciones* strategy to shield courts from the consequences of procedural favoritism toward the powerful religious houses allied to the counts. These cases also allow us to see the importance of the strategy as a response to the growing number of withdrawals from court as frustration with the legal system grew among many lay litigants.

Chapter 5 allows us to see one consequence of this growing frustration: the *condiciones* strategy—defined by its hybridization of law, liturgy, and sacred space—gradually lost its synthetic character. Cases reveal how courts increasingly experimented with the utility of supernatural power invoked in law, while often jettisoning its previous pairing with citations

from the Visigothic Code. To best illustrate this practice in detail, much of the chapter explores a single, multi-stage case. This dispute may not serve as a perfect watershed, but it signals an important moment in a longer transformation. First appearing as a dispute that pitted the frontier lord, Mir Geribert (d. 1060), against the monastery of Sant Cugat del Vallès, a closer reading of the case using the judge-centered approach reveals that the various tribunal proceedings may be viewed as an contest between Mir and the judge, Ponç Bonfill Marc, over the efficacy of the legal system itself. Ponç deployed an intricate use of the *condiciones* strategy to limit Mir's ability to advance his case, while the baron performed tactical withdrawals in order to signal the court bias to the assembly. Mir Geribert, while losing the case, established a basis for more dramatic rejections of the legal system, the *condiciones* strategy, and any judgment, save that of God himself. The remainder of the chapter explores these consequences through key examples. Use of the *condiciones* strategy and other traditional court procedures became increasingly irregular, with a broad spectrum emerging. At one pole we see traditional uses of the strategy, while the other features uses of supernatural elements in novel ways. In closing the study of this strategy, we see that its hybridization of codified law and ritual action in sacred space all but collapsed.

Chapter One

Creating and Using Sacred Space in the Province of Narbonne

Oliba consecrated this blessed temple to the Virgin
This house which Oliba made is holy.
++The heavenly (building) is illuminated with the fire of divine will

Virginis hanc aulam sacravit Oliva beatam.
Hec domus est sancta quam fecit domnus Oliva.
++Caelitus accensus divini numinis igne.
***
+This holy altar contains the venerable cross of the Lord
and also a piece from the edifice of the tomb,
which, with faith, the blessed prelate Oliba consecrated.

+Hoc altare sacrum Domini venerabile lignum
continent atque sui fragmen de mole sepulcri,
quod fide cum diva presul sacravit Oliva.

—Abbot-Bishop Oliba of Vic, 1032[1]

1.1. Introduction

These words, attributed to Abbot-Bishop Oliba of Vic in 1032, commemorate two important moments in a single transformation. They mark his consecration of the new monastic basilica at Santa Maria de Ripoll. Both poems—one inscribed at the church entrance and the other scrawled on the high altar—stress the importance of Oliba himself as an agent of change. He was not just the spiritual leader of Ripoll, but he also was bishop of Vic. In this latter capacity, guiding the cathedral clergy through an intricate consecration rite, he had changed

[1] Eduard Junyent i Subirà, ed., *Diplomatari i escrits literaris de l'abat i bisbe Oliba* (Barcelona, 1992), "Textos literaris d'Oliba," 4, 5 (at 308-9). For the consecration record pertaining to this dedication, see Ramon Ordeig i Mata, ed., *Les dotalies de les esglésies de Catalunya, segles IX-XII* (Vic, 1994), 151. Marc Sureda i Jubany, "Oliba, *sapiens architectus*," in *Oliba episcopus*, ed. Marc Sureda i Jubany (Vic, 2018), 56-66, explains that scholars have viewed Oliba as an exceptional builder of churches, crediting him with introducing the Lombard Romanesque style to the region. Yet, Sureda argues that Oliba's involvement with church construction may be more representative of early eleventh-century bishops than previously understood. In this context, the statements made by these inscriptions may be indicative of a norm for how bishops and communities conceived of the prelate's actions in creating sacred spaces.

physical space and matter into something else entirely. Oliba joined two worlds by bridging Heaven and Earth, establishing a place "illuminated with the fire of divine will." No metaphor, this doorway was centered at the altar and guarded by unseen saints. Such gatekeepers could channel human entreaties to God and advocate for their salvation in his heavenly courtroom. Thus, the inscriptions describe the bishop's efforts to demarcate a space that housed the unquestioned power and authority of God. Out of the many steps in the rite, Oliba ordered the two moments described in these poems to be scrawled publicly and for all time so that future generations might understand the transformation he effected. Not only do they indicate what Oliba found important about his celebration, but, as we will see, they stand as concise indicators of a broader belief in the power of church buildings across the Province of Narbonne, a consensus at the heart of the *condiciones* strategy.

1.1.1. Community belief in sacred space

The principle that judges used to make the *condiciones* strategy an effective adjudicatory tool is something I term, "community belief in sacred space." In order to emphasize the power this principle offered courts in later chapters, it is necessary to first show its key features and place it in its proper historical, liturgical, and documentary contexts. Put simply, it was a general consensus-understanding of consecrated churches as places where Heaven and Earth merged in the Province of Narbonne during the ninth through eleventh centuries (and beyond). Many parishioners understood these buildings as distinct from mundane spaces by merit of ritual action performed within. Churches were doorways to Heaven. Worshipers could, together with their kin and neighbors, venture to that threshold and seek intercession from saints, envisioned as judicial advocates capable of helping the living prepare their defense for the Last Judgment. People

relied foremost on their local church for access to these supernatural defenders.[2] The sources to be reviewed, communicating the views of both elites and non-elites, reveal that the consensus at the center of community belief in sacred space largely transcended boundaries of class, clerical/lay status, and educational background. It was something that encouraged devotional cooperation with one's neighbors and trust that they would help maintain the integrity of church sacrality. Of course, community belief was not a cultural monolith. We must remain mindful of varying perspectives between individuals and the challenges presented by parsing common understanding through author-intermediaries. As noted in the Introduction, Phillip Buc has shown that there are pitfalls in attempts to distill truth from source descriptions of ritual. This will require we be attentive to variation between reports and look for conviction between formulaic phrasing in sources.[3] Nevertheless, it appears that enough people adhered to the consensus belief, fueled by fear that salvation lay just beyond reach, to provide judges a reliable tool. It was one by which they could leverage social pressure behind rulings based on the Visigothic Code, and thereby prevent defeated litigants from resuming disputes.

[2] Éric Palazzo, *L'espace rituel et le sacré dans le christianisme: La liturgie de l'autel portatif dans l'Antiquité et au Moyen Âge* (Turnhout, 2008), 128-29, shows the use of portable altars to prepare sacred spaces for the purpose of the liturgy. As Kate Craig, "Fighting for Sacred Space: Relic Mobility and Conflict in Tenth-Eleventh-Century France," *Viator* 48 (2017), 17-37, explains, there were also travel circuits for relics and even resultant competition between saints. For most people, however, gaining saintly intercession meant entering consecrated spaces and beseeching saints whose relics were installed in altars.

[3] Philippe Buc, *The Dangers of Ritual: Between Early Medieval Texts and Social Scientific Theory* (Princeton, 2001). For an instructive model for how to explore the rite and celebration of church consecration, see Louis Hamilton, "Les dangers du rituel dans l'Italie du XIe siècle: Entre texts liturgiques et témoignages historiques," in *Mises en scène et mémoires de la consécration de l'église dans l'occident médieval*, ed. Didier Mehu (Turnhout, 2008), 159-88; and Louis Hamilton, *A Sacred City: Consecrating Churches and Reforming Society in Eleventh-Century Italy* (Manchester, 2010). For studies of sacrosanct space in another region (the area surrounding the monastery of Cluny), see, Barbara Rosenwein, *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (Ithaca, 1999); and Didier Méhu, *Paix et communautés autour de l'abbaye de Cluny, Xe-XVe siècle* (Lyon, 2001).

In order to understand community belief, we must look to the dedication event at which a church was consecrated. For this, the best sources are *dotalia* (sing. *dotalium*) and *ordines* (sing. *ordo*). A *dotalium* is a documentary record commemorating the proceedings of a dedication assembly. Nearly three hundred such records survive from Catalonia during the ninth through eleventh centuries.[4] The ritual blessing of the church is but one part of such a summit, with the economic and organizational aspects of establishing a new parish church receiving significant scribal attention. At first glance, therefore, *dotalia* seem of little use in determining specific beliefs. Yet, this is not the case. These records explain who instigated the construction of church buildings, why they did so, and what bishops, clergy, and parishioners hoped to gain from worship in the new church. Moreover, the expressions of these themes featured in this genre are varied enough that their contents may not be dismissed as the simple product of formulaic documentary language. Thus, *dotalia* offer our closest look at community belief in this region.

Ramon Ordeig, Michel Zimmermann, Dominique Iogna-Prat, and others have addressed community relationships with local churches in the province, with much of the emphasis focused on the *dotalia* from the bishopric of Urgell.[5] Jointly, these scholars note many of the central

[4]For the full range of *dotalia* in the region and an analysis, see *Dotalies*. Much of the early work on Catalan *dotalia* emphasized the evidence from the bishopric of Urgell, the records of which are available as Cebrià Baraut, ed., *Les actes de consagracions d'esglésies de l'antic bisbat d'Urgell, segles IX-XII* (La Seu d'Urgell, 1986).

[5] Michel Zimmermann, "Les actes de consécration d'églises: Construction d'un espace et d'un temps chrétiens dans la Catalogne médiéval, IXe-XIIe siècle," *Cahiers d'études hispaniques médiévales* 15 (2003), 29-52; Zimmermann, "Les actes de consécration d'églises du diocèse d'Urgell, IXe-XIIe siècle: La mise en ordre d'un espace chrétien," in *La sacré et son inscription dans l'espace*, ed. Michel Kaplan (Paris, 2001), 301-18; Ramon Ordeig i Mata, " La consagració i la dotació d'esglésies a Catalunya en les segles IX-XI, " in *Symposium Internacional sobre els Orígens de Catalunya, segles VIII-XI*, ed. Frederic Udina i Martorell (Barcelona, 1991), II: 85-101; Dominique Iogna-Prat, *La Maison Dieu: Une histoire monumentale de l'église au Moyen Âge (v. 800-1200)* (Paris, 2006), 334-50; Michel Lauwers, "Consécration d'églises, réforme et ecclésiologie monastique: Recherches sur les chartes de consécration provençales du xie siècle," in *Mises en scène et mémoires de la consécration de l'église dans l'occident médieval*, ed. Didier Mehu (Turnhout, 2008), 93-142; Palazzo, *L'espace rituel*, 37-38; Manuel Riu and María del Pilar Valdepeñas Lozano, "El espacio eclesiastico y la formación de las parroquias en la Cataluña de los siglos IX al XII," in *L'environnement des églises et la topographie religieuse de campagnes médiévales: Actes du IIIe congrès international d'archéologie médiévale (Aix-en-Provence, 28-30 septembre 1989)*, ed. Michel Fixot and Elisabeth

themes evident in these sources, including villagers pooling resources for construction, broad enthusiasm for saintly intercession, and fear of damnation. This work may be taken further using the full corpus of accessible *dotalia*. We can chart the prevalence of these beliefs, who in society were most likely to share them, and why they appealed to judges. However, given the administrative and legal purposes of *dotalia* as a genre, these records always limit mention of the key consecration rite to a mere statement that the bishop had performed the ritual. Scribes then proceeded to practical concerns.

For this central rite—the all-important moment of transformation—*ordines* outlining performance of the consecration are important. Prelates celebrated according to liturgical instructions detailing the steps, prayers, gestures, and invocations necessary to make the space suitable to host the liturgy and community worship. *Ordines* stand to tell us much about the theological scaffolding undergirding the consecration rite. They would position us to better grasp the statements attributed to bishops in *dotalia*, thereby affording a side-by-side look at the beliefs of elite prelates, clerical scribes, and lay founders. Yet, we face a significant problem: *dotalia* never specify which *ordo* bishops used in the Province of Narbonne.[6] As the chapter proceeds, we will have occasion to note candidate *ordines* that were likely available in the region during this period. Nevertheless, the lack of confirmation from the documentary record means they may only serve as a supplementary source.

An alternative approach is to contextualize these aforementioned sources with the broader theological discussions of Late Antiquity and the Early Middle Ages. I argue that the

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Zadora-Rio (Paris, 1994); and Robert Baró i Cabrera, "Les esglésies d'Arraona: Aproximació a tres llocs de culte del segle XI," *Arraona: revista d'història* 35 (2015), 192-207.

[6] Hamilton, "Les dangers du ritual dans l'Italie," 165, notes this challenge also faces scholars of Italian consecratons.

Province of Narbonne has a place in the history of Christian debate over the symbolic versus real nature of sacred space. After explicating this history, I explore an atypical *dotalium* from 972—unique in its exegetical exposition on church consecration—that reveals the reception of the position that consecrated churches were inherently distinct from mundane space. Context gleaned from this record will be instrumental in exploring subtler trends evident in the *dotalia* corpus and lead us to an outline of community belief in sacred space.

The chapter will close by reflecting on church spaces and the consecration event through the eyes of judges. These men were members of a class of professional jurists who used these sanctuaries as adjudicatory arenas for three centuries. Despite this, and their appearance as participants in various capacities in twenty-six *dotalia*, no previous attempt has been made to distill a general impression of what judges appear to have thought about the powers of sacred space and consecration. By looking at examples of their participation as scribes, founders, and celebrants, we may determine that they shared and encouraged the broader consensus belief in sacred space. With judges themselves compelled by the powers believed to inhabit churches, they well understood the value of these structures and the stabilizing role they could play in law.

1.2. Defining Sacred Spaces

Early Christian theologians were interested in the nature and meaning of churches. Given seeming biblical inconsistencies, writers like John Chrysostom (d. 407) and Augustine (d. 430) were troubled by how to define the status of these buildings: were they symbolic representations of the Christian community, or were they real, supernaturally charged sacred spaces?[7] The issue

[7] John Chrysostom, "Homilia de capto Eutropio et de divitiarum vanitate," in *Patrologiae cursus completus, series Graeca*, 52:397; Augustine, "*Celebritas hujus congregationis, dedicatio est domus orationis," Patrologia Latina*, 38:1471-72; cited in Iogna-Prat, *La Maison Dieu*, 31-36; and Karl Shoemaker, *Sanctuary and Crime in the Middle Ages, 400-1500* (New York, 2011), 17. For additional discussion on the debates of early Christian authors, see Palazzo, *L'espace rituel*, 71-83.

received attention from commentators well into the eighth and ninth centuries, when the Carolingians sought to foster uniformity in belief and liturgical celebration.[8]

We begin with two contrasting descriptions of theophanies from scripture. In Gen. 28:10-20, Jacob dreamed that a heavenly ladder reached down to where he lay sleeping. Flanked by angels, God descended and revealed himself. Upon waking, Jacob exclaimed, "Surely the Lord is in this place, and I was not aware of it… *How awesome is this place*! This is none other than the *house of God*; this is the *door of Heaven*."[9] The italicized parts of this quotation are prominent in select *dotalia*. Importantly for our understanding of those latter sources, Jacob conveys the realization that God's arrival changed the nature of mundane space, which he now sees as a *domus dei* and *porta caeli*. Other biblical passages, such as 1 Kings 8:27, complicated the matter. Here, Solomon wonders, "But will God indeed dwell on the Earth? Behold, 'Heaven and the Heaven of heavens cannot contain you; how much less this house that I have built'."[10] Early Christian thinkers sidestepped such Old Testament disparities by redirecting focus on the transformative nature of the New Covenant between Christ and humanity.[11] This resulted in a

[8] Brian Repsher, *The Rite of Church Dedication in the Early Medieval Era* (Lewiston, 1988), 12-13, 17-18.

[9] Gen. 28: 10-20, "Cumque evigilasset Jacob de somno, ait: Vere Dominus est in loco isto, et ego nesciebam. Pavensque, Quam terribilis est, inquit, locus iste! Non est hic aliud nisi domus Dei, et porta caeli."

[10] I Kings 8:27, "Ergone putandum est quod vere Deus habitet super terram? Si enim caelum, et caeli caelorum, te capere non possunt, quanto magis domus haec, quam aedificavi? "

[11] Iogna-Prat, *La Maison Dieu*, 29-37, shows that by the second century, theologians were reacting to Christian intellectual culture's double rupture with Jewish and Greco-Roman thought on the subject of space. Elite writings reveal a dual process of "spiritualization" and "interiorization." In the first process, many came to believe that God's omnipresence rendered the entire physical world inherently sacred; worship in a specific place was unnecessary. The second process emphasized the divine's presence in the soul. The influence of spiritualization and interiorization explain why Late Antiquity saw limited enthusiasm for a pronounced dichotomy between sacred and mundane space in early Christian writings.

view for many that the true church was the community of the faithful. Therefore, the building, the place where congregants gathered, was a metonym for that true Church.[12]

After the Christian persecutions of the second and third centuries, however, interest in martyr remains and beliefs in their powers as relics grew.[13] In time, this popular fascination with sacred matter would influence the sanctification of worship spaces. Some commentators saw the tombs of the martyrs as junctures where Heaven and Earth met, owing to the belief that the saint was spiritually "present" at his or her body.[14] Ambrose of Milan (d. 397) was to some degree a champion of this new perspective. He wrote to his sister about how he entombed martyr relics beneath the high altar during the consecration of the basilica of Milan on account of the miracles the remains had performed.[15] Ambrose's letter, while not defining churches as inherently sacred, marks an early moment in a transformation: Christian writers were beginning to reflect on the gravity of space that housed holy matter. For Ambrose, relics were an important part of church dedication: a rite that transformed the dignity of the space, but not its holy nature. The building's spiritual significance came from its association with interred relics.

Patrick Geary describes the popular piety of this age as "hagiocentric."[16] We see this focus on the saints in the rise of shrines, pilgrim routes, cemeteries, and a growing idea that the quality and nature of certain places were different because these spaces hosted saintly remains.

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[12] Didier Méhu, "*Locus, transitus, peregrinatio*. Remarques sur la spatialité des rapports sociaux dans l'Occident medieval, XIe-XIIe siècle," in *Construction de l'espace au Moyen Âge: Pratiques et representations*, ed. Société des historiens médiévistes de l'enseignement supérieur public (Paris, 2007), 275-293.

[13] Peter Brown, *The Cult of Saints: Its Rise and Function in Latin Christianity* (Chicago, 1981), 1-22.

[14] Brown, *The Cult of Saints*, 3-5; Sabine MacCormack, "Loca Sancta: The Organization of Sacred Topography in Late Antiquity," in *The Blessings of Pilgrimage*, ed. Robert Ousterhout (Urbana, 1990), 7.

[15] Ambrose, "Epistle 22," *PL* 16:1019-1020; Brown, *The Cult of Saints*, 36-37.

[16] Patrick Geary, *Furta Sacra: Thefts of Relics in the Central Middle Ages* (Princeton, 1990), 30-31.

Peter Brown explains this interest in martyr relics and their shrines with the term, *praesentia*: the localized manifestation of holy power.[17] In Late Antiquity, *praesentia* had everything to do with the deposition of relics (the objects of power), rather than the space itself. Nevertheless, communities increasingly treated the place where they were kept with reverence. Brown noted numerous North African shrines featuring the inscription, "*Hic est locus*!"[18] Such heightened importance granted to matter, and by extension place, affected norms of worship. As the Christian religion became ever more institutionalized, the importance of liturgical precision grew. Against this backdrop, the presence of relics during worship became crucial to the divine office and led to a rising fascination with churches themselves. Between the sixth and the end of the eighth centuries, liturgical works began to mention dedicated consecration rites and the involvement of relics in the ritual.[19] The use of relics in the *ordines* for consecration was paired with the dedicated inaugural mass common from earlier periods.[20] The Second Council of Nicaea in 787 went as far as to mandate the interment of relics as part of the consecration rite.[21] This emphasis on the importance of sacred matter to constitute a proper church transcended regional

[17] Brown, *The Cult of Saints*, 86-105, argues that this proliferation was driven by "a yearning for proximity kept so carefully in suspense (it) occasionally exploaded" (quotation at 88).

[18] Brown, *The Cult of Saints*, 86.

[19] Iogna-Prat, *La maison dieu*, 45-53, argued that there were two concurrent trends driving the "slow placement of a consecration ritual." The first was the growing centrality of saints to the practice of the liturgy. The second was the institutionalization of the Church following the successor kingdoms' acceptance of orthodox Christianity.

[20] Repsher, *The Rite of Church Dedication*, 20-21, explains that Pope Vigilius (d. 555) wrote that an inaugural mass sufficed to consecrate a church-building. The text, however, assumes that relics are part of the ceremony. It stipulates that lustration must precede the placement of relics.

[21] Giovann Domenico Mansi, ed., *Sacrorum conciliorum nova amplissima collectio* (Graz, 1960), XIII. col. 751, c. 7.

variations in the liturgy, variations that would gradually coalesce into a single Roman-oriented liturgical tradition by the close of the Carolingian period.

Study of texts belonging to either the early Roman Rite or the Gallican Rite reveal notable differences between these traditions, but the key elements of the inaugural mass and the importance of relics are evident in both. Gallican texts, such as the *Angoulême Sacramentary* (ca. 800), show that additional elements were prioritized outside of the regions under papal influence. Dedication of the altar was especially important.[22] Although its classification is debated, the latest sacramentary attributed to the Gallican Rite is the *Missale Francorum*. It calls for the blessing of liturgical implements and the lighting of candles.[23] Many of the stages from the *ordines* contained in these aforementioned works appear in the *Ordo ad benedicandam ecclesiam* (*PRG* 40) of the so-called *Pontifical Romano-Germanique*, [24] *PRG* 40 an *ordo* that, along with *Ordo quomodo in sancta romana ecclesia reliquiae conduntur*, resulted from the emergence of the Romano-Frankish Rite (a combination of earlier traditions) under the guidance of Alcuin of

[22] Repsher, *The Rite of Church Dedication*, 22. The *Angoulême Sacramentary* includes an *ordo* for the consecration of a church. The altar is given special treatment under its own heading. The rite mandates the altar be lustrated with a mixture of water and wine. For the *ordo*, see Paul Cagin, ed., Le *Sacramentaire Gélasien d'Angoulême* (Angoulême, 1919), 140-142.

[23] Repsher, *The Rite of Church Dedication*, 22; and Leo Cunibert Mohlberg, ed., *Missale Francorum* (Rome, 1957). This sacramentary has long been considered part of the Gallican Rite, and Repsher places it in that family.

[24] Cyrille Vogel and Reinhard Elze, eds., *Le pontifical romano-germanique du dixième siècle*, 3 vols. (1963-1972), I. 40:124-73. Repsher, *The Rite of Church Dedication*, 13, argues that *PRG* 40, as it exists in the hypothesized tenth-century pontifical, is a copy and modest expansion of a non-extant early ninth-century work. Iogna-Prat, *La maison dieu*, 265, more specifically dates its composition to 840. While a direct connection remains uncertain, articulated statements from the *ordo* concerning demarcated zones of progressive sacrality within churches bear much in common with the ideas expressed in the eighth-century anonymous Insular work, *Collectio canonum Hibernensis*, a popular text among Carolingian liturgical commentators. For an analysis of the *Hibernensis*, see Samuel Collins, *The Carolingian Debate over Sacred Space* (New York, 2012), 34-39. For the edition, see Hermann Wasserschleben, ed., *Collectio canonum Hibernensis. Die irische Kanonensammlung* (Leipzig, 1885). Henry Parkes, *Making the Liturgy in the Ottonian Church: Books, Music and Ritual in Mainz, 950-1050* (New York, 2015), 18-20; and Henry Parkes, "Questioning the Authority of Vogel and Elze's *Pontifical romano-germanique*," in *Understanding the Liturgy: Essays in Interpretation*, ed. Helen Gittos and Sarah Hamilton (London, 2016), bring the broader authenticity of the parent pontifical housing *PRG* 40 into question, explaining that there is no direct evidence that pontifical's component *ordines* were ever circulated together.

York (d. 804) and Charlemagne's other liturgical advisors. It was during these generations straddling 800 that the idea of real sacred space would receive its most nuanced articulation by liturgical commentators, as well as its fiercest opposition. The chief figure in that story is Amalarius of Metz (d. ca. 850).[25]

In contrast to theologians like Augustine or Bede (d. 735), Amalarius read wondrous meaning into the world around him. He was particularly fascinated with the four-part exegetical approach Bede used for his exploration of scripture, adapting the tool for his own writings. However, Amalarius did not maintain Bede's careful separation of the revelatory biblical past and the mundane present. Like Isidore of Seville (d. 636), another of Amalarius' influences, he saw his own age as one in which God continued to manifest truth in the physical world, preparing the way for an eschatological future. Amalarius believed that revelation occurred principally through the liturgy, which fundamentally blurred the distinction between scriptural past and sacramental present. The liturgy was authoritative for this cleric. At a time when the reforms sought to *Romanize* the Gallican liturgy, and therefore make it more "authentic," Amalarius took the position that the liturgy, thought to have arisen from the minds of the early fathers, could be read exegetically like scripture. He believed ritual created truth; it was sacred, as were the spaces in which it occurred. His work carried implications for the conceptions of churches through the principle of *similitudo*. Whether it was the Eucharist, the consecration of a bishop, or any other liturgical act, this principle dismantled the distinction between a biblical

[25] Iogna-Prat, *La Maison Dieu*, 107-52, stresses that the eighth and ninth centuries saw construction campaigns order by the Carolingian rulers. This effort generated a sense of "monumentalization," as new settings for the liturgy were created and affected conceptualizations of sacred space. Collins, *The Carolingian Debate over Sacred Space*, 13, took this position further. He explained that the ambiguity Iogna-Prat noted was in fact a quite contentious debate, as some writers adhering to older ambivalences over space grew alarmed with the "Carolingian embrace of increasingly sanctified Christian architecture."

event occurring in the Temple and the liturgical reflection on that event in a ninth-century church.[26]

Amalarius was not without his detractors and faced censure at the 838 Council of Quierzy. Agobard of Lyon, Florus of Lyon, and Walafrid Strabo all condemned his views, seeking to connect him to the Adoptionist heresy that had been rooted in Urgell (part of the Spanish March) during the eighth century.[27] Walafrid attacked Amalarius' application of exegesis to the liturgy. He particularly argued that church consecration was a symbolic reference, rather than a real transformation.[28] Nevertheless, well after Amalarius' death, his ideas had taken hold. His chief work, *Liber officialis*, was copied widely and almost certainly helped define regional positions on these issues. Michel Zimmermann shows the presence of Amalarius' works in the Province of Narbonne during the post-Carolingian period, with three copies of the *Liber officiorum* attested at the library of the monastery of Ripoll. More importantly, for this study of law, Ramon Ordeig has found the works of Amalarius among the possessions listed in the will of an eleventh-century Catalan judge.[29] As we shall see, these ideas had resonance south of the Pyrenees.

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[26] These points are best summarized in Collins, *The Carolingian Debate over Sacred Space*, 41-65; Christopher Jones, "A Lost Treatise by Amalarius: New Evidence from the Twelfth Century," in *The Study of Medieval Manuscripts of England: Festschrift in Honor of Richard W. Pfaff*, ed. George Hay Brown and Linda Ehrsam Voigts (Turnhout, 2010), 41-67; and Amalarius of Metz, *On the Liturgy*, ed. Eric Knibbs (Cambridge, 2014), xviii.

[27] Iogna-Prat, *La Maison Dieu*, 284-86; John Cavadini, *The Last Christology of the West: Adoptionism in Spain and Gaul, 785-820* (Philadelphia, 1993), 71-72. The controversy surrounding Adoptionism thrust theological positions espoused by Iberian clerics into the forefront of Frankish religious debate, drawing the ire of Alcuin of York, the papacy, and numerous other commentators, with the position being formally declared heretical in 794 at the Council of Frankfurt. The position was particularly championed by Bishop Felix of Urgell (d. 818). In 792, Charlemagne condemned Felix and sent him into exile at Lyon.

[28] Collins, *The Carolingian Debate over Sacred Space*, 60-61.

[29] Michel Zimmermann, *Écrire et lire en Catalogne, IXe-XIIe siècle* (Madrid, 2003), I: 570. Ramon Ordeig i Mata, *Guibert de Lieja i Joan de Barcelona: Dos Europeus del segle XI* (Vic, 2018), 39-54. For Guillem Ramon's testament, see Ramon Ordeig, ed., *Diplomatari de Vic*, 3 vols. (Vic, 2000-2005), III: 1455, dated to 12 Nov. 1082.

1.2.1. The debate over sacred space

An analysis of how these debates affected communities within the province would be advanced by close comparison of the *ordo* a bishop used at a dedication and the event's associated *dotalium*. Unfortunately, no *dotalium* specifies the consecration *ordo* used. Nevertheless, we have some idea of what may have been available locally during the eleventh century. For dedications occurring in the bishopric of Urgell, Cebrià Baraut suggests an *ordo* from the *Pontifical de Roda* (*PRod*), dated to the decades around 1000.[30] Treating the region more broadly, Ramon Ordeig proposes a rite from the *Pontifical de Narbonne* (*PNar*). Michel Gros suggests the surviving manuscript of *PNar* dates to the eleventh century.[31]After 1030 we may add the possibility of an *ordo* composed as part of a portable pontifical from Vic (Vic *ordo*).[32] While these candidate *ordines*—among the region's earliest extant[33]—provide useful context for eleventh-century dedications, determining what was available to bishops in earlier centuries proves more challenging. While no answers are final, we are not without clues.

[30] Baraut, ed. *Les actes de consagracions*, 14-5 n. 20, explains that the *dotalium* for the dedication of Sant Esteve d'Olius (see *Dotalies* 241) specifies that an *ordo* is used: "ut mos et ordo exigit." The scribe, however, does not specify which. Baraut posits that the *Pontifical de Roda* (PRod) may be a candidate. For this *ordo*, see Josep Romà Barriga Planas, ed., *El sacramentari, ritual i pontifical de Roda. cod. 16 de l'arxiu de la Catedral de Lleida, c. 1000* (Barcelona, 1975), 484-518.

[31] Ordeig, "La consagració i la dotació d'esglésies," 87. For an edition of the *ordo*, see Edmond Martène, ed., *De antiquis Ecclesiae ritibus libri quatuor*, 2nd ed. (Antwerp, 1736), II: 733-47. Based off of analysis by Pesch, Martène stated that the manuscript was composed before 700. However, Miquel Gros i Pujol, "El ordo romano-hispánico de Narbona para la consagración de Iglesias," *Hispania Sacra* 19 (1968), 4-5, argues that the eleventh century is a more likely date.

[32] Miquel Gros i Pujol, ed. "El pontifical Romà de Vic: Vic, Bib. Episc. ms. 103 (XCIII)," *Miscel·lània litúrgica catalana* 15 (2007), 187-272 (*Ordo ad benedicandam ecclesiam*, at 220-27). This portable manuscript, Vic, arx. cap. ms. 103(XCII), should not be confused with the *Pontifical de Vic* (*PVic*), Vic, arx. cap. ms. 104, composed in the early twelfth century.

[33] Gros, "El ordo romano-hispánico de Narbona," 1-3, notes the existence of texts included in the same manuscript tradition for later centuries.

Arthur Westwell, concurring with the analysis of André Wilmart, discusses the contents of a letter that the monk Almannus of Hautvillers (diocese of Rheims) sent to Archbishop Sigebod of Narbonne (d. 885) sometime during the prelate's tenure.[34] Among the materials included in the missive was a commentary about a work (or one similar) to that which Michel Andrieu grouped into his edition of the *Ordines romani*. The *ordo* in question, *Ordo antiqua ad ecclesiam dedicandam* (*OR* 41), dates to the late eighth century and bears significant Frankish influence despite Andrieu's categorization as "Roman."[35] While Almannus' letter lacks the text of *OR* 41, one might wonder if the *ordo* was included separately, perhaps was already present in the archdiocese, or was at least a work that the monk hoped to popularize in the region.[36]

The absence of evidence confirming *OR* 41's actual use in the province before or in the wake of Almannus' letter recommends significant caution. However, Michel Gros argues that *OR* 41 influenced the liturgical tradition that generated *ordines* of the Romano-Hispanic family of manuscripts rooted at Narbonne, particularly the later pontificals of Roda, Narbonne, and

[34] Arthur Westwell, "The Dissemination and Reception of the *Ordines romani* in the Carolingian Church, c. 750-900" (PhD diss., Queens' College, Cambridge, 2017), 222-23; and André Wilmart, "La lettre philosophique d'Almanne et son context littéraire," *Archives d'histoire doctrinale et littéraire du moyen âge* 3 (1928), 285-320 (a list of the contents is found at 287-290).

[35] Michel Andrieu, *Les Ordines Romani du haut Moyen Âge*, 5 vols. (Louvain, 1948-1962), IV: 339-47. Westwell, "The Dissemination and Reception," 2-6, explains that the tradition of the *ordines romani*—often seen as a Carolingian program to replace the Gallican Rite with rituals associated with worship in Rome—was in fact heavily influenced by local Frankish scribal influence, as has been shown by Rosamond McKitterick, *The Frankish Church and the Carolingian Reforms, 789-895* (London, 1977), 116-154.

[36] Westwell, "The Dissemination and Reception," 223, explains that the manuscript, Albi Bibliothèque municipal 42, contains a variation of *OR* 41. Westwell argues it was likely created at Rheims after 852, concurring with Andrieu, *Les Ordines*, I: 32-34 and Bernhard Bischoff, *Katalog der festländischen Handschriften des neunten jahrhunderts (mit Ausnahme der wisigotischen)*, 4 vols. (Weisbaden, 1998), I: 11. This helps support the conclusion that Almannus' exposition is indeed a treatment of *OR* 41. Susan Keefe, *Water and the Word: Baptism and the Education of the Clergy in the Carolingian Empire*, 2 vols. (Notre Dame, 2002), I: 160-61, lists southern France as the locale of origin for this manuscript, though she does not provide an extended explanation for this.

Vic.[37] *PRod* is especially close to *OR* 41 in the presentation of its rubrics for the consecration.[38] Gros also argues that Vic *ordo* shares similarities with the tradition surrounding *PRG* 40, an *ordo* dated to the ninth century though not attested in the province at that time.[39] These different *ordines* share important features that focus on the use of sacred matter to void mundane space of corruption and demarcate zones of especial sacrality. *OR* 41, the turn of the millennium *ordines* of Romano-Hispanic tradition of Narbonne, the Vic *ordo* and its parent text, each stress the ritual creation of lustral waters during the rite. They prescribe compound mixtures that include salt, water, ashes, and wine, each exorcised and blessed in turn. While not every rite's mixture includes every ingredients, they each explain how lustral waters are to be used for cleansing space prior to the infusion of sacral energy, conceived as fiery light (in the case of *PRod*: "*Ut habitaculum istud una cum habitatoribus benedicere et custodire dignetur per aspersionem aque huius cum vino mixte, et tenebras ab ea repellat et lumen infundat*," an emphasis on illumination that is not dissimilar to Oliba's inscription describing Ripoll's church, "*Caelitus accensus divini numinis igne*").[40]

[37] Gros, "El ordo romano-hispánico de Narbona," 7.

[38] Gros, "El ordo romano-hispánico de Narbona," 9.

[39] Gros, ed. "El pontifical Romà de Vic," 187-272; Gros, "El bisbe Oliba i els antics manuscrits bíblics i liturgics catalans," 92-3. While Gros indeed shows striking parallels between the Vic *ordo* and *PRG* 40, how and when *PRG* 40 made it to the Province of Narbonne remains unknown.

[40] *OR* 41, steps 6-11 (at 341-42). "(6) Deinde veniens ante altare dicit: Deus in adiutorium meum intende, cum Gloria, absque Alleluia. (7) Inde benedicit salem et aquam cum cinere mixto et dicit hanc orationem: Deus qui ad salutem humani generis, et reliqua. (8) Sequitur exorcismus: Exorcizo te, creatura salis et aquae. (9) Et miscitur salis et cinis et faciens ter inde crucem super ipsam aquam. (10) Deinde ponis vinum mixtum cum ipsa aqua benedicta et dicis hanc orationem: Creator et conservator. (11) Deinde faciens crucem cum digito suo de ipsa aqua in dextra parte per quatuor cornua altaris." *PRod* and *PNar* (of the Romano-Hispanic tradition) convey similar instructions, exorcising each substance at length prior to its blessing and addition to the mixture. For example, *PRod* (at 489) explains the following as part of the twelfth step in the rite, "Deinde sequitur exorcismus aque: Exorzizo te, creatura aque, in nomine dei patris et filii et spiritus sancti, ut repellas diabolum a terminis iustorum, ut nec sit in umbraculis huius ecclesie, sed tu, domine ihesu christe, infunde spiritum sanctum in hanc ecclesiam tuam, ut proficiat ad sanitatem corporum animarumque adorancium te, ut magnificetur nomen tuum in gentibus et increduli corde

Scholars have long worked to discern the intended meaning and function that *ordo* authors intended for liturgical rites.[41] Given that the roots of the candidate *ordines* did not have their origins in the communities of the province, the intent of their authors is less significant for determining community belief in sacred space. What is pertinent, however, is the issue of their reception. Despite uncertainties surrounding exactly which *ordo* a bishop used on a given occasion for dedication, select *dotalia* that focus on features common to the majority of the candidate *ordines*—such as lustral waters applied to the cleansing of altars—offer a window into how the ritual of church consecration was understood in the Province of Narbonne. Before turning to how general trends within *dotalia* allow us to define a regional consensus belief, I begin with a *dotalium* from 972 that reveals a scribe grappling with the very issues at the center of the longstanding debate over sacred space. A close observer of the rite in question, he settled on an understanding that churches were real liminal zones, bridging Heaven and Earth.

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convertantur ad te, ut non habeant alium deum praeter te solum, qui cum patre." The water is then blessed as part of step seventeen (at 491), "Domine deus pater omnipotens statutor et conditor omnium elementorum, qui per ihesum christum filium tuum dominum nostrum elementum hoc aque in salutem humani generis esse voluisti, te suplices deprecamur, ut exaudias oraciones nostras, eamque tue pietatis respectu sanctifices, atque ita omnium spirituum inmundorum ab ea recedat incursio, ut ubicumque fuerit in nomine tuo aspersa, gracia tue benediccionis adveniat, et mala omnia, te propiciante, procul recedant. per eundem." *PRod* repeats this paired exorcism-blessing for salt (at 492-93) and finally blesses the salt-water mixture once the wine is added (at 494), "Deum patrem omnipotentem, karissimi, in cuius domo mansiones multe sunt, suplices deprecamur, ut habitaculum istud una cum habitatoribus benedicere et custodire dignetur per aspersionem aque huius cum vino mixte, et tenebras ab ea repellat et lumen infundat. Nullam sevienti adversario relinquat potestatem, sed propria deo sit domus, ut nullam in ea inimicus licenciam habeat, potestatemque noccendi, per nomen domini nostri ihesu Christi, qui venturus est iduicare vinos et mortuos et saeculum per ignem." Though the exact phrasing differs, the structure of *PNar* bears resemblance to that of *PRod*. Likely building off of *PRG* 40, the Vic *ordo*, 222, provides a similar ritual change of mixed waters that include wine, "Deinde deponat vinum in ipsam aquam et dicat: 'Fiat comixtio aquae et vini ad consecrationem huius aecclesiae et altaris, in nomine Patris et Filii et Spiritus Sancti. Amen'."

[41] Repsher, *The Rite of Church Dedication*, 14, 17-39, focusing on *PRG* 40 and its associated commentary, *Quid significent duodecim candelae*, sought to understand the significance of the *ordo* within the context of the Carolingian religious reforms of the ninth century. He argued that *PRG* 40 was a didactic tool meant to educate the laity about the nature of baptism and membership into the community of Christians. Hamilton, "Les dangers du ritual dans l'Italie," 160 n. 2, urges a greater degree of caution in extrapolating this assumption for all observers of *PRG* 40's performance.

1.2.2. Ritual exegesis at Sant Benet de Bages (Bishopric of Vic, 972)

Early in December 972, three bishops met at a place called Bages, near Manresa. As the priest-scribe called Sunyer, reported, the task before them was to consecrate a monastic church and bless three altars in honor of Sants Benet, Pere, and Andreu.[42] After a multi-generational effort, the rite would help realize a patron family's hopes for salvation. Over a decade earlier, a man called Sal·la and his wife, Ricarda, had resolved to found a religious community.[43] Yet, in 960, Ricarda died. Sal·la himself followed nine years later.[44] With much familial wealth spent, the church remained unfinished. Three years after Sal·la's passing, however, his sons, Isarn and Guifré, completed their parents' vision. With the church built, the siblings called on the bishops of Vic, Urgell, and Barcelona to consecrate the sanctuary and its three altars.

While much of the dedication is unremarkable, Sunyer's *dotalium* includes a unique introduction. He discusses the nature of altars and churches in Christian history while also expressing a vision for Bages' place in God's plan. In his treatment, Michel Zimmermann argued this section of the *dotalium* explains the expansion of the covenant between God and man, with

[42] *Dotalies* 90. The 972 *dotalium* is among a collection of documents recording the establishment of Sant Benet de Bages. Two additional documents, from 967, address the monastery's foundation. For a history of the foundation and endowment see: Fortià Solà, *El monestir de Sant Benet de Bages* (Manresa, 1955), 39-44; Antoni Pladevall, "Sant Bartomeu Sesgorgues, Sant Miquel de Sererols i Sant Vicenç Sarriera," *Ausa* 7 (1972-74), 332-335; Antoni Pladevall and Francesc Català, *Els monestirs catalans* (Barcelona, 1970), 252-255; Joan Pagès i Pons, *Les Preses i el monestir de Sant Benet de Bages* (Olot, 1984), I: 57-67, 89; Jonathan Jarrett, "Pathways of Power in Late-Carolingian Catalonia" (Ph.D. diss, University of London, 2005), 38-48; and Xavier Sitjes i Molins, "Els enterraments de Sala fundador de Sant Benet de Bages, i de la seva muller Ricarda," *Dovella* 92 (2006), 10-12.

[43] *Dotalies* 90. "Divinitus inspiratus aevoluere coepit corde ut mereretur hedificare domum nomine Domini."

[44] Francesc Junyent i Maydeu and Alexandre Mazcuñan i Boix, "Sant Benet de Bages (Sant Fruitós de Bages)," in *Catalunya romànica* 11: *El Bages*, ed. Francesc Junyent i Maydeu, Alexandre Mazcuñan, Albert Benet i Clarà, et al. (Barcelona, 1993), 408-18. When Sal·la was abroad in Rome, he secured papal confirmation and protection for his foundation. The exemption gave the new monastery autonomy from episcopal jurisdiction and an assurance that all future abbots ought to be drawn from the line of Sal·la. He returned to the province with the relics of Sant Valentí. The family did not wait for the consecration of the church, establishing the community by 967, when a man called Abbó became the first abbot.

the proliferation of churches symbolizing the ultimate victory of Christianity and a sacralization of the world.[45] Yet, that observation is only half of the story, and requires qualification. In reality, Sunyer's introduction communicates belief on multiple levels, as this priest-scribe—much in the vein of Amalarius of Metz—applied exegesis to the ritual event. Although, cursory reading suggests Sunyer espouses a fully symbolic conception of the *Ecclesia*. A more nuanced interpretation emerges when we note the scribe's fascination with compound cleansing substances commonly prescribed in *ordines* that would have been available at the time (see above discussion). This underscores that Sunyer focuses as much on the ritual present and eschatological future as on the scriptural past. Seemingly symbolic references in fact support a commentary on real changes occurring as part of two rites conducted by humans: (1) the consecration, a ritual in which Sunyer—as a priest trusted to compose the *dotalium*—possibly participated at Bages; (2) the celebration of the Eucharist during the building's lifespan to come.

Sunyer relates the significance and history of altars, allowing us to compare his understanding with positions articulated in the ninth-century debate over sacred space. He traces a conceptual lineage and functional equivalency between past biblical theophanies, the present foundation at the moment of its consecration, and instances during the future liturgy to be performed at Bages. Sunyer designed his biblical references to guide readers back to ritual action taken during the consecration rite and the future celebration of the divine office. Not only does Sunyer define altars, but he explores their supernatural power, activated during a ritual action. For him, the Old Testament theophanies, the Tabernacle, and the Temple bore direct relevance to the empowerment of the altars on this day in 972. The three celebrating bishops' ritual

[45] Zimmermann, *"*Les actes de consécration d'eglises, " 44-45.

performance reestablished those ancient doorways here at Bages; the assembly was to view the three new altars through Jacob's eyes, as liminal points on Earth where God made himself manifest. Sunyer uses scripture to tell the history of both the *Ecclesia* and the *ecclesia*, through a discussion of altars, sacred matter, purity, and time. Most importantly, he links these concepts to the biblical covenants, which he understands to be reforged through two interrelated rites occurring in the present and in the future: the initial consecration and the ongoing celebration of the Eucharist. These rites mirror the Old and New Covenants respectively. I argue that the manner in which Sunyer relays his history, suggests that—through a theme of *recurrence* (a process by which a past event takes place again by means of ritual)—the Second Covenant is continuously renewed within the monastic community worshiping at Bages.[46]

In his opening lines, Sunyer addresses the relationship between God and humans, connecting that bond to the importance of churches.

> The grace of the deeds (*operatio pragmarum)* of the first fathers is daily renewed by the *Ecclesia*, itself redeemed by the blood of Christ, truly this began at the opening of this age, and extends to the end of days, and because, with the inspiration of God's will, forever counseled by the resolution of the nourishing Trinity, the invention is most gloriously and most manifestly confirmed.[47]

Thus, he begins with a thesis concerning the *Ecclesia* as the community of the faithful: every day, the Church reaffirms God's covenant with humans, a relationship established by the Old

[46] This understanding of *recurrence* bears much in common with Amalarius of Metz's conception of *similitudo*. For a discussion of how that principle affected Amalarius' writings, see Collins, *The Carolingian Debate over Sacred Space*, 46-55. However, in Sunyer's efforts he at times seems to take this idea of resemblance further. The connection between past, present, and future bears the tone of literal recurrence.

[47] *Dotalies* 90. "Operatio pragmarum priorum patrum crebo cotidieque renovantur ab Aecclesia Christi cruore redempta, hoc vero ab exordio hujus aeonis iniit et ad finem usque pertingit, quoniam instinctu nutuque Dei ante aeternis seculis in consilio Trinitatis alme est gloriosissime adinventum atque aevidentissime confirmatum." For a discussion of the use of *pragmarum* (from *pragma*), see Marta Punsola Munárriz, "Els hel·lenismes a la documentació llatina de la Catalunya altmedieval, segles IX-XII: La seva relació amb els glossaris" (Ph.D. Diss., Universitat de Barcelona, 2017), 541-42.

Testament and envisioned anew at the crucifixion. This statement expresses a view of the building as a metonym. Continuing, however, Sunyer shows that such re-investment will continue to the end of time. The word *cotidieque* is our first clue that we may question a purely symbolic reading. This adverbial expression of daily repetition references liturgical action, fulfilled through the divine office. Sunyer does not state that renewal happens only at the specific points stressed in his history, but rather daily. As we will see, ritualized worship drives renewal by repeating the past. Sunyer connects that performance to the interplay between seemingly stand-alone events in Scripture and linear time, a theme on which he elaborates. Renewal becomes a literal *recurrence* rather than symbolic *reenactment*. It is not the physical gathering of devotees that perpetuates the covenant, as Augustine wrote, but the collection of rites and invocations expressed on *behalf* of humanity in the altered church space. Confirmation comes in Sunyer's history. His journey begins with Genesis and progresses all the way to the Bages consecration, underscoring an unbroken link between the new altars and the earliest manifestations of sacrality on Earth. Sunyer's narration is indeed linear, but the ritual framework he describes within the story—far more than metaphor—supports a conception of time that is less so, with biblical events recurring through contemporary ritual.

To begin, Noah built the first altar once the Flood waters had washed away the crimes of men. The importance *ordo* authors within the Roman-Hispanic tradition placed on lustral waters mixed during the consecration ritual allows us to note a critical connection between this scriptural reference and the consecration rite. As is especially pronounced in *PRod*, based on *OR* 41, the celebrants exorcize unclean entities through aspersion, a prerequisite for the subsequent infusion of voided space with divine power. The *ordines* stress the bishop's cleansing of discrete spaces as his party moves around the structure and altar. Given that Sunyer was likely aware of

this essential aspect of the rite, his emphasis on the Flood preceding the altar's erection indicates that he saw the aspersion of the building and anointing of the altar as a recurrence of this event. The 972 lustral waters *are* the Flood waters. The nature and properties of altars, vis-à-vis their connection with sacred matter, are further explained as the priest-scribe continues.

Late Antique discussions of altars and sacred matter explicitly associate them with sacrifice and martyrdom. As we saw, the concept of such matter within Christian theology emerged from enthusiasm for martyr remains in the fourth century. Ambrose's view on the power of relics and their association with the altar is clear in *Epistle* 22. The space beneath the altar was the only fitting tomb for such powerful remains. Beyond the importance of the martyrs to the history of sacred matter, the Eucharistic celebration anchors the altar as a place of simultaneous sacrifice and redemption, harkening back to Old Testament themes. Sunyer adheres to this interpretation, as seen in his discussion of Abraham's near-sacrifice of Isaac prior to God staying his hand.[48] In Gen 22, the Moriah altar is a place of sacrifice, but it is also one of mercy. This dual nature would have been familiar to tenth-century parishioners, eager to sacrifice wealth toward the endowment in hope of meriting forgiveness (see dotalia discussion below).

Sunyer next addresses Jacob's ladder (Gen. 28). Here, some care must be taken with his use of language. The priest writes, "Namely Jacob, son of Isaac, who understood upon seeing God, came to Bethel and, raising and anointing with oil a stone house of renown in that place, he worshiped the strongest God of his father, Isaac."[49] This statement again marks the close association of construction (possibly the role of the lay donor) and anointing (the role of the

[48] *Dotalies* 90: "Hedificavit altare ubi apparuit ei Deus patris sui Abraham, quem et adoravit."

[49] *Dotalies* 90: "Israel scilicet, qui videns Deum interpretatur, venit Bethel aerigensque lapidem in titulum ungensque holeo adoravit ibidem Deum fortissimum patris sui Ysahac."

bishop) in dedicating the church. Sunyer next provides a cursory treatment of the story of Job, before turning greater attention to Moses' construction and furnishing of the Tabernacle, explaining,

> Moses, namely, the legislator, son of Amram, having been instructed by God, made a work from gold, hyacinth, and various colors for God, and he put up a tent in lofty position. He placed an altar, prepared a table there, and constructed an ark in testimony of the God of Israel, and there the people of the lord worshiped God.[50]

Moses' preparations resemble the bishop's treatment of the altar prior to its blessing and possibly the later installment of relics (in place of the Ark of the Covenant). Sunyer underscores the structure's purpose: as with the new Bages altars in 972, it was designed to host human worship. Thus, Sunyer relates the church building as a reconstitution of Moses' Tabernacle. As a place, it is defined by the relationship between the altar and the physical structure enveloping it, God's covenant with humans, the essential presence of sacred matter, and the purpose of the place as a locale for worship. If the stories related thus far constitute the steps toward establishing the First Covenant, the Flood was an important prerequisite to Moses' effort. Placed in the context of the consecration rite, we can see that the bishop's lustration is the Flood, while his anointing of the altar is Moses' erection of the Tabernacle, the house of God. Lustral waters/the Flood waters and oil (the *ordines* prescribe chrism oil following lustration) are the material agents of this two-stage transformation, which could not occur without them.

[50] *Dotalies* 90: "Moyses videlicet, legislator, filius Amram, a Deo commonitus fecit utensilia ex auro et jacincto variisque coloribus in opere Dei aerexitque tentorium in sublime, posuit altare, paravit mensam ibidemque archam constituit in testimonium Dei Isreal ibique populus Domini adoravit Deum."

Sunyer then pivots to his story's climax: a description of Jerusalem and the formation of the New Covenant, again through the power derived from sacred matter.[51] It is here, through reference to the Eucharist, that the idea of ritual recurrence is confirmed. He stresses that the reigns of Solomon and David prepared the city for Christ's arrival. Upon Jesus' entry, he was followed by a crowd exclaiming, "Osana! Blessed is he who comes in the name of the Lord, the king of Israel."[52] Sunyer does not use the word *altare,* as he had earlier. Yet, the story clearly has its place in his history of altars. Jerusalem itself is the church building, with the cross at Calvary serving as the new altar.[53] Jesus/the host and wine enters the city/church as the sacrifice/Eucharist, to be offered at the cross/altar. He then literally ascends to Heaven. Sunyer fixates on the various parts of this most important of biblical theophanies, demonstrating its connection to the rite of consecration:

> And at that time Christ suffered bodily passion and on the tree, he died on the cross, he was pierced by the lance, and clearly *blood and water poured forth* from his side, and **<u>again</u>**, *he washed the world of crimes, which had long ago been washed by the Flood*. And the interred one, rising on the third day, revealed himself to his disciples and offered the kiss of peace to them, he blessed them. And with those men watching, he ascended into Heaven and sits at the right hand of the all powerful God, the father, whence he awaits his judgment of the world through fire.[54]

[51] Palazzo, *L'espace rituel*, 129; and Amalarius of Metz, *On the Liturgy*, I. 105, explain that Jerusalem itself may be considered an altar, "Altare Hierusalem potest designare, ut praetulimus, de qua exivit Evangelica praedicatio, sicut scriptum est: 'De Sion exivit lex et verbum Domini de Jierusalem'." Sunyer takes this comparison further.

[52] *Dotalies* 90. "Osana! Benedictus qui venit in nomine Domini, rex Israel."

[53] While the comparison Sunyer draws is clear, his degree of familiarity with city's geography is unknown. Indeed, his model is not perfect. Calvary (or Golgotha) lay outside the walls of Jerusalem in the first century. Matthew 27:39, Mark 15:29, and John 19:20 indicate that the site was beyond Jerusalem's walls. Yet, the fourth century construction of the Church of the Holy Sepulcher helped establish the tradition that Calvary along with Christ's tomb lay within the precincts of that church. In Sunyer's time, that would have placed the church within the city walls.

[54] My emphasis. *Dotalies* 90. "Eo quoque tempore passionem pertulit in corpore suo super lignum mortuus in cruce, lancea perforatus, a latere videlicet ejus aexivit sanguis et aqua, iterumque lavit mundo a delictis, quod jamdudum laverat per diluviis, sepultus surgensque tercia die hostendit se manifeste suis discipulis dans eis osculum pacis

The familiar story aside, here Sunyer uses the narrative to describe the function of the altar during Mass, hinting at what that celebration accomplishes and how witnesses to such events in the space are changed. A focus on two themes—purity and covenants—allows us to better define Sunyer's understanding of the power of churches and how central holy matter is to that conception.

The fluids rushing from Jesus' side are blood and water. These are two ingredients that form the basis of a second, more powerful lustral water in the *ordines* from *PRod* and the Vic *ordo*. Yet, they are also components of the wine featured in the Eucharistic celebration. The two mixtures—the lustral waters/Flood waters and the blood of Christ/Eucharistic wine—share common purpose: spiritual purification and the establishment of a covenant. Christ's blood recalls and, through ritual action, functionally mirrors the lustral waters used in the consecration. Those waters are themselves envisioned as a recurrence of the Genesis Flood. Sunyer endeavored to demonstrate that the sacred matter involved in the Eucharistic celebration accomplished a similar purification of space wrought by that initial cleansing (i.e both the Flood and in the consecration), laying the path for the establishment of a covenant. Striking this equivalence between applications of sacred matter allows Sunyer to return to an earlier theme that highlights the recurring covenant: daily renewal (*cotidieque renovantur*).

He shows that the Eucharist—as part of the divine office now and in the future—maintains the purity of a space first established at consecration. Despite norms of decorum within churches, sin inevitably reenters the church with the comings and goings of imperfect

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benedixitque eis et videntibus illis conscendit in celum sedetque ad dexteram Dei Patris omnipotentis, unde expectamus eum judicaturum seculum per ignem."

humans. Regular celebration of the Eucharist reinvigorates the changed space, repeating the lustration. In the Gospels, the material result of Christ's sacrifice—blood—established the purity necessary to forge the New Covenant in the same way that the earlier Flood erased the sins of the first men prior to the Old Covenant. As is emphasized in Sunyer's history, the Flood waters are represented by the lustral waters of the consecration rite, and Christ's blood is represented by the Eucharistic meal. Now in 972, these contemporary examples of holy matter, paramount to their respective rites, prepare the way for the recurrence of their associated covenants. Put simply: Sunyer believed that the ritual application of sacred matter transformed the consecration rite into the establishment of the Old Covenant and the Eucharist into that of the New Covenant. The two rites are mapped onto one another and are inseparable. They continue together daily and will proceed to the end of time. Thus, when Sunyer opened his introduction with a statement of daily renewal of the New Covenant, it is a renewal seen through the framework of continuous liturgical action collapsing distinctions of time and space. This process was essential to maintaining the sacrality of the church and keeping it operable for community worship.

With the significance, conceptual association, and operation of altars related, Sunyer returns to historical narration and explains how the three altars at Bages came into existence. He narrates how Christ's disciples spread throughout the world, raising altars of their own. Considering the correspondence between covenant and altar, these structures represent a localized recurrence of the New Covenant with newly converted peoples. He makes special note of Saint Peter's establishment of the altar in Rome. Given that Sant Benet de Bages was here being placed under papal protection, and one of the altars was to be dedicated to Peter, this is not a surprising inclusion in the introduction.

> And in the same manner as him (Peter), all the Apostles made altars. Certainly, several of the believers were widely spread (across the earth) and, following their

> example (that of the Apostles), they raised and lifted up altars, just as the present time demonstrates. Among such men, was an extremely rich and distinguished man called Sal·la, and divine inspiration began to unfold in this man's heart, so that it might be fitting to construct a house in the name of the Lord.[55]

Thus, we see Sunyer's belief that the church and altars at Bages were the most recent iterations in a long history of altar- and covenant-establishment dating back to the first lustration of the world, the Flood. This introduction establishes that Sal·la's and Ricarda's foundation not only secures salvation, but reconstitutes that first altar. Importantly for our understanding of *dotalia* going forward in this chapter, this action changes the quality of space, collapsing the worldly present into the biblical past—a process that does not occur in mundane spaces. The monks had Sal·la and Ricarda to thank; these founders from the county of Osona walked in the footsteps of great altar-theophany-covenant builders.

With his exposition and history concluded, Sunyer assumes the traditional *dotalium* format we will explore at length in the next section, relating the present building's construction and endowment. The founders act out of joint love and fear of God. Yet even here, Sunyer communicated such sentiment with a flourish harkening back to his introduction. We learn that, while keeping a vigil, Sal·la was "inspired by divine mercy" to build the church and he was even granted the proper location to begin.[56] As with Noah and Jacob, the place where Sal·la built his altar was selected by God. As the priest-scribe continues, he gives the impression that such comparisons are intentional. When Ricarda died in 960, Sal·la, in the tradition of Noah and

[55] *Dotalies* 90: "Et ascemate ejus cuncti apostoli fecerunt altaria. Nonnulli quippe credentes longe lateque diffusi ad prefigurationem ejus atria et altaria condiderunt et condunt, sicut et presens tempus demonstrat. Inter quos quippe vir eximius perdives insignisque vocitatus Sallane, divinitus inspiratus aevoluere coepit corde ut mereretur hedificare domum nomine Domini."

[56] *Dotalies* 90: "Inter quos quippe vir eximius perdives insignisque vocitatus Sallane, divinitus inspiratus aevoluere coepit corde ut mereretur hedificare domum nomini Domini. Quo pervigilans in oratione, inspirante divina misericordia, invenit locum in proprio prediolo agnovitque locum aptum et a Deo helectum ibique fundamenta posuit, aedes diligenter instruxit atque altaria digno opere mirifice aerexit ex proprio voto vel sumptu favente Deo."

Moses, had an ark (*archa*) constructed to hold her remains. And just as Moses prepared the altar *within* the Tabernacle, housing the Ark of the Covenant, Sal·la ordered his own ark to be interred within the precincts of the unfinished sanctuary.[57] Almost a decade later, Sal·la summoned his children to his deathbed. He implored them to keep their faith in God, the Prince of the Earth, and to lead peaceful lives. With these final words, he signed his confession and, "having turned his eyes to Heaven, rendered his soul to God, who had given it to him."[58] His kin took this admonishment to heart and finished the monastic foundation. Isarn and Guifré made further arrangements for the establishment of a religious community at Bages and finalized construction. Upon the building's completion the brothers extended an invitation to the three bishops. Thus, we see that despite the conclusion of Sunyer's history, he worked to draw a comparison between the pious efforts of Sal·la and those of the Old Testament fathers. Sal·la had prepared the way for the dedication and the recurrence of man's covenant with God.

1.2.3. Conceptions of space in the Province of Narbonne

Because a direct application of individual *ordines* to specific records of church consecration is often problematic, an atypical *dotalium*, like that hosting Sunyer's exegetical introduction, is invaluable. It allows us to parse belief and thus indirectly explore how broad themes like lustration, prevailing across the *ordines* corpus, may have been received in the region. Sunyer reveals a conception of sacred space that is distinct from mundane space. Was this priest-scribe's understanding an outlier? We must remain cautious in extrapolating his sophisticated articulation—informed by education and liturgical experience—to the people of the

[57] *Dotalies* 90: "Protinus vir suus Sallane a funere surjgens cum dignis obsecrationibus, cum agenda sajcerdotum sepellivit eam in archa saxea juxta aedem ipsius templi inchjoati."

[58] *Dotalies* 90: "Aerectis in caelum occulis, et sic animam Deo reddidit, quam donavit."

region more broadly. Therefore, comparison of his ideas with other records from the *dotalia* corpus is key.

Another *dotalium* offers an example of this approach. This record suggests Sunyer's understanding was perhaps an especially direct communication of an established position concerning the status of churches. In 1037, Bishop Eribau of Urgell (d. 1040) explained to assembled parishioners not only what he had just done to change the nature of the church building, but how the people could benefit from the transformation.

> And according to the rite of the Old Testament and the institutes of the holy canons, with the precept of present law, we dedicate the place in which the faithful come together for prayer through the invocation of the Holy Spirit, and by God's authority, to advocate for all humans. *What is first merely called a house, by merit ought to be called the house of God and the doorway to heaven (*porta celi*). For after the consecration, whoever, having been heartfully inspired, shall pray there through a contrite heart and penance shall achieve remission of his sins in a full indulgence*. And for this reason, I Eribau, by the grace of God bishop of Urgell, with the clerics of the church of Urgell and with many other faithful Christians, come here to the place which is called Urús … in order to consecrate the church of God and also the cemetery.[59]

Like Sunyer, Eribau opens (at least in the words of the scribe) with a seeming endorsement of Augustine's metonymic church. Yet, in his address to the gathered congregation, the prelate highlights for the laity the result of his ritual action. By merit of the consecration, the church now stood as the community's locale for intercession. During future liturgical performance, it would

[59] My emphasis. *Dotalies* 155: "Utriusque legis preceptis inerentes, secundum veteris testamenti ritum et sacrorum canonum institutionem, locum in quo fideles ad orandum conveniunt per invocacionem Sancti Spiritus ad petitionem tocius populi auctore Deo dedicamus et ea, que prius domus tantum vocabatur, merito vocetur domus Dei et porta celi. Post consecracionem enim, quisquis corde compunctus in ea oraverit per cordis contricionem et penitenciam veniam de peccatis suis et plenam indulgenciam consequitur. Ac de causa, ego Eribaldus, Dei gracia Urgellensis episcopus, cum clericis urgellensis eclesie et multis aliis fidelibus xpistianis veniens in locum qui dictur Urue, in onore sancte Trinitatis et in gloriosissime Crucis nec non beati Clementi martiris Xpisti ecclesia Deo anuente ibidem consecravi atque ciminiterium .XXX. passum ecclesiasticorum ex omni parte ei concesi cum oblacionibus et decimis et primiciis, et ceteros limites sue parochie, in locum qui dicitur sancti Clementi de Urue cum suis affrontacionibus, dedi terciam partem decime clerico istius eclesie in eras dividatur…" For placement of this text in context with the broader Urgell collection, see *Baraut, ed., Les actes de consagracions d'esglésies, 14-17.*

host a "doorway to Heaven" (*porta celi*). With the aid of the clergy, the people of Urús could interact with saintly forces within and entreat them to intercede on their behalf. Bishop Eribau had created a sacred space.

In other instances we find less explicit mention of the rite's result, but a greater focus on the types of actions taken. One example comes from the consecration of Sants Feliu i Joan d'Aïnsa between 1056 and 1063. Bishop Arnulf of Ribagorça explains that he circled the building during the consecration, anointed the ground with chrism oil, and absolved the laity of their sins in the presence of relics, thereafter enjoining them to endow the church generously.[60] These ideas are found across the candidate *ordines*, but receive unusual stress here. The rarity of such description in this documentary genre hints at the significance that the celebrants and/or scribe for this occasion attributed to them.

Thus, in two different ways, these examples supplementing the analysis of Sunyer's introduction show that, when studying *dotalia*—often seen to be formulaic in form—we must be attuned to instances of variation within the corpus. This allows us to see past standard phrasing and parse belief. This effort will proceed in the coming pages, as we explore the *dotalia* corpus more broadly and explain how common themes—though varied in their exact expression—reveal a general consensus about the significance of churches. While this belief in the realness of altered spaces is not always as sophisticated as Sunyer's exposition, or as direct as Bishop Eribau at Urús, it sparked powerful emotions and transcended boundaries of class and clerical status.

[60] *Dotalies* 216 (1056-1063): "Cum autem dedicassent ecclesiam in gyro et intus pavimentum et parietes et altare sive aram holeo erismatis perunxissent et exeuntes ab ecclesia in locum reliquiarum propararent, fecit episcopus sermo-nem et absolutionem ad populum. At illi pregaudio sermonis et solutionis necnon et consecrationis venerunt plurimi promittentes dare ecclesie supranominatq ex predia sua que habere poterant. Inter quos venit quidam homo nomine Sancio Exemenonis et dedit partem terre que ad eum pertinebat cum suas afrontaciones, que est in coma de Ainsa, propter Deum et remedium animç suç. Venit et alius dictus Ennecus Dat nomine et dedit supradictç ecclesiç terra una in ipsa corona d Ainsa cum suas afrontaciones propter Deum et spem vite eterne."

1.3. Creating sacred space

Map 2. Notable sites referenced in Chapter 1[61]

The preceding discussion has drawn heavily on atypical *dotalia* that reveal the existence of a conception of real sacred space in the region. We may now turn to the larger body of these sources, explaining their standard features and patterns of description linking particular ideas across the corpus. Highlighting these patterns, while continuing to flag unique cases, reveals that understanding of sacred space outlined in the preceding section was not the exclusive purview of educated elites like the priest-scribe, Sunyer. In this section, I will define the parameters of

[61] Note: italicized locales are consecration sites discussed in the chapter.

community belief and show how it transcended distinctions of class, clerical vocation, and professional status. I will also show that community belief was remarkably stable between 800 and 1100. Thus, there was much to recommend the belief in sacred space as a reliable resource for courts.

1.3.1. The structure and formulaic features of *dotalia*

As noted above, a *dotalium* is the record of a multi-stage dedication event, of which the consecration is one part.[62] Unlike *ordines*, they provide no liturgical instructions. Rather, as records of the dedication, they primarily enumerate community gifts and obligations to the new church. Ritual actions are mentioned only in passing.[63] Most *dotalia* present eight steps in roughly the same order: (1) the invitation of the bishop; (2) a narration of the church's creation, or prior history if being re-dedicated; (3) an explanation of why the church was built and by whom (sometimes conflated with the building's history); (4) the execution of the consecration itself; (5) the endowment; (6) the establishment of the parish boundaries and appointment of a priest; (7) a statement of the church's inviolate nature and sometimes a penalty clause; and (8) the creation of a subscription list. This pattern of eight steps is clear in the ninth century.

[62] *Dotalies* 262: "Ut predictam ecclesiam dedicaret atque sacraret." Although this document comes from late in the period, dated to 1091, and is perhaps a later forgery, it is a direct articulation of the distinction (often implicit in earlier examples) between dedicating (*dedicare*) and consecrating (*sacrare*) a church. For a discussion of this record's authenticity, see *Dotalies*, 286-88.

[63] For a representative example, see *Dotalies* 174: "Notum sit omnibus hominibus presentibus atque futuris quod ego Alemannus invitavi domnum Olibanum, pontificem sancte sedis Ausonensis, ad dedicandam aecclesiam Sancti Michaelis, fundatam in diocese Sancti Petri supranominate sedis, in alodio meo castro Rocheta." This is an especially terse *dotalium*. While the consecration and the installment of relics are important parts mentioned, the scribe did not extrapolate on Alemany's motivations for establishing this sanctuary. Comparison with the *dotalia* corpus at large shows that these omissions are not for a lack of belief or conviction on the part of this lord, but rather owe to the documentary priorities of the scribe.

Step in the dedication event	Action Taken
Step 1	Invitation of the bishop by community/patron.
Step 2	Narration of the church's construction and identification of its patron(s).
Step 3	Expression of why the church was built.
Step 4	Statement of the consecration's celebration.
Step 5	Endowment of the church.
Step 6	Incorporation of the church into the bishopric, appointment of a priest, and other administrative concerns.
Step 7	Statement of the church's inviolate nature and a penalty clause.
Step 8	The creation of the subscription list.

Figure. 1.1. Steps of the dedication event as commonly related in *dotalia* records

Scribes' prioritization of property rights over spiritual matters is unsurprising, given that the endowment could be challenged in court. A clear record of the church's holdings was essential. Extended discussion of the building's meaning or social aspects of the dedication event are often omitted. However, the functional nature of these documents makes the references to the nature of the building that we do have all the more remarkable. Despite the genre's legal focus, the desire to express individual and group piety shines through scribal pragmatism.

The eight steps outlined above are a generalization, and scribes often excluded one or more parts. Thus, despite the existence of a model included in the tenth-century Ripoll formulary, its borders as a documentary genre are hazy, much like the *condiciones sacramentorum* records.[64] In Ramon Ordeig's edition there are 276 entries that each correspond to an episode of dedication or relic interment between 819 and 1100.[65] However, many entries consist of multiple documents concerning the same event, or they are associated writings appearing on a single parchment. In quantifying elements from the collection, I separate these

[64] Michel Zimmermann, ed., "Un formulaire du Xème siècle conservé à Ripoll," *Faventia* 4 (1982), 67-69.

[65] Not all entries in *Dotalies* correspond to a stand-alone parchment narrating the steps of the dedication event. Many entries exist as excerpts from late medieval or early modern registers or *historiae*, reporting that a church had been dedicated. Others are relic tags, reports of relic installment, court disputes, or records of other matters relating to church foundations.

sub-entries into different episodes of writing (another moment of engagement with the constitution of sacred space). Thus, I expand the 276 entries to 296; all percentages are based on this latter number (see Figure. 1.2).[66]

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number change	66→ 72	53→54	70→77	84→ 90	276→296

Figure 1.2. Expansion of numbers, *Les dotalies de les esglésies de Catalunya, segles IX-XII*

Despite the scribal variation noted above, the *dotalium* was comparatively stable for a medieval documentary form, with the steps outlined above evident early in the genre's history. Although records expanded in detail and number by the eleventh century, the basic structure and thematic concerns (particularly steps two and three) persisted. By accounting for descriptions of community reaction to the consecration found in *dotalia* across the period considered, we may postulate that belief in real sacred space and the broad desire to use these buildings as intercessional spaces were stable features of popular religiosity in the Province of Narbonne from the ninth through the eleventh centuries. To exemplify this, and also explain the noted steps outlined in a *dotalium* in context, I present three case studies that reveal how dedication events unfolded in practice. Each example dates to the end of each century under consideration (890, 999, and 1098).[67] Together, they form a foundation that will allow us to more effectively explore narrower aspects of community belief relevant to the *condiciones* strategy. Beyond these introductory examples, we must address the corpus as a whole.

[66] This has not necessitated a re-numbering of entries. For example, the second writing event included under the designation of *Dotalies* 123 does not become case *Dotalies* 124. For the 123rd dedication Ordeig isolates an (A) document from 1007 and a (B) text. When I refer to one of these sources, I will provide the entry as *Dotalies* 123A or 123B—in alignment with Ordeig's practice.

[67] *Dotalies* 13 (9 Jan. 890), 114 (31 Jan. 999), 268 A (1 Oct. 1098).

1.3.2. Sant Climent de Ardòvol (Bishopric of Urgell, 890)

In the winter of 890, Bishop Ingobert of Urgell (d. ca. 900) arrived at Ardòvol, several kilometers east of la Seu d'Urgell "in order to consecrate the church in honor of blessed Climent, martyr of Christ."[68] Afterward, the villagers donated property toward the upkeep of their new sanctuary. Following this introductory announcement, the scribe-priest, Centullus, shifted to a first-person perspective of the church's patrons, nine men and *ceteri alii plures* who announced their initiative in constructing the building. The patrons granted Ingobert custody of the building so that he might perform the consecration and weave it into the bishopric's administration.[69]

Centullus then turned to the all-important endowment section. For the sake of their souls, their love of God, and the exaltation of the greater Church, the patrons handed over property. The scribe treated the gifts as a unit, except for that of a man called Albarus. In a pious statement speaking for the group, he explained that the gifts were "for the redemption of our souls and those of our relatives, that before the tribunal of our Lord Jesus Christ, and through the intercession of the blessed Climent, martyr of Christ, and thereafter, may we deserve to receive the kindness of all the saints."[70] A noteworthy aspect, one to which we will return in detail, is the judicial metaphor for discussing salvation. Climent's intercession as a quasi-legal advocate is critical to Albarus' chances at Christ's tribunal (almost certainly conceptualized as the Last Judgment). Albarus' yearning for salvation fuels his largesse, establishing the connection

[68] *Dotalies* 13: "Ad ecclesiam consecrandum in onore beati Clementis, martiris Christi."

[69] *Dotalies* 13: "Nos omnes hominess cohabitantes in jamdictam villa Ardocale, is nominibus Ansila, Donadeus, Senta, Vardinas, Agapius, Albarus, Cratus, Raudaldus, Trasobado vel ceteri alii plures in jamdicta villam commanentes, quia edificavimus ipsa ecclesia in honore sancti Clementis, tradimus eam ad venerabilem pontificem nostrum, Ingobertum episcopum, ad consecrandum."

[70] *Dotalies* 13: "Propter remedium anime nostre vel parentum nostrorum, ut ante tribunal Domini nostri Jesu Christi per intercessione beati Clementis, martiris Christi, vel omnium sanctorum veniam exinde mereamur accipere."

between funding the construction, endowing the church once built, and securing his place in Heaven. Centullus then closed with a penalty clause, designed to secure the property transfer. The document ends with the date and a subscription list. Seventeen people appear in the list, including the nine donors. By the close of the ninth century, all this had become quite standard.

1.3.3. Sant Pere d'Eroles (Bishopric of Ribagorça, 999)

In 999, Bishop Eimeric of Ribagorça arrived before Count Sunyer I of Pallars (d. 1011) and his son, Ramon III (d. 1047).[71] Although the corresponding *dotalium* presents additional features not found in the Ardòvol case, these constitute elaborations. In structure and theme, the document conforms to the established form of *dotalia*. After invoking the Trinity, the unnamed scribe explains how sometime in the past, the count of Pallars—likely Ramon II (d. 992)—together with Abbot Isarn of Sant Pere de les Maleses, and the lord, Erimany, had built the church at Eroles for Isarn's monks. Afterward, the abbot and Erimany summoned the bishop for the dedication.

Next, conveying the same sentiment as Albarus a century prior, the donors expressed their motivation for funding the construction: the salvation of their souls and desire for a place in Heaven. Describing the church, they explain:

> (The church) is for the love of God, remission of their (the donors') sins, for the desire to obtain the celestial realm of the Holy Father, and for the dedication of his Christian and most devout people adhering with devotion to the universal religion. And we (the donors) do this for the absolution of deceased relatives, the salvation of their souls, to overcome future calamities, to escape the realm of Hell, to rise to the state of the Holy Church of God, to gain remuneration at the eternal tribunal and ultimately deserve to receive a place in the celestial realm with all the saints.[72]

[71] *Dotalies* 114.

[72] *Dotalies* 114: "Pro amore Dei remissione peccatorum suorum et pro desiderium selestis sancte patrie adipiscendum, ad ejus dedicatione Christianum et devotissimum populi religione chatolica concurrentes devotionis sue vel parentum decesorum facimus absolvendum vel pro remedium animarum suarum et incalamitate futura

The scribe continues in the first person with a donation from Isarn. The abbot offers relics, ornaments, vestments, and a book to the new sanctuary. He is followed by fifty-three additional donor parties (sometimes families acting in concert). Many state that they give for the remission of their sins or those of relatives. After the list, Bishop Eimeric explains that he consecrates the church, handing its management to the monastery and establishing the bounds of a parish.[73] The scribe then closes the document with a penalty clause threatening anathema to violators and the subscription list.

This second *dotalium* does not perfectly match the first, but does present the same steps and rationales for construction. One additional feature is the mention of a seventh step: the administrative issue of establishing a parish and stipulating monastic (rather than episcopal) control over the church. A little over half of all *dotalia* include this concern (a stable feature across each century, see Figure 1.3). The statement often involves the bishop's choice of a priest, establishment of tithes and rents to be paid to the bishopric, and any obligations the priest may have to appear at diocesan synods.[74]

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of docs. and percentages (1) of docs for that vol.	37 (51%)	34 (63%)	43 (56%)	53 (59%)	167 (56%)

Figure 1.3. *Dotalia* discussing the administration of the new church

adipiscendum et zabulo teterrimum etfugiendum et statu sancte Dei Ecclesie erigendum vel renumeratione ad eternum arbitre ad ultimum consequi valeam et cum sanctis omnibus in selesti regione coruscerit."

[73] *Dotalies* 114: "Decimos et primisias a Deo sunt donandos et episcopus sunt dividendos." The scribe explains the spiritual recipient of incomes and how they are to be managed on Earth.

[74] Here at Eroles we see Bishop Eimeric subject the parish to Abbot Isarn's authority as a monastic church.

1.3.4. *Santa Maria de Guissona (Bishopric of Urgell, 1098)*

The continuity of structure and theme seen in the previous examples stood the test of time. At the very close of our period, in the extreme south of the bishopric of Urgell, a scribe called Pere wrote a *dotalium* that Centullus would have found familiar in 890. Two centuries later, in 1098, Pere explained how the bishops of Urgell, Barcelona, and Roda arrived at the frontier village of Guissona for the dedication of church to the Virgin.[75] Also, appearing for the celebration were the counts of Urgell and Pallars, a multitude of lords, and canons from the cathedrals. The events unfolded as we would expect. The bishops arrived and consecrated the church along with its cemetery. The magnates and locals endowed the establishment out of fear of God (*timentes Dei*). The prelates demarcated parish boundaries and incomes, and threatened anathema for violators. Finally, the witnesses subscribed.

The only innovation signaled in this *dotalium* is the dedication of significant space to the idea of the church's *sacraria* (Cat. *sagrera- es*).[76] Arising toward the end of the tenth century, and becoming a greater focal point in the sacred landscape of the region's churches, it designated a boundary zone encircling the church building. Though here the bishop stipulates sixty paces from the church walls, it was more commonly thirty. The space was considered part of the

[75] *Dotalies* 268 A.

[76] Víctor Farías, "Problemas cronológicos del movimiento de Paz y Tregua catalán del siglo XI," *Acta historica et archaeological mediaevalia* 14-15 (1993-94), 9-37; Farías, "Compraventa de tierras: circulación monetaria y sociedad campesina en los siglos X y XI: el ejemplo de Goltred de Reixac," *Anuario de estudios medievales* 29 (1999), 269-99; Karen Kennelly, "Sobre la paz de Dios y la sagrera en el condado de Barcelona, 1030-1130," *Anuario de estudios medievales* 5 (1968), 107-136; and Ramon Martí Castelló, "L'ensagrerament: l'adveniment de les sagreres feudal," *Faventia* 10 (1988), 153-82. For summaries of much of this literature, see Pierre Bonnassie, "Les *sagreres* catalanes: La concentration de l'habitat dans le 'cercle de paix' des églises, s. XIe," in *L'environnement des églises et la topographie religieuse des campagnes médiévales: Actes du IIIe Congrès international d'archéologie médiévale*, ed. Michel Fixot and Elizabeth Zadora-Rio (Caen, 1994), 68-79; and Martí, "L'ensagrerament: Utilitats d'un concepte," in *Les sagreres a la Catalunya medieval*, ed. Víctor Farías, Ramon Martí Castelló, and Aymat Catafau (Girona, 2007), 85-204.

radiating sacral zone expanding away from the church altar. A *dotalium* from 1061 defined it thus: "Whatever and everything that is collected from just people within the cemetery and thirty paces is the *sacrario* for the salvation of men and burial of the parish's dead members."[77] It may be seen as the outermost layer of sacred space, but still an integral part. As the 1098 prelates explain, the zone was inviolate "and as is supported by divine authority, we pronounce and establish as a penalty the fetters of excommunication and anathema, to anyone who dares to cause unrest, infringe on the sacred boundaries (*sacraria*), or who enacts violence."[78] The rise of these spaces in the Province of Narbonne does not signal an altered conception of churches, but rather a deepening of interest in the alterity of church space. In the eleventh century, when courts gathered before sanctuary doors, or officials set up a cauldron in the church close for the ordeal,[79] such events occurred on sacred ground.

1.3.5. The proprietary and administrative concerns of *dotalia*

We may glean much from these examples, as well as from the larger collection they represent. *Dotalia* stress three forms of action related to establishing a church: (1) proprietary, (2) administrative, and (3) liturgical. The latter category is always the least developed. Each of these introductory cases fit this trend. Without the performance of the consecration, however, the first two forms of action would have been moot. Yet, if this rite was so important to Christian devotion and was the basis for beliefs about the nature and power of sacred spaces, why does the

[77] *Dotalies* 209A: "Et quicquid intra hos et extra hos juste conquisivit et conquiseverit cum cimyterio et XXX passuum sacrario pro salvatione vivorum et sepultura parrochitanorum."

[78] *Dotalies* 268A: "Et divina fulti auctoritate precipimus et sub vinculo excomunicacionis et anatemate obligamus, ut inter spacium predicti cimiterii nullus audeat inquietare vel sacraria infringere vel aliquam violenciam facere."

[79] For an example, dated to 1100, see Josep Maria Salrach et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval: Col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018), 545. This case will be addressed in full as part of Chapter 5.

supernatural act not dominate discussion? Why are explanations like that which Bishop Eribau offered in the Urús *dotalium* not ubiquitous?[80] Again, this owes to the genre's purpose. *Dotalia* address control of a church and its legal position. Unlike the ground on which it stood, that position, at least in an administrative and proprietary sense, was not invulnerable.

A 1063 court dispute reveals how ownership of churches and their endowments could become the subject of substantial disputes.[81] In these instances the existence of a *dotalium* proved pivotal. Here, the abbot of Santa Maria de Lavaix fended off claims against his monastery's ownership of a church by producing a *dotalium* explaining that his opponents' parents had relinquished the parish to monks at the time of its dedication, sometime before May 1007. After hearing oaths in support of the document submitted as proof, the judge upheld the monks' ownership. This conflict shows that there were real threats to the tenure of these lucrative buildings. Scrupulous accounting of proprietary and administrative details at the time of dedication was necessary to safeguard a donor's spiritual investment.[82] Indeed, the specter of legal challenge was likely an important consideration in writing *dotalia*.[83] These concerns are an

[80] *Dotalies* 155.

[81] *Dotalies* 122. This entry in the Ordeig collection marks a court case that was heard in July 1063 over the church of Santa Maria de Lacera (dedicated before May 1007).

[82] Such occurrences arose during the time of the eleventh-century reforms. To varying degrees of intensity, different regions of Europe experienced a clerical effort to remove churches from lay control. Constance Brittain Bouchard, *Sword, Miter, and Cloister: Nobility and the Church in Burgundy, 980-1198* (Ithaca, 1987), 177-81, shows that in Burgundy, this was a more gradual process than has often been imagined within the context of the Gregorian reforms. *Dotalia* and records of other gifts reveal similar levels of complexity in the lands of the Province of Narbonne.

[83] This is well displayed in the creation of forgeries. False *dotalia* afford us insight into what scribes believed to be an ideal of the genre. In a forgery, they could prioritize the information they believed central to the genre. A notable example comes from *Dotalies* 192, dated to 1051. Pertaining to the church of Sant Martí de Cambrils in the Solsonès, the scribe details a complex property and jurisdictional arrangement which saw rights over the church divided between the bishopric of Urgell and the monastery of Sant Miquel de Cuixà. He notes that Bishop Guillem Guifré of Urgell consecrated the church, but does not elaborate on the process beyond "Consecravit ipsa ecclesia Beati Martini confessoris Christi et simul cum eo accesserunt ibi multi nobiles et mediocre viri," and noting that

important lens through which to understand scribal priorities and why there is not greater reflection on belief. Such details would not have helped the document achieve its purpose.

The objective of my study is not to delve into the economic and administrative aspects of church dedications. Yet, if these worldly issues were scribes' primary concern, then why and how might we use *dotalia* to better understand how communities perceived churches as sacred spaces? *Dotalia* offer something that *ordines*, liturgical commentaries, and scriptural exegesis do not: expressions of why people (often lay individuals or entire village communities) built/restored and endowed churches. A close examination of the key sentences in these documents, even when broadly formulaic, offers insight into what common people and the clerics serving them thought churches were and what humans might gain by worshiping in them. Thus, these sources are critical to defining a regional understanding of sacred space.

1.3.6. *Dotalia* and the shape of the community belief in sacred space

To fully define the community belief in sacred space, we must address the initiative to establish a new church. *Dotalia* allow us to identify founders, define the emotions driving their largesse, and isolate what return they expected on their investment. Numbers derived from the corpus reveal that despite ecclesiastical leadership in the dedication event, there was substantial lay enthusiasm. Indeed, laymen frequently provided the initial funds, expecting the result to be ready access to an intercessional space. Given the cost and general enthusiasm, the construction and endowment steps were most often collaborative endeavors. Such cooperation between kin and neighbors would have relied on a commonality of purpose, collective sacrifice, and trust.

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action is taken "pro animarum suarum redemptione." The consecration was an important component, but the core value of the document in a hypothetical court case would have depended on an exhaustive listing of properties, jurisdictional rights, privileges, and even potential witnesses.

Recognition of this reality helps us to outline a community conception of sacred space, the factor of chief interest to judges in their deployments of the *condiciones* strategy.

With respect to the inaugural foundation step of church construction, only thirty-five (12%) of the 296 *dotalia* stipulate a bishop, cleric, or religious institution acting without lay participation. That leaves 169 (57%) instances in which lay patrons led the establishment. Of this latter category, seventy-two *dotalia* (24%) report the foundation being directed by a village collective rather than at the initiative of a wealthy patron or magnate.[84] The above-discussed *dotalium* from Ardòvol is an example of one such collective foundation (For a breakdown of these numbers by half century, see Figures. 1.4-1.6, Appendix B).

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	48 (67%)	30 (56%)	46 (60%)	45 (50%)	169 (57%)

Figure 1.4. Instances in which a church has lay founders (irrespective of class).

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	27 (38%)	6 (11%)	19 (25%)	20 (22%)	72 (24%)

Figure 1.5. Instances when a scribe explicitly states that a village community built and endowed a church collectively (narrowed from Figure. 1.4 above). This is a non-magnate/collective action.

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	11 (15%)	13 (24%)	7 (9%)	4 (4%)	35 (12%)

Figure 1.6. Instances of a clerical or ecclesiastical institution leading a foundation without significant lay involvement.

[84] Iogna-Prat, *La Maison Dieu*, 336, argues that the initiative for construction up to the opening of the eleventh century was "above all" that of the peasantry. Yet, close study of the *dotalia* allows us to quantify humble initiative.

Of the 296 *dotalia*, 210 (70%) list the identity of founders. Of the remaining eighty-six records, foundation was either not applicable (on account of an atypical case) or not mentioned. Exclusion of these eighty-six *dotalia* from our calculations puts the figures above into starker relief. If we take the number for lay initiative—169 instances (57% of the total 296 *dotalia*)—out of the 210 *dotalia* that do stipulate an impetus for construction, we find that in fact 80% underscore the laity as the principal actors (see Figure 1.7). Thus, regardless of whether village communities could afford to finance the construction effort, they wished to be associated with the building's creation. Why was this desire so pronounced? The language scribes used to discuss founders is instructive.

Instances of lay initiative for foundations	**All 296 *dotalia* (all centuries)**	**The 210 *dotalia* that provide the identity of founders (all centuries)**
Number of documents stressing lay initiative (irrespective of class).	169 (57%)	169 (80%)
Number of documents indicating village collective action.	72 (24%)	72 (34%)

Figure 1.7. Lay initiative derived from different factorings of *dotalia*

Many *dotalia* open with a paraphrased dialogue that unfolds between the bishop and principal donors. Scribes often report that bishops performed the consecration rite as a direct response to the builder's explanation of their construction efforts and motivation (*Ideo ego… episcopus consacro*). The founders typically speak first, forcefully underlining what they—regardless of lay or clerical status—believed churches were and how they could be used. Five related themes stand out as rationales for a foundation: (1) A desire for one's salvation, and that of one's family; (2) a wish to travel to the heavenly kingdom; (3) a love of God; (4) a desire to form an intercession-based relationship with a saint; and (5) a resounding fear of the devil and the tortures of hell. Of these expressions, the anxious desire for salvation is the most frequently expressed and often the one to which bishops responded directly. Taken together, over 51% of

the 296 *dotalia* include explicit statements of varying degrees of intensity. This is remarkable given the primarily legal and administrative purpose of these documents. *Dotalia* scribes consistently used language that demonstrates a causal relationship between human hopes for salvation and a bishop's execution of the rite. It is worth examining key passages to better understand such conviction.

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	53 (74%)	40 (74%)	24 (31%)	34 (38%)	151 (51%)

Figure. 1.8. *Dotalia* featuring supernatural anxiety as a prime motivator for construction[85]

1.3.7. The heavenly tribunal

One exchange between donor and bishop comes from a dedication that occurred in October 893. This is another example of a typical *dotalium*, yet it more clearly articulates the connection between donor impetus and ritual action. A country priest and his associates had built a church in honor of Santa Maria in the valley of Merlès and then called for Bishop Ingobert of Urgell. They begin by collectively asking him to consecrate in accordance with the canons so they may receive redemption.

> All these aforementioned men and many others asked the noted venerable Ingobert, bishop, to consecrate this church of theirs in honor of Santa Maria, virgin of God, and he did just that, firstly *on account of the honor of God and the redemption of his own soul*. Therefore, we the above men place that church under the authority of our lord and bishop to be consecrated, just as the holy canons set down, and *so that we might accept the salvation of our soul before the tribunal of the eternal judge*.[86]

[85] I define "supernatural anxiety" as expressed statements concerning a desire for saintly intercession, the remission of sins, fear of hell, a hope for protection from the devil, and a yearning for salvation.

[86] My emphasis. *Dotalies* 16: "Hii omnes supradicti vel alii plures rogaverunt jamnominatum venerabilem Ingobertum, episcopum, ad ecclesiam illorum consecrandam in honorem sancte Marie virginis Dei, sicut et fecit, in primis propter honorem Dei et remunerationem anime sue. Propterea nos supradicti tradimus ipsa ecclesia in potestate domni et pontificis nostri ad consecrandam, sicuti sancti canones consituerunt, et ante tribunal aeterni judicis anime nostre accipiamus remedium."

Further elaboration comes with an extended statement following the endowment description.

> We give all this to that church on account of the redemption of our souls with all [the necessary] integrity, in order that, *through the intercession of the holy Virgin Mary we and our descendants might have forgiveness before the scrutiny of the Lord*. And if whoever, or we ourselves, should come to intrude against this our action, he shall pay all that noted above in quadruple to that church and *may that mentioned donation on behalf of the redemption of our soul remain firm*. Therefore, I Ingobert, bishop, consecrate that church and hand over the parish to it.[87]

These passages tie together several of the themes that define religious statements found in *dotalia*. The donors repeatedly note nervous desire for a pardon (*veniam*). Indeed, with the aid of a saint, they hope to obtain salvation at God's heavenly tribunal. This anxiety leads donors to give toward the endowment and transfer control of the building to the bishop. There is a legal tone to such statements that bears comparison to tribunal practices. Just as judges and court presidents scrutinized documentary proofs in earthly courts, the heavenly court of Christ "scrutinizes" (*ante conspectum*) the faith and generosity of the founders. Also, similarly to how judges frequently asked litigants to support their evidence with supplementary proofs, the founders who had paid for the construction were asked to donate more. Thereby, they renew their commitment in the endowment stage of the dedication event. The bishop responds to the submission of this "evidence" through a fulfillment of ritual action. Introducing his response with the word, *ideo*, he consecrates the church and entrusts it back to the community as a parish.

This exchange presents two lessons. First, the model for demonstrating truth (defined under these circumstances as the sincerity of founder/donor conviction) is a tribunal. Second, the

[87] My emphasis. *Dotalies* 16: "Donamus hec omnia superius nominata ad ipsa ecclesia propter remedium anime nostre ab omni integritate, ut per intercessionem sancte Marie Virginis veniam ante conspectum Domini abeamus et nos et proles nostra. Et qui contra hunc factum nostrum venerit ad inrumpendum, aut venerimus, hec omnia superius nominate in quadruplum componat ad ipsa ecclesia et in antea ipsa donatio propter remedium anime nostre firmis permaneat. Ideo ego Ingobertus, episcopus, consacro ipsa ecclesia et trado illi parroechia."

all-encompassing desire for salvation is a binding agent, uniting the spiritual and material concerns addressed in the dedication's eight steps. This case, from 893, is far from isolated. Another example—that of Sant Martí de Tost in 1040—reveals that even well after a century later, scribes continued to address these themes using similar language.

> With not all things held as unknown but with certain things coming to light, namely I, Arnal Mir, together with my wife Arsinda, and with many other good men named above bestowing a little (token of) compassion for fear of the heavenly and celestial father, and fear of the horrible pains of Hell. We consider the weight of our sins and grow fearful of the wrath of eternal judgment, so that, before the tribunal of Christ, we might merit to gain the pardon (*veniam*) of our sins in our hearts we arrange and decree that there ought to be a church in honor of the all-powerful God and Sant Martí, confessor of Christ, which is located in the county of Urgell and in the castle called Tost. Together with the consent of the lord pontiff, Eribau, and his canons who are seen to be present and attending devotedly, we implore the now stated pontiff so that, with the assistance of God and his grant of mercy, Bishop Eribau might dedicate that aforementioned church on the day of the holy consecration, and he did just that.[88]

This case from the bishopric of Urgell, while including additional detail about just how deep the fear of Hell's trials was for groups of associates, presents the same themes stressed in 893.[89] The donors, a lay couple, supported by their community, give property and entreat their friends to do likewise. Contextualized with the language displayed in the above passage, the amount of wealth the family and its associates muster can be seen as an investment toward the donors' impending

[88] *Dotalies* 164 B: "Omnibus non abetur incognitum set quibusdam patefactum qualiter Arnal Mir, una conjuge mea Arsindis, vel cum aliorum bonorum hominum superna tribuente clemencia alicuantulum previdentes pro timore divinitus celestis patrie et pro timore orribilis geenna penarum, consideramus pondus peccatorum nostrorum et pertimescimus eterni judicis iram, ut ante tribunal Christi veniam mereamur adipisci de peccatis nostris in corde nostro disponimus vel decrevimus ut ecclesia in honore Dei omnipotentis et sancti Martini, confessoris Christi, qui est situs in pago Orgellitano seu in castro vocitato Tost, una consensus domno Erballo pontifice et chanonichorum ejus qui ibidem preesse videntur et devota famulantur, precamur jamdicto pontifice ut prefata ecclesia Deo auxiliante et ejus misericordia propiciante, ut ad diem sanctum consecracionis dedicasset, quod ita et fecit."

[89] The cases stressed above come from the same diocese, Urgell. On a formulaic/terminological level, they represent a regional trend. Yet, while exhibiting less precise phrasing, other Catalan bishoprics communicate the same sentiments as those conveyed in Urgell, and consistently do so over the course of three centuries. I have selected these cases from Urgell, because they mostly clearly exemplify the common interest in salvation as the impetus for church construction and dedication.

defense at Christ's court. They were establishing a sacred space where they would work with Sant Martí to strengthen their case. This service was only possible with the bishop's performance of the rite and the resultant creation of a sacred space: a gateway through which Sant Martí could relay the donors' contrition to God. Indeed, this offers further context for the function of the *porta celi* described in the Úrus *dotalium* (occurring in the same bishopric three years prior). Together, such passages explain the close connection between expressions of a yearning for salvation, worry over the outcome of a divine tribunal, and the bishop's performance of the rite.

These two examples, one from 893, the other from 1040, represent cases typifying a small cadre of donors initiating construction to benefit themselves and their kin. Yet, neither their act of foundation nor the sentiment driving it was an exclusive prerogative of wealthy donors; their actions were merely part of a broader consensus. Seventy-two examples of village collectives acting as joint founders allow us to place elite establishments in context, thereby defining the outlines of a broader community belief. That belief transcended considerations of class. An extended case study below, a dedication that moved from a private establishment to a valley-wide affair, does just this. It most clearly demonstrates that the passion fueling collective undertakings could be intense. The affair, dated to 891, was surrounded by an air of concern for the effectiveness of ritual action. Community belief—while a powerful motivator for soliciting construction resources, or as support for the power of the *condiciones* strategy—could prove volatile, if mishandled by authorities.

1.3.8. Consecration & conflict at Sant Andreu de Baltarga (bishopric of Urgell, 891)

In the fall of 891, Bishop Ingobert of Urgell arrived at the village of Baltarga to dedicate a church that the inhabitants had built in honor of Sant Andreu. While there are doubts concerning aspects of this record's authenticity (with the presence of eleventh-century

interpolations), the copyist's efforts to build a plausible narrative capable of accomplishing his aims indicates that we may cautiously use the narrative conveyed for our purposes of reconstructing general belief.[90] In the record—as we have it—an anonymous *dotalium* scribe memorialized the congregants' conception of the church, what they believed could be gained through worship there, and how the space would be changed with the bishop's participation. The broader dedication aside, and despite their passivity during the ritual performance, the community specifically fretted over the details of the consecration. Their attention focused on the exactitude of the rite's execution. Even when that concern was allayed, worry persisted. The scribe depicts the villagers believing that their very salvation depended on constant commune with saintly entities. The fragility of that connection could prove dangerous. Indeed, the celebration as described ended in discord when an administrative decision made by Ingobert jeopardized daily access to the liturgy.

The foundation had begun under a local notable called Exclua. With this lord seemingly now dead, humbler villagers had assumed the mantle of the project and completed the work. They sent a delegation to entreat Ingobert to consecrate the building.[91] Agreeing, he appeared

[90] As Ordeig explains in his introductory note for *Dotalies* 15 (at 54), this *dotalium* has a complicated history and is the product of heavy interpolation likely occurring in the eleventh century. Pierre Ponsich, "Dédicace de Saint-André de Baltarga (Cerdagne): Cette église est-elle l'œuvre du moine Sclua, constructeur de Saint-Martin du Canigou?" *Etudes Roussillonnaises* 2 (1952), 127-29, first argued that this document may more accurately date to the episcopate of Sal·la of Urgell between 981 and 1010, with the given date of 891 and name of the bishop being the product of confusion on the part of a cartulary copyist, or possibly even intentional deception. Ramon d'Abadal i de Vinyals, "Com neix i com creix un gran monestir pirinec abans de l'any mil: Eixalada-Cuixà," *Analecta Montserratensia* 7 (1954), 281-84, however, asserted that clear eleventh-century elements were added into a copy of what would have been a late ninth-century textual foundation in order to justify the monastery of Cuixà's claim to Baltarga. The resulting record (*Dotalies* 15), thus, blurs the boundaries of the truth. The presence of words like, *milites* (odd for the late ninth century), suggests these scholars are right to urge caution.

[91] *Dotalies* 15: "Veniens…Ingobertus, Urgellensis episcopus…in villa scilicet Baltarga, rogatus ab ipsis parrochianis, videlicet a Sancio milite et Elmiro et Abicello ac cum aliis viris." It appears that the effort was led by these three men, or they were perhaps nominated as a delegation to entreat the bishop to perform the rite.

before a large assembly. Yet, as would be important later, not only had Baltarga's residents gathered, but their neighbors from the village of Saii were present as well. The scribe then states,

> All those men asked Bishop Ingobert that he consecrate (*consecraret*) their church in honor of God and Sant Andreu. Whence all those stated soldiers (*milites*) and laymen together submitted and placed the said church in the power of the lord bishop of the see of Urgell for consecration, just as the venerable fathers stipulated and is ordained in the canons, so that, in the world to come, they shall receive for their souls an indulgence of their sins (*indulgentiam delictorum*). Then we, the parishioners, knights, and laymen, give to you forever the church of Baltarga as a donation along with the cemetery, thirty paces to the east, thirty paces to the south, thirty paces to the north, and thirty paces to the west.[92]

Such were the villagers' priorities: beyond administrative transfer, the community was concerned with just how the bishop would approach the consecration. They felt that he ought to act as the "venerable fathers stipulated" and as was "ordained in the canons."[93] Only then could the villagers seek their salvation in the church (through an *indulgentiam delictorum*).[94] Similar to the *ideo*-based structure seen above, the scribe here uses a grammatical result clause (*ut*) to bind these two ideas into a cause and effect dynamic. The intercessional quality of the space *resulted* from ritual action. It was not inherent to the space, prior to Ingobert's action, or by merit of collective worship. The consecration was key, and of concern to founders. Such emphasis illustrates that parishioners held high standards for the bishop's performance. The laity understood that there were standards associated with the rite and worried that the space would

[92] *Dotalies* 15: "Omnes predicti rogaverunt prefatum venerabilem Ingobertum episcopum ut eorum ecclesiam in honore Dei et sancti Andree consecraret. Unde omnes predicti milites et laici omnes partier submittimus et tradimus predictam ecclesiam ad consecrandum in potestate domni predicti episcopi et Urgellensis sedis, sicut patres olim constituerunt et in canonibus sanxitum est, ut in future seculo anime nostre indulgentiam delictorum inveniant. Deinde omnes nos prefati parrochiani et milites et laici damus per secula cuncta vestre iam dicte de Beltarga ecclesie in dotaria cimiterium a parte orientis triginta passos, a meridie trginta passos, ab aquilo triginta, ab occidente triginta."

[93] Baraut, *Les actes de consagracions d'esglésies*, 15, explains this is the common way of describing the form by which the bishop celebrated the consecration.

[94] As is likely the case with *Dotalies* 155, this was an episcopal measure granted by Bishop Ingobert as part of the dedication.

not assume its intercessional character without careful execution. Their concern centered on liturgical function. Such reflection on the use of churches is a recurring theme across the corpus. Indeed, it is an association also seen in Sunyer's connection between the consecration ritual and the Eucharistic celebration to be performed at the church at Bages in the wake of its dedication. The villagers' desire for salvation is mirrored in the subsequent endowment at Baltarga. Each donor explained how his or her largesse was motivated by a "love of God." The donors then state collectively, "We give all that has been stated above to the noted church so that through the intercession of Sant Andreu, we and our relatives might merit to have pardon from God of our sins."[95] This hope for salvation through intercession in the church was not mere lip-service scribes attributed to the donors. We can test the sincerity and intensity of this sentiment. To do so we turn to the confrontation that arose at the conclusion of the dedication, a dispute pitting the people of Baltarga against their neighbors from Saii.

Immediately prior to the conflict, Bishop Ingobert informed the assembly that it was necessary to make an organizational change in the valley. Often, in addition to listing the church's rights and allocation of tithes, this meant either submitting the new church to another parish *or* making an established church dependent on the new one being dedicated. The latter is what Ingobert set out to do at Baltarga, and this is where the trouble arose.

The residents of Saii, the parishioners of the church of Sant Martí, had been summoned to the dedication event. It is likely that Ingobert called for them with a consolidation in mind. He announced that he planned to fold Sant Martí into the newly constituted parish of Baltarga.

[95] *Dotalies* 15. "Hec predicta donamus prefate ecclesie ut per intercessionem sancti Andree nos et proles nostra veniam delictorum nostrorum a Deo habere mereamur." This language was used similarly in *Dotalies* 202. "In primis propter amorem Deo et remunerationem anime, ut per intercessione ejus vel omnium sanctorum veniam consequi mereamur."

Moreover, he appointed a priest named Auderic to care for the two communities. There is no indication that the inhabitants of either village opposed the reorganization on principle. Such moves were not frequent sources of trouble.[96] As far as the villagers were concerned, administrative unity would not threaten their access to a source of intercession, as Sant Martí de Saii would continue to operate as a church. It was only when the bishop jeopardized the efficient functioning of the dependent church that the people of Saii protested. The effectiveness of the sacred space as an intercessional zone required regular celebration of the liturgy.

Ingobert wanted Auderic to service both sanctuaries, but the priest could not be in two places at once. During the bishop's announcement, he stated that Auderic was to celebrate mass daily at Baltarga. However, he was also expected to do the same at Saii. Ingobert clearly had not foreseen a problem, assuming that Auderic could effectively journey between the villages daily. Yet, where would Auderic maintain his primary residence? The scribe reports that "a great contention and discord arose between all the parishioners" over this very issue.[97] Arguing, each community demanded that Auderic reside in their village and travel to the other church to celebrate mass. The parishioners from each village understood that any delay, whether from inclement weather or illness, could result in an interruption of the offices at their church. Without Auderic, the village's intercessional space may not function properly. In addition to revealing an additional layer of anxiety, this disagreement underscores the importance of a resident celebrant to the effective functioning of a church. It comes then as no shock that judges frequently worked alongside a priest in the use of the *condiciones* strategy.

[96] *Dotalies* 97 (dated to 978) provides a later example that did not spark disagreement. In this case the new church was subordinated to an already established sanctuary close by.

[97] *Dotalies* 15: "Cum autem omni prenominat de predictibus duabus ecclesiis in eadem die patrata fuerint, contentio magna atque Discordia surrexit inter omnes parrochianos sancti Andree de Baltarga et Sanct Martini de Saii."

At this moment, however, with Auderic's core residence uncertain, a celebration that should have brought people together now threatened the stability of the valley. With the situation escalating, the bishop needed a resolution. He gathered a council of clerical and lay leaders to settle the impasse.[98] Given the convictions underlying the conflict, the bishop had his doubts as to whether the people would adhere to a compromise. Before he would allow the council to continue, Ingobert demanded the residents of the valley provide fifty pounds of gold and silver as surety and accept pledges from all sides. Four men from each village then joined the council. The result was a compromise concerning the priest's residence. From the Vigil of Sant Joan to Christmas, Auderic was to dwell in Saii. Every day he would travel to Baltarga. During the other half of the year, he should do the opposite. With the discord resolved, the dedication events came to a close.

This example, coming at the close of the ninth century, articulates the core elements of community belief in the power of sacred spaces. Fear of damnation and insistence on easy access to the liturgy were the motivating factors that drove people to found and endow churches. Only careful performance of the consecration rite could forge a *porta celi* at which villagers could entreat saints to intercede on behalf of their souls and those of their loved ones. Not only was the establishment of the church important, but—as the disagreement over Auderic's residence reveals—so too was the availability of a regular celebrant. Churches, while distinct by merit of ritual consecration, also required liturgical specialists to keep the benefits to be gained at sacred spaces accessible to worshipers. The body of *dotalia* suggests that the sentiments and fears

[98] The group included himself, Archdeacon Fredario, Provost Oliba, a *miles* called Sanç, and other notable men of the area.

expressed by the congregants of Baltarga and Saii were shared broadly throughout the Province of Narbonne during the ninth through eleventh centuries.

Yet, this *dotalium* shows that it was not simply the priest on whom communities depended to maintain sacred spaces. Neighborly reliance was an essential to ensuring the accessibility of local churches. Though never explicitly stated, the events of the Baltarga dedication show that one's personal salvation depended on the actions of others. This theme is evident across the *dotalia* corpus. Whether it was gathering funds to construct the church, furnishing the buildings' endowment, performing the consecration rite, ensuring the structure's upkeep, and guaranteeing the liturgy's celebration, one was at the mercy of neighbors, the bishop, and the clergy. The centrality of community trust bore implications beyond worship. Legal episodes to be studied in coming chapters reveal that norms of accountability and pressure to safeguard the integrity of churches proved to be of great value to judges in dispute. Indeed, given the universal fear for one's salvation, it is unsurprising that judges capitalized on human fixation with sacred space. The church itself—by merit of consecration and the liturgy celebrated there—became a font of authority that judges viewed as a tool to reinforce other, faltering sources of authority, like the Visigothic Code.

1.3.9. Summing up community belief

Whether real or imagined, the discord that erupted at Baltarga allows us to place the *dotalia* corpus' terser expressions of community belief into situational context and underscore the intensity of the conviction and social pressure fostered by church spaces. Indeed, recognition of the clear power these buildings had over the people who funded their construction and worshiped within helps us to position Sunyer's introduction more firmly within this culture. Given the great enthusiasm for churches and yearning for salvation shared by all founders, it is

unsurprising that the priest-scribe incorporates the story about the labors of Sal·la and his family at Bages into a history of altars and covenants between God and humans. The sophistication of Sunyer's expression is another facet of community belief, existing alongside the anxiety—and ultimately anger—depicted in the Baltarga *dotalium*. For a great many parishioners, an interest in sacred spaces stemmed from a joint love of God and fears that salvation for oneself and one's family lay just beyond reach. Although Zimmermann highlighted that divine mercy was the impetus for foundation, endowment, and worship, closer examination of *dotalia* has revealed just how intense and nuanced the conception of sacred space could be. Moreover, we must also more directly recognize the collective nature of the belief in sacred space. Given the expense of construction, the upkeep, and the inherent fragility of the space's sense of purity, one's salvation required trust in neighbors to help build, supply, and safeguard the space; it was a collective affair fueled by community belief. As we will see in the final section below, and in the chapters to come, this perception affected legal practice in the region. As judges would come to realize, the collective belief in sacred spaces could be adapted as a normative tool in law: the *condiciones* strategy. Before turning to that story, however, something must be said of these judges and their understanding of the nature of churches.

1.4. Judges at church dedications

Map 3. Consecrations at which a judge was present[99]

Judges were officials of repute and were frequently found in comital and episcopal entourages.[100] Ponç Bonfill Marc (d. ca. 1046), the son of a jurist, described himself as "judge of the palace" (*iudex palacii*), and a contemporary opted for even grander self-reference, "Guifré, by the grace of God, judge" (*Guifredus, gratia Dei iudex*).[101] Much has been written about these men as a professional class, particularly their guidance of tribunal proceedings.[102] They were

[99] Note: some *dotalia* mention multiple churches.

[100] Bowman, *Shifting Landmarks*, 94.

[101] *JRCCM* 223, 234.

[102] Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société* (Toulouse, 1975-76), I: 187-202, II: 540-47, 560-76; Élisabeth Magnou-Nortier, *La société laïque et l'Église dans la*

often of clerical status, though some led secular lives, simply calling themselves *iudex*.[103] As Bowman noted, not enough is known about judges' training to describe their educational curriculum; though it must have been substantial.[104] If not their course of study, we have an idea of their intellectual interests. In his analysis of Guibert of Lieja (d. 1054) and his family, Ramon Ordeig discussed the testament of one Guillem Ramon d'Àger (d. 1082), a judge and head of the cathedral school at Vic (*caput scolae*). The books listed in his last testament reveal eclectic intellectual pursuits. Among the works, were many concerning liturgical subjects, including the work of Amalarius of Metz and Alcuin (*et Amelarium simul iunctum cum Pascasio et Alcuino*).[105] More may be gleaned from a judge's own writing. At the outset of the eleventh century, the illustrious jurist, Bonhom (d. ca. 1025), wrote a prologue to a glossed copy of the Visigothic code known as the *Liber iudicum popularis*. As Bowman explains, the commentary found in this text conveys Bonhom's conception of the judge's role in the law and his moral obligations. More abstractly, he stresses law's divine origin, the connection between justice in

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province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle (Toulouse, 1974), 263-73; Marie Kelleher, "Boundaries of Law: Code and Custom in Early Medieval Catalonia," *Comitatus* 30 (1999), 1-11; Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 81-99; Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 19-43, 194-211; and Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 43-52.

[103] Though less common, there are numerous documents (irrespective of genre) that note laymen were judges. Many simply state their name and the word *iudex*. As seen in *Dotalies* 37 (23 Dec. 909-forgery), some assumed joint legal and military identities, "Ellemarus miles et judex." There were also judges who were married, as seen in *JRCCM* 139. Ponç Bonfill Marc, was himself the son of a well-respected judge.

[104] Bowman, *Shifting Landmarks*, 82-83.

[105] Ordeig, *Guibert de Lieja i Joan de Barcelona*, 39-54. For Guillem Ramon's testament, see *Diplomatari de Vic* 3:1455, dated to 12 Nov. 1082; Zimmermann, *Écrire et lire*, I: 541-42. Like many in his position, being a judge was but one aspect of Guillem Ramon's identity. As, Zimmermann, *Écrire et lire*, II: 870-78, explains, the position of *caput scolae* would have been in control of a substantial prebend and held considerable influence in the bishopric. Like Vic, the cathedral of Barcelona also featured late eleventh-century *capites scolae* that also held the title *iudex*.

Heaven and on Earth, and connection between Moses as legislator and Christ's fulfillment of the Old Testament legacy: themes evident in both *dotalia* and in dispute records.[106]

Thus, while we do not know how common liturgical and theological education was among judges—our clearest examples come from the province's legal elite—jurists do appear to have taken interest in these topics, and the information was accessible at educational centers within the region. Given the high degrees of literacy and celebrated reputations of cathedral and monastic schools in the province, it is unlikely that humbler judges would have received a legal education in an intellectual vacuum.[107] Moreover, the clerical background of many indicates such individuals had active liturgical experience. Yet, beyond mentions of academic pursuits and clerical vocation such sparse evidence does not reveal how judges would have conceived of the church spaces they used for adjudication. For this, we must again turn to the *dotalia*. The twenty-six *dotalia* noting the attendance of these men at a dedication allow us to determine that the conception of church spaces held by judges, as a rough class, mirrored that of the society at large.[108] They participated in diverse roles, including founder, endowment donor, witness, and even as a ritual assistant in one case. *Dotalia* reveal that not only did they understand the community beliefs surrounding these spaces enough to incorporate them into their legal

[106] Jesús Alturo i Perucho, Joan Bellés, Yolanda García, Anscari Mundó Marcet, Josep Font i Rius, eds., *Liber iudicum popularis, ordenat pel jutge Bonsom de Barcelona* (Barcelona, 2003), 19-30, provide a discussion of the work in context. Bowman, *Shifting Landmarks*, 84-85, also addresses the work. Intriguingly, Bonhom opens his prologue with a connection between Moses as legislator and Christ, before turning to the moral character of judges. "Lex a proto Moyse, uiro iusto, data est. Gratia autem et ueritas per Iesum Christum facta est."

[107] Adam Kosto, "Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia," *Speculum* 80 (2005), 44-74, shows that the region enjoyed a significant rate of documentary literacy.

[108] *Dotalies* 37 (23 Dec. 909—forgery), 97 (30 Jul. 978), 105 (May 987), 108 (1 Jan.- 24 Mar. 992), 109 (30 Apr. 992), 110 (19 Nov. 993), 122 (ante. May 1007), 123A (25 Nov. 1007), 130 (22 Oct. 1013), 131 (6 and 7 Jul. 1015), 137 (15 Jul. 1020), 141A and B (14 Oct. 1022), 151 (15 Jan. 1032), 169 (15 Jan. 1041), 182 (21 Jan. 1047), 186 (28 Dec. 1048), 188A (15 May 1050), 206 (23 Nov. 1058), 215 (31 Dec. 1063), 222 (8 Dec. 1065), 223 (11 Dec. 1067), 226A (12 Jan. 1069), 240 (30 Jan. 1079), 241 (21 Dec. 1079), 246 (22 Sep. 1082), 258 (3 Jul. 1090).

strategizing, but they too shared the broader enthusiasm for them as locales of saintly intercession and commune with God.

In the next chapter, we will address the origins of the *condiciones* strategy as a legal instrument. The overlapping belief of judges and the communities with which they interacted (and of which they were a part) is central to that discussion.[109] This context works in tandem with evidence gleaned from early ninth-century dispute records. However, we face a hurdle moving forward. Judges do not appear in *dotalia* before the late tenth century.[110] We may overcome this challenge with an awareness of a central feature of the larger consecration corpus. As discussed above, community belief was remarkably stable across the three centuries under review. From the late tenth century, judges' understanding certainly aligned with the societal view shared across class boundaries. There is nothing to suggest that such synergy of cultural belief would not have existed earlier. Indeed, as we will see in the ninth-century dispute documents examined in the next chapter, judges held an important role in cultivating ritual uses of sanctuaries outside of worship. Thus, while we must proceed with caution, we may indeed proceed.

1.4.1. Prevailing themes

Interest in spiritual functionality is pronounced in these twenty-six cases in which we have judge-participation. *Dotalia* noting the presence of judges bear the same themes as those in which they do not appear. In these twenty-six examples, we find the same concern for the remission of sin, fear of damnation, a desire for intercession on behalf of loved ones, and an

[109] Zimmermann, *Écrire et lire*, II. 618-831, argues that the region held a strong degree of cultural cohesion emerging in this time.

[110] *Dotalies* 37 is the earliest mention, but this record is a forgery. This makes *Dotalies* 97 the earliest example.

engagement with the Last Judgment through judicial metaphor. Each of these themes stems from a deep hope for individual and collective salvation. In a *dotalium* written by a judge in 1007, we find an example of their joint invocation. A judge-scribe called Borrell commemorated a dedication celebrated in the county of Ribagorça. Based on appearance of stock phrasing, Ordeig argued that Borrell likely used a formula localized to the county, noting eight other examples stretching from the middle of the tenth century well into the eleventh.[111] Voicing the bishop's explanation of why he consecrates the church, Borrell explains,

> The venerable Bishop Eimeric from the county of Ribagorça came at the request of Abbot Galí and the priest Guimarà in order to consecrate the church in honor of our lord, Jesus Christ, and the holy martyr and confessor of Christ, Climent… We do this for the love of God and the remission of our sins and for the desire of the celestial realm, for whose dedication the Christian and most dedicated people constitute the universal religion, for the absolution of those gathered and that of their deceased relatives, for the remission of their souls and safety to be had in the future, in order to escape the wickedness of the devil, and to raise the established Church of God. He does this so that he might deserve to obtain the remuneration at the ethereal final judgment and shine with all the saints in heaven.[112]

The core *dotalia* themes are present in this formulaic language.[113] With Christians anxious over their salvation, the bishop acts on behalf of the faithful. Eimeric dedicates the church so that the

[111] *Dotalies* 123A. For the other examples, see *Dotalies* 78, 94, 114, 131, 133, 134, 138, 152.

[112] *Dotalies* 123A: "Veniens venerabilis Ahemericus presul ex comitatum Ripacurcensem per preces Galindoni abbati et Gimarane presbitero ad consecrandam ecclesiam in onorem Domini nostri Jesu Christi et sancti Clemencii martiris et confessoris Christi quem prefactus qui jam suprascriptus est, pro amore Dei et remissionem peccatorum suorum et per desiderium celestis patrie, ad cujus dedicationem christiani et devotissimi populi religionem chatolicam concurrentes devocionis sue vel parentum decessorum facimus absolvendum vel pro remedium animarum suarum et incolumitatem futuram adipiscendum et zabulo teterrimum effugiendum et statum sancte Dei Ecclesie erigendum, ut remunerationem ad hetereo arbitrem ad hultimum consequi valeat et cum sanctis omnibus in celestis regionem coruscent."

[113] Much of this statement is stock phrasing. We find similar language in other examples from Ribagorça. For example, *Dotalies* 131, also written by a judge, adheres to the same structure. "Ad consecrandas ecclesias in honore sancte Crucis et sancti Petri quas prefatus jam suprascriptus episcopus pro amore Dei et remissione peccatorum suorum et pro desiderium celestis patrie dedicavit, ad cujus dedicationem christiani et devotissimi populi religione catholica concurrentes devotionis sue vel parentum decessorum facinus absolvendum vel pro remedio animarum suarum et incolomitate futura adepiscenda et zabulo teterrimum fugiendum et statum sancte Dei Ecclesie erigendum

community—alive and dead—might be absolved of sin and prevail at the Last Judgment. Later in the document, Borrell provides a conception of the church altar, offering the bishop's explanation of its purpose and function, "And he who shall give these offerings for souls, God shall cast away all his sins, past, present, and future, and through this holy sacrifice these offerings were consecrated over that most holy altar. May those who offer together receive a place in eternity, and on the Day of Judgment be judged worthy."[114] Taken with the extended quotation above, we find similarity with Bishop Eribau's later reflection on the altar at Urús in 1037. An individual's engagement with the sacred matter of the altar through largesse could bring remission of sin. The church was not a symbol. It bore a pragmatic spiritual function. As we have seen, this was a purpose that the Bishops Eimeric and Eribau, the villagers at Baltarga, Sal·la and Ricarda, and now the judge-scribe, Borrell, each knew: salvation.

1.4.2. Judge as celebrant

Like most judges in this grouping of *dotalia*, Borrell was a passive observer, watching and recording events. Yet, an earlier case from 978 reveals a judge who performed an active role in creating sacred space. This man was a canon of the cathedral of Urgell, and may well have served as a liturgical aid to Bishop Guisad II (d. 981) at the consecration of Sant Jaume de Queralbs, in the county of Cerdanya. Announcing his completion of the ritual action, the bishop declares that he consecrates the church "together with several of our canons."[115] The original

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ut remuneratione ab eterno arbitre ad ultimum consequi valeant et cum sanctis omnibus in celesti regione coruscent."

[114] *Dotalies* 123A: "Et qui hoc offerentia dederit pro animabus suis dimitat Deus omnia peccata eorum preterita, presencia adque futura et per hoc sanctum sacrificium quod super isto sacrosancto altario consecrati fuerint, partier eternam participacionem accipiant, et in die judicii digni auditor sint."

[115] *Dotalies* 97: "Unacum caterva nostrorumque cannonicorum."

dotalium survives and allows us to note the participation of one Durand, who, writing in a confident hand signed as "*Durandus levita et iudex canonicus*." Bishops did not perform rites alone, but were in fact assisted by cathedral canons. Consecration *ordines*, such as *OR* 41, *PRG* 40 and the rites of the Romano-Hispanic tradition, prescribe specific roles to these liturgical helpers. Given that Durand is a prominent canon appearing in the list, the possibility of his ritual participation is likely.

As a potentially active celebrant, what then did Durand help accomplish? The scribe, one Godmar, explains in the words of the bishop,

> And therefore I the noted prelate, Guisad, came to this place at the urge and request of men, they are [he lists names] so that this temple that has been built might become the house of the Lord (*domus Domini*) and be inviolate, and so that all people of either sex might gather in the remembered temple. May they stand to gain whatever they shall worthily ask from the lord without limit; may they prevail in gaining a pardon for the sins of men. For this reason, I Guisad, the named prelate, dedicate and consecrate this church together with several of our canons in honor of the omnipotent God and holy men, and in honor of Jacob the Apostle, under the authority of Sant Sadurní, martyr of Christ, who appears in this founded parish, called Fustanyà.[116]

As Godmar relates, the liturgical action established a *domus Dei*, a holy and inviolate (*inviolabilisque*) space. This establishment of sacred space had a predictable purpose: salvation for people seeking expiation therein. The focus was the value of this local church. The bishop was explaining to those who would live in its shadow, how it could work for them.

[116] *Dotalies* 97: "Idcircho ego prefatus Wisadus, presul, veni in unc locum a peticione et rogacione de hominus, id est,… ut construam templum hoc et fiat domus Domini inviolabilisque et omnis utriusque sexus qui apud memoratum templum concurerrint, quidquid ibi digne a Domino postulaverint exaudiri sine fine mereantur sive homniumque facinora peccatorum suorum veniam percipere valeant. Ob hanc causam ego Wisadus, jamdictus presul, dedico unacum caterva nostrorumque cannonicorum et consecro hec ecclesiam in onore omnipotentis Dei et sanctorum homnium et in onore sancti Jacobi apostolic in subdiccione Sancti Saturnini, martir Christi, qui in eodem parroechiam fundatus aparet, nuncupata Fustiniano."

From Durand's perspective, Guisad's statement bore legal ramifications. Places like Queralbs were remote, somewhat secluded within the broader maze of high Pyrenees valleys. For humble people, lacking need or means to travel, the parish church was the center of their religious experience and likely the site of any pastoral care. These structures were anchors of community salvation. That situation was typical throughout the province. Judges like Durand, understanding the importance of church spaces within communities, their inviolate nature, and the role they played in village life, knew that the normative pressures associated with churches could provide the raw material needed to compel adherence to rulings at tribunals. Dispute records never mention this level of detail but that context may be gleaned from *dotalia* such as this.

1.4.3. Judge as founder

Yet, it would be wrong to read Judge-Canon Durand's understanding as cynicism or condescension toward community belief. *Dotalia* also afford examples of judges themselves expressing the same fear and desires. Judges were inextricably linked to the world in which they lived. When they used the *condiciones* strategy, the tool was fueled just as much by their own belief as that of the litigants, witnesses, or *boni homines*. At tribunals held in churches, they invoked power, rather than fabricated it. If we return our focus to the west of the province, another *dotalium* from Ribagorça reveals the role of a lay judge as a founder.[117]

In 987, two brothers set out to restore the church of Sant Pere dels Molins, which had been destroyed in a fire. The priest-scribe Altmiró composed a lengthy document detailing the founders' actions and relating their view of the renewed sanctuary. Judge Asner and his brother,

[117] The judge has a wife and children.

Miró, explained that God had instructed (*expuncxit*) them to build this "house in honor of our Lord."[118] Speaking for both men, Asner reveals that it was not only a divine command that motivated them, but hope for salvation through assistance from a cadre of saints. He states, "We built that church of Sant Pere which is called Molins, in honor of Santa Maria, Sant Creu, Sant Pere, and Sant Vicenç, the martyr, who are established in the monastery of Alaó, for the purpose of the redemption of my soul and the soul of my brother Miró, and in order that before the tribunal of our Lord Jesus Christ, he might extend mercy to us."[119] As in many *dotalia*, here a founder reflects on the Last Judgment, envisioning it as a tribunal. The discussion of the saints in this sentence, with two clauses separated by *propter*, indicates a connection between such entities and the End of Days. Knowing he needs assistance, Asner invokes four saints who will assist him. As the statement indicates, it is only with their help that he and his kin can hope to prevail. The very next sentence explains that these worries led the brothers to invite the bishop to consecrate. Thus, as the scribe moves toward the actual consecration, we see the linking of a series of ideas that constitute the motivation for that ritual action and help describe its purpose.

For our purposes, however, the judge's emphasis on the saints is most important. While not unique to this record, Asner articulates one of the chief domains attributed to these beings in *dotalia*: advocating for humans in the heavenly court and at the Last Judgment. As noted above, Judge Bonhom, in his prologue, describes the connection between spiritual law and earthly law stretching back to the tradition of Moses, and confirmed by Christ.[120] This mirroring is evident in

[118] *Dotalies* 105: "Ego, Asnerus, judex, et frater meus Miro expuncxit nos Deus et trina majestas ut hedificaremus domum in honore Domini nostri Jesu Christi et sancti Petri apostolic."

[119] *Dotalies* 105: "Propter remedium anime mee et anima fratri meo Mironi, ut ante tribunal Domini nostri Jesu Christi mercies nobis exinde adcrescat."

[120] Alturo et al., eds., *Liber iudicum popularis*, 297-98; and Bowman, *Shifting Landmarks*, 84-85.

cases of the *condiciones* strategy when viewed alongside context, such as Judge Asner's foundation. Humans could journey to a church hoping to secure a saint as their intercessional advocate. Indeed, from the time of the consecration rite, and throughout the church's lifespan, such invocations were performed as part of the liturgy. This was the role of the saints in Bonhom's conception of spiritual law. Yet, beyond the liturgical context, judges also brought judicial assemblies to churches so that saints could perform an earthly judicial function in the Rite of the Guarantor. With judge, witnesses, and litigants gathered around the altar, the saint supervised oaths and channeled God's authority. From Asner's perspective this was likely only a slight augmentation of a role they already played.

1.4.4. Judge as scribal commentator

Judges frequently acted as scribes, helping to compose documents of diverse genres. Indeed, there are multiple cases of judges writing *dotalia*. Yet, one record, composed by Ervig Marc (father of Ponç Bonfill Marc), stands out in that it shows the judge-scribe's reflection on the consecration rite. A few years after Asner's efforts in Ribagorça, this consecration was performed far to the southeast, near the coast south of Barcelona. Ervig recorded the dedication of the church of Sant Miquel d'Olèrdola (at episcopal initiative).[121] While this *dotalium* does not share the thoughtful insight of Sunyer's introduction, it reflects on the same biblical episodes and conveys a similar fascination with the power of sacred matter to alter space during the consecration rite.

Without the eloquence Sunyer displayed at Bages, Ervig explains the role of Moses as legislator and Aaron as priest in establishing the Tabernacle, which they completed "in order to

[121] *Dotalies* 108: "Hec est paginola dotis quam fiery maluit domnus Vivas, Barchinonensis cathedre codrus, in honore sancti Michaelis angeli et apostolorum princebs Petrus fundata."

invoke the name of their lord." Looking at the titles of these two biblical figures, it is worth noting that many *condiciones sacramentorum* documents open by listing men with the titles of *iudex* and *sacer*, working together to achieve the court's ritual business. Ervig then turns to the construction of the temple which God inhabited (*ille Dei dilectus, implevit*). With these Old Testament actions explained, Ervig addresses the New Covenant which is remade with the construction of this church at Olèrdola. He explains just how this is accomplished through the consecration. He states that the bishop undertakes the dedication "so that the temple may be for the remission (of sin) for all Christians (*omnium catholicorum*) through the water of regeneration (*per aquam regenerationis*)."[122] Not all that Sunyer addressed is present in Ervig's reflection. The concepts of *recurrence*, a lineage of altars, and the importance of the Eucharist as continuous renewal are absent. Yet, the same fascination with the cleansing power of water—an essential component of the consecration rite—is well defined. Later in the text, after locating the church and property, Ervig states that "the Lord forgives and cleanses (*abluat*) the universe of its sins."[123] Thus, in these contexts, we find a judge who not only was in tune with the function-focused spirituality of the local community, but also understood the layers of meaning and history behind that functionality.

These three specialized *dotalia* stand out not in what is different about judges' conceptions of sacred space, but rather in how they confirm the broader understanding. The

[122] *Dotalies* 108: "Comperimus in divinis voluminibus qualiter Dominus per Moysen legislator et Aaron sacerdos ex rubricates pellibus jussit sibi preparari ad invocandum nomen ejus domum. Ad post demum David, preco Christi, cupiens cudere domum, auditam sibi a Domino non hedificare, sed ex renibus illius procensurum qui impleret jussa Dei, qui utique Salomon, ille Dei dilectus, implevit, edificavit domum dedicavitque. Editum namque ex Virgine Dominus et Salvator noster Jesus Christus, que vetera facta sunt nova, construuntur baselice dedicanturque, ut fiat omnium catholicorum templum remissionis per aquam regenerationis."

[123] *Dotalies* 108: "Ignoscat illis Dominus et ablaut universis peccatis illorum."

community belief that permeated class and geographic boundaries in the province was a conception of sacred space that judges understood and endorsed.

1.5. Conclusion

In the winter of 1032, the valley cradling Santa Maria de Ripoll erupted in much fanfare as Abbot-Bishop Oliba led the consecration of his monastery's church.[124] As the dedication events came to a close, the building was different. As would be engraved at the entrance of the structure, everyone agreed "The heavenly building is illuminated with the fire of divine will."[125] Given that his leadership of the abbey, an illustrious establishment to which his family had maintained close ties going back to the time of Guifré the Hairy, was a cornerstone of Oliba's influence in the region.[126] He had ensured that the dedication was well attended. In addition to over a dozen other bishops, the archbishop of Narbonne, several counts (including Countess Ermessenda), and numerous viscounts attended. Four judges were also present. Among their number was Ponç Bonfill Marc.

We know little of what Ponç saw or thought about the dedication he attended. He appears only as a subscriber to the *dotalium*. It is unlikely that he was party to the mysterious events occurring behind the great doors of the church during stage two of the consecration, as he would have been left outside with the magnates and people of the Ripollès. Yet, much of his understanding has survived through another type of record: *placita* tribunal proceedings

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[124] *Dotalies* 151.

[125] *DOliba*, Textos literaris d'Oliba, 4. "Caelitus accensus divini numinis igne."

[126] For the relationship between Santa Maria and the comital family at the time of Guifré the Hairy and during the tenure of his descendants, see Jonathan Jarrett, "Power over Past and Future: Abbess Emma and the Nunnery of Sant Joan de les Abadesses," *Early Medieval Europe* 12 (2003), 235-41; Jarrett, *Rulers and Ruled in Frontier Catalonia, 880-1010* (Woodbridge, 2010), 9, 62-64, 70; Ramon Ordeig i Mata, *El monestir de Ripoll en temps dels seus primers abats, anys 879-1008* (Vic, 2014), esp. at 9-26, 138-55 as the discussion pertains to Abbot-Bishop Oliba.

featuring the *condiciones* strategy. As the chapters to come will reveal, this man—the son of Judge Ervig Marc, an accomplished jurist in his own right, and a principal advisor to Countess Ermessenda—was well experienced with sacred spaces and their significance. Faced with the political and legal crises gripping the Province of Narbonne in the early eleventh century, it was figures like Ponç Bonfill Marc who kept tribunals from falling apart as challengers to comital authority came to the fore and litigants scoffed at the court system. Ponç, like many judges before him, wielded the power of community belief in churches against these adversaries. At the height of dramatic tribunals, he drew rebellious litigants, witnesses, and throngs of local onlookers to these thresholds of Heaven. With anxious community members crowded in the sanctuary and enveloped by murals of intercessors looking down on them, Ponç dared witnesses and litigants to defy God by violating his ruling or giving false testimony. The weight of one's neighbors waiting for a response and any implications it would carry for their community surely provided added gravity to the moment. Such pressure promised commensurate social consequences alongside the already unfathomable spiritual penalties for aberrant behavior at the site of a theophany.

Judges like Ponç Bonfill Marc used the power of these spaces and the communities relying on them to maintain authority within the legal system. The remaining chapters in this dissertation explore why this was necessary and just how it was done. What is important here, however, is to understand the community belief in sacred spaces as a raw resource for that approach to law. The *dotalia* explored in this chapter, conveying similar religious beliefs and social norms, show the great stability of community belief in this area over the centuries considered. In the context of the eleventh century—a time of broad political, social, and legal change—the fear and effusive yearning for salvation remained true to patterns evident in ninth-

century *dotalia*. These emotions lay at the core of the belief in churches as real sacred spaces. At dedication events, they helped grant common purpose to villagers, prelates, and magnates alike. Thus, the stability engendered by such hegemonic belief recommended churches as adjudicatory centers for generations of judges seeking to resolve conflicts. It is to their stories we now turn.

Chapter Two

Visigothic foundations and the early practice of the *condiciones* strategy

2.1. Introduction

On Easter Sunday, 801, Louis—king of Aquitaine and future emperor—entered Barcelona at the head of his army, ending nearly a century of Muslim rule. Yet, the Carolingian conquest of lands south of the Pyrenees and the establishment of the Spanish March (*Marca Hispanica*) did not foster lasting political stability capable of guaranteeing adherence to the mandates of the region's traditional legal system based on the Visigothic Code. The divine mandate of Visigothic kingship had been lost, and the effectiveness of a Carolingian surrogate was questionable.[1] Soon after Louis' ascension to the imperial throne in 814, the lands of Catalonia and Septimania became embroiled in the rebellions that would plague the Frankish world for much of the ninth century. In this environment, judges encountered cases in which disputants of roughly equivalent rank and resources faced off, and others carefully planned defenses for future conflict. Given geographic and political constraints, regular appeal to distant kings proved unrealistic. This was the world in which the *condiciones* strategy emerged.

[1] Cullen Chandler, *Carolingian Catalonia: Politics, Culture, and Identity in an Imperial Province, 778-987* (Cambridge, 2018), 25, explains the Franks permitted southern lands to continue use of Gothic law: a concern for the region as early as Pippin III's annexation of Septimania in 759. As Michel Zimmerman, "Origines et formation d'un etat Catalan, 801-1137," in *Histoire de la Catalogne*, ed. Joaquim Farreras and Philippe Wolffe (Barcelona, 1982), 237, suggests, Pippin III's conquest of Septimania was a model for the later conquest of Catalonia. Chandler, *Carolingian Catalonia*, 49, explains that Pippin desired the passivity of province, necessitating the support of its "Gothic" aristocracy. The allowance of the Visigothic Code was a central tactic of maintaining control in the region. Respect for local practice as a strategy of rulership has been discussed at length by Jennifer Davis, *Charlemagne's Practice of Empire* (Cambridge, 2015), 172-73. "These policies did not aim at completely reworking how power was exercised locally; they aimed at reworking the ultimate goals of power and how local power related to central power" (quotation at 172).

In search of the authority necessary to invigorate rulings, judges melded the community belief in sacred space with requirements for oath exaction found throughout the code. The change was not that oaths were suddenly a feature of law, but rather the context of their exaction and the heightened emphasis on the power of church space and the altar. This legal subroutine, the *condiciones* strategy, allowed officials to use the impression that churches had on assemblies to convert the consensus about the power of the space into a consensus about the justness of a ruling. Thus, in addition to legal and spiritual consequences for would-be violators, community pressure became a helpful adjudicatory tool. This was achievable by gathering witnesses and litigants around the altar to call forth the very powers on which they relied for salvation. When circumstances warranted, God and his saints, invoked at consecrated altars, came to supplement the waning royal authority at the center of Visigothic law.

This chapter explains the early history of the *condiciones* strategy. Setting the stage, Section One addresses the judicial landscape of the Visigothic kingdom, specifically the legal uses of churches and the earliest evidence for the *condiciones sacramentorum* oath structure. Parallel to this analysis, the section also occasions a look at the importance of royal oversight in the system before the conquest. These discussions help define a legal culture that we may contrast with what is evident in ninth-century dispute records. Section Two outlines foundational examples of the *condiciones* strategy used in its two contexts: in contentious disputes and as a preparatory measure in non-contentious hearings. I then turn to define the most common circumstances of use within each of these contexts. Section Three explains how judges found the strategy useful when litigants of relatively equal influence disputed. Section Four explains how non-contentious uses show judges and clients jointly worrying over the potential for conflict and preparing for it.

Date range	782-849	850-899	**Late eighth and ninth century total**
All judicial cases	14	34	**48**
Disputes featuring the *condiciones* strategy (with percentages of above column)	6 (43%)	13 (38%)	**19 (40%)**

Figure 2.1. Frequency of the *condiciones* strategy in the long ninth century

Although the exact moment of the strategy's inception is unknown, its emergence likely dates to the decades straddling 800. Two late eighth-century cases may constitute early uses, though internal context within those records makes confirmation difficult.[2] In order to account for these records, this chapter covers what amounts to a long ninth century in the region, one that includes Charlemagne's establishment of the Spanish March. As section two details, 817 and 834 mark the earliest *clear* uses of the strategy.[3] Remaining conservative about what constitutes an example, I count nineteen cases during this period, amounting to 40% of surviving judicial records for the century (see Fig. 2.1).

This figure, however, merits a caveat concerning ninth-century documentary sources. Jonathan Jarrett explains how the balance of diplomatic genres surviving from this century has been distorted by the loss of many archives and different levels of preservation between counties.[4] We must also contend with the fact that many records come from later copies.

[2] Jean Pierre Cros-Mayrevielle, *Histoire du comté et de la vicomté de Carcassonne* (Paris, 1846), docs. I: 2 and 3 (at 4-7). Nathaniel Taylor, "The Will and Society in Medieval Catalonia and Languedoc, 800-1200" (Ph.D. Diss., Harvard University, 1995), 106-07, notes that, beginning in 791, there are "some dozen judicial charters with the incipit '*condiciones sacramentorum*'" surviving from Languedoc and Catalonia into the ninth century. These records precede a tenth-century revival of the testamentary form. This occasions his discussion that there are sporadic *condiciones sacramentorum* records that do not appear to be testamentary in nature during the ninth, tenth, and eleventh century.

[3] Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomatic, segles IX-XI* (Barcelona, 2018), 2, 4.

[4] Jonathan Jarret, "Comparing the Earliest Documentary Culture in Carolingian Catalonia," in *Problems and Possibilities of Early Medieval Charters*, ed. Jonathan Jarrett and Allan Scott McKinley (Turnhout, 2013), 89-91, 93, 96, reports preservation disparities between the counties of the region (at 93, 96). The counties of Pallars,

Numerical figures and percentages given in the following pages must be taken with due consideration of this evidentiary reality. Yet, we may proceed. A close reading of cases reveals a shift: courts synthesizing codified law and liturgically-influenced ritual to foster stable dispute outcomes. While issues of source-distortion merit caution concerning the extent of this change, it is clearly evident in the choices courts made. When accounting for lost archives, the 40% figure may well be lower, revealing that the strategy was never common. It was a ritual action selected for its strategic benefits in particular circumstances. But, as we will see, the *condiciones* strategy was an innovation to legal practice and did not foster uniform confidence for all judges. Thus the anxieties and challenges some courts faced must be part of any telling of the strategy's history.

This chapter establishes a baseline for what the *condiciones* strategy was, its deployment in court, how officials understood it, and signs of potential risks associated with it use. Ultimately, these inquiries—pursued using our judge-centered approach—reveal the ninth century as a time of transformation and creativity. This was not the collapse of an older tradition, but the addition of normative conceptions of sacred space that courts used to strengthen that tradition.

2.2. Space and authority in Gothic law

The *condiciones* strategy was not simply the use of churches in law; it was their use within a belief structure that emphasized them as real sacred spaces. In this sense, the subroutine

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Ribagorça, and Urgell dominate the corpus. Empúries and Rosselló are poorly represented because of the loss of the archive of Sant Andreu de Eixalada in the flood of 877. The southernmost counties of Barcelona, Osona, and Manresa produced little before the closing decades of the century. Girona presents unique inconsistencies, given that royal documents were preserved to the exclusion of other genres. For the entire region, Jarrett shows that half of the corpus of surviving records comprises sales. Dontations and precepts are about evenly represented. Other types, including judicial documents, do not constitute a significant proportion of the corpus. He counts 37 court records, distinguished from the 7 testamentary records (Jarrett's table at 90). The *JRCCM* collection reports a slightly larger number, with 48 total cases. See Fig. 2.1.

did not exist during the time of the Visigothic kingdom. Emerging at the turn of the ninth century, its practice resulted from challenges judges faced enforcing the Visigothic Code law under Frankish rule. However, it was not wholly divorced from what had come before. The strategy was an extrapolation of antecedents from earlier centuries, and legal uses of churches that judges redefined under liturgical frameworks that were becoming popular as the region's cultural ties with the north deepened. Therefore, it is necessary to examine how altars and churches featured in Iberian legal acts before the Islamic invasions of 711. While such examination shows precedent for the utility of churches in law before the kingdom's fall, the understanding of space seen in the region at this time was more symbolic (or at least less central to the act) than it would be in *condiciones* cases (and *dotalia*) after 800. The non-real, metaphorical conception of sacred space conveyed in Visigothic era sources together with the prominence of royal authority in the legal system of the time together help describe a legal culture that did not have need for doorways to Heaven. This contrasts with what we find in the ninth century *dotalia* and disputes, recommending that we see the *condiciones* strategy as a product of that later period. It was not a continuance of earlier practice simply obscured by a dearth of sources.

2.2.1. The use of oaths, altars, and churches in Gothic Iberia

As the previous chapter showed, the real conception of sacred space developed over many centuries. It did not take hold at the same pace, or with the same dominance, in all regions of the Latin West. The ninth century was a time of debate and intensification of the real conception. This makes discerning how church spaces were viewed on the Iberian Peninsula at the time when the Visigothic kings were promulgating the code difficult. Our chief sources are the Visigothic slates, a formula for the *condiciones sacramentorum*, discussions of oaths in the

code, and to a lesser extent the Councils of Toledo.[5] This evidence showing how people used altars in law, at least from the perspective of those who composed our records, suggests they primarily sought their symbolic weight as reminders of one's position within the Christian community. The functional interplay of sacred matter and space, so essential to the community belief in sacred space, evident in *dotalia* after 800, was not yet fully articulated.

The first mention of the use of sacred space in a legal context appears on a fragmented slate tablet, known as Slate 39. Dated to 589, it details lawful ownership of horses. Beyond featuring ritual action in a church, the slate presents the earliest appearance of the words *condiciones sacramentorum*:

> *Condiciones sacramentorum ad qua[s debea]d iurare Lolus ess vendinatione Eunandi, Argeredi, vicariis, Ra[…]ri, Vviderici, Argiuindi, Gundaci iudicib(us) ad petitione Basili iurare devead Lol(us) propte[er] caballos quos mutaverunt: Iuro p(er) Deum rem homnipotenten et Hio Xptum fium ei[us] p(er) ec <u>per quator evangel[ia super] positis ante is condicionib(us) in sacrosancto altario sancte S[…]</u> … Dei [ira Dei Pa]tris ad infra dicende[t ut videntes omnes] pertimescan essenplo. Factas cond[iciones…] anno fideliter tertio regni glo(riosissimi) d(omni)ni nos[tri Reccaredi regis?] Euandus as condiciones a nouis ordinatas s(ub)s(cripsi). (signum). Ra[..rus] Argeredus as condicionib(us) s(ub)s(cripsi). (signum) sign[um] Vividericus in as condicionibus s(ub)s(cripsi). A[rgiuindus].*[6]

[5] Rachel Stocking, *Bishops, Councils, and Consensus in the Visigothic Kingdom, 589-633* (Ann Arbor, 2000), 1-3; and José Vives, Tomás Marín Martínez, Gonzalo Martínez Díez, eds., *Concilios hispano-romanos y visigodos* (Barcelona, 1963), Tol. IV, c. 75 (at 217-22); Tol. VIII, c. 2 (at 268-77). While oaths feature in conciliar legislation, they are not specific enough about means of exaction to facilitate the same level of scrutiny as other sources from this period.

[6] My emphasis. Isabel Velázquez Soriano, ed., *Las pizarras Visigodas: Entre el latín y su disgregación. La lengua hablada en Hispania, siglos VI-VIII* (Burgos, 2004), 210-19 (Pizarra 39; dated ca. 589); Manuel Díaz y Díaz, "Un document privé de l'Espagne wisigothique sur ardoise," *Studi medievali* 1 (1960), 25-71. This is not the only slate to mention an altar. Pizarra 127, (at 422-26), from Salamanca was composed at some point in the seventh century. Its poor state of preservation makes it difficult to interpret the exact role the altar played. However, given that it is largely contemporaneous with the code's inception, it is reasonable to guess that it conforms to understandings of altars communicated by the law.

This heavily worn text displays the basic structure of the oath publication that became the framework for testamentary documents, as discussed by Taylor.[7] The structure of Slate 39 is close to that seen in dispute documents after 800. However, the slate presents key differences, suggesting its composition and use under a different mindset. Later episodes of the *condiciones* strategy frequently depict witnesses swearing *at* or *on* an altar, often with the accompanying mention of relics and the surrounding church itself. Slate 39, however, stresses that the oath occurs, "by the four Gospels which are placed before these publications on the consecrated/holy altar of Sant S…" (*per quator evangel[ia super] positis ante is condicionibus in sacrosancto altario sancte S…*). The slate-scribe makes a careful distinction: the object empowering the oath is not the altar, but rather the Gospels, with the former being the location of scripture. While the word *sacrosancto*, describing the altar, suggests a degree of prominence granted to the structure, it is not the cause of the transformation. This point is worth underscoring with a comparison.

We may contrast the passage from Slate 39 with a later text from Judge Bonhom's "Rite of the Guarantor" text, in which he explains, "by this place of the veneration of the holy Virgin Maria whose basilica is located next to the house of Sant Pere of the see of Vic, above whose consecrated/holy altar we bear these publications with our hands and join together to swear."[8] In sharp contrast to the key line in Slate 39, in Bonhom's document not even relics at the altar receive mention.[9] Bonhom was quite comfortable with the altar and church serving as the

[7] Taylor, "The Will and Society," 82-84.

[8] *JRCCM* 143: "Per hunc locum veneracionis sancte Marie Virginis cuius baselica sita est iusta domum Sancti Petri sedis Vico, supra cuius sacrosancto altario has condiciones manibus nostris continemus vel iurando contangimus."

[9] The presence of relics in this case is possible, but not confirmed. Given the Assumption of Mary, corporeal relics were not available. Yet, secondary relics existed. A tenth-century episode of the *condiciones* strategy notes their presence at a church in the province. See *JRCCM* 59: "Iuramus nos supradicti testes, in primis per Deum Patrem omnipotentem et per Ihesum Christum eius Sanctumque Spiritum, qui est in Trinitatem unus et verus Deus, sive per reliquias sancta Maria Virginis, in cuius honore basselica sita est in territorio Impuritano, in villa Mocoron fundata

operable objects underwriting the oath and sourcing God's authority. While this emphasis from a key case is evident in the ninth century (see below), Slate 39 presents a different understanding of church space and altars.

The slate-scribe did not stress the power of the church or its altar. He did not find the location to be of prime significance. Rather, the scribe emphasizes objects kept within that space: the Gospels. Perhaps these codices were viewed as sacred matter. We cannot fully rule this out. Yet, context gathered from additional sources challenges this position. It is most likely that they were considered referential, rather than true sacred matter. In Slate 39, it is not the Gospels' presence as tangible codices that grant them the power to shape human action. That result is accomplished by their abstract contents, forming the foundational ideas of Christianity. Orthodox belief is what demonstrates one's membership into the community of the faithful; this union manifests divine power and normative force when it comes to Slate 39's report of the oath. Though commonsensical, it cannot be overstated that belief is immaterial. Physical interaction with matter was therefore symbolic: appearance of the Gospels marks a *credo* of sorts, reminding the oath-taker of the commitments made to Christ as one member of a greater community. The *sacrosancto* altar supports that *credo,* perhaps adding gravity, though not itself the instrument of empowerment. In Slate 39, the church and its altar do not constitute a place expressed as distinct from mundane space.

This interpretation of Slate 39 need not stand on its own. The formula for the *condiciones sacramentorum* received elaboration in the so-called *Formulae Wisigothorum*.[10] In this template,

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esse dinoscitur, supra cuius sacrosancto altario has conditiones manibus nostris continemus vel iurando contangimus." For another example, see *JRCCM* 79bis.

[10] Eugène de Rozière, ed., "Conditiones sacramentorum," in *Formules wisigothiques inédites, publiées d'après un manuscrit de la Bibliothèque de Madrid* (Paris, 1854), 27-28. "Conditiones sacramentorum, ad quas ex ordinatione

the oath-taker swears by numerous religious authorities. Among the many sentences beginning with *iuramus*, we find one explaining that the oath-takers swear by the "four holy Gospels and the sacred altar of the Lord and that martyr, where we extend these raised publications with our hands." It merits stress that this sentence conveys merely one authority out of many. Other powers referenced include: the lord's blessing, Cherubim, Seraphim, the sacred mysteries, the sign of the holy cross, the Last Judgment, the bodies of the martyrs, the heavenly virtues, Holy Communion, and other manifestations of God's power. In the same vein as the orthodox belief emphasized in Slate 39, it is important to note that many of these authorities are non-physical/abstract concepts. No effort is made to distinguish the intangible from the material authorities mentioned. This suggests the invocation of the altar and Gospels is once more primarily symbolic. Like in Slate 39, the altar (hosting the Gospels) is not a standalone power. This argument is strengthened when we expand our analysis beyond a documentary context and

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illorum iudicum iurare debeant: Iuramus primum per Deum Patrem omnipotentem et Ihesum Christum filium eius Sanctumque Spiritum, qui est una et consubstantialis magestas. Iuramus per sedes et benedictiones Domini. Iuramus per Cherubin et Seraphin et omnia Dei secreta misteria. Iuramus per signum sanctae et venerandae crucis, quod ipsius fuit patibulum. Iuramus per tremendum atque terribilem futuri iudicii diem et resurrectionem Domini nostri Ihesu Christri. Iuramus per omnia sacra corpora gloriosasque martirum coronas omnesque virtutes coelorum vel haec sancta quator evangelia et sacrosancto altario domini nostri illius martiris, ubi has conditiones superpositas nostris continemus manibus. Iuramus per dexteram Domini, qua sanctos coronat et impios a iustis separat eosque mittit in camino ignis inextinguibilis, ubi erit fletus et stridor dentium. Iuramus per cardines coeli et fabricam mundi, quae ipse virtute verboque fundavit. Iuramus per sacra misteria et sancta sacrificia. Iuramus per omnes coelestes virtutes et cuncta eius mirabilia. Iuramus per sanctam communionem, quae periuranti in damnatione maneat perpetua, quia nos iuste iurare et nihil falsum dicere, sed nos scimus inter illum et illum hoc et illud in tempore illo actum fuisse. Quod si in falsum tantam divinitatis magestatem ac deitatem taxare aut invocare ausi fuerimus, maledicti efficiamur in aeternum; mors pro vita nobis eximetur et lutus in consolation assiduus descendet igne rumphea coelestis ad perditionem nostrum; oculi nostri non erigantur ad coelum; lingua nostra muta efficiatur; omnis interiora viscera nostra obdurentur et arescat atque in breves dies spiritus diaboli periurantem arripiat, ut omnes periuri metuant et sinceres de tam celeri Domnini vindicta congaudeant; et quemadmodum descendit ira Dei super Sodomam et Gomorram, ita super nos extuantibus flammis eruat mala ac lepra Gyesi, vivosque terra absorbeat, quemadmodum absorbuit Datan et Abiron biros sceleratissimos, ut videntes omnes supernae ire Dei iuditium talibus hominibus terreantur exemplo. Late conditines sub die illo, anno illo, era illa. Ille vicem agens illustrissimi viri comitis illius has conditiones ex nostra praeceptione latas subscripsit. Ille has conditiones nostra coram praesentia latas subscripsi."

look at the use of altars in other sources. I turn to an important measure in the code concerning the prescribed manner for Jews to convert to Christianity.

In *LV* XII, Titles 2 and 3, the code addresses laws concerning Jews. The code is inherently hostile, but does allow for conversion in *LV* XII.3.15. This measure is deeply concerned with the confession of faith at the center of the conversion rite. Thus, as in Slate 39, orthodox belief was the key feature of the oath that *conversi* swore. First, it was necessary that Jews sign a written testament of their conversion (as covered in *LV* XII.3.14). The code provides the text of this statement. It details the aspects of Christianity established in the New Testament. This marked the portion of the scripture to which the *conversus* previously did not adhere, and what would amount to the pivotal change of their religious beliefs. The next measure, however, explains the role of that document in the oath to be sworn.

The oath episode in *LV* XII.3.15 amounts to an additional expression of the *conversus*' commitment to conform to the Christian faith, leading up to the final action at the altar: the oath itself. The heading for this measure—"*Condiciones sacramentorum, ad quas iurare debeant hii, qui ex Iudeis ad fidem venientes professions suas dederint*"—immediately places the oath in the same arena of ecclesiological reflection as Slate 39. Beyond the words *condiciones sacramentorum*, the conversion oath shares an important feature with the oath validating the horse-exchange: the centrality of the Gospels to swearing. The *conversus* explains: "Indeed, I swear by all the celestial virtues and by all the saints and by the relics of the Apostles, and by the

four Gospels, under which these published oaths (*conditionibus*) have been placed on the consecrated/holy altar of this saint, and which I extend and touch with my hands."[11]

This sentence comes at the end of a long recitation of principles by which the *conversus* swears. He opens with an invocation of God the Father and then proceeds to swear by all the authority figures of the Bible and by key principles, such as Jesus' resurrection and the Trinity. Ultimately, however, it is the accounts related in the Gospels that are the centerpiece of the oath. The code stresses the Gospels because they communicate the beliefs that distinguish Christianity and Judaism. The four books correspond to the text of the published oath the *conversus* had made, in fulfillment of *LV* XII.3.14. The Old Testament aspects of the spoken oath in *LV* XII.3.15 are not included in the written statement. Thus, there is an intended similarity between the Gospels and the document, explaining why the *conversus* placed the latter atop the former. Put simply, his oath is empowered by the beliefs at the core of Christian identity and the bedrock of the community of believers. Those intangible ideas are the conduit of divine authority, rather than the tangible codices or the document themselves.

Yet, the relics suggest a moment of transitional thinking. Relics were sacred matter by this point, but given the discussion of *LV* XII.3.14 and XII.3.15, their power may have been considered supplementary in this issue of conversion, grounded firmly in issues of belief. Indeed, it is possible that they were also referential in nature. It is not a coincidence that the relics appear in the same sentence as the Gospels and placement of the statement. One explanation is that they were simply present along with the altar on which the codices and statement rested, this being proximity by circumstance. Another interpretation, however, aligns with the point that *LV*

[11]*LV* XII.3.15: "Iuro etiam et per omnes celestas virtutes omniumque sanctorum et apostolorum reliquias, sive et per sancta quattuor evangelia, que superpositis his conditionibus in sacrosancto altario sancti illius, quod manibus meis continuo vel contingo."

XII.3.15 conveys. In this context, the presence of relics references a model for how to *live* one's *credo*. The saints serve as exemplars for orthodox Christians and encourage believers to reflect on what sacrifices are necessary to preserve the faith.[12]

What of the altar? Did the structure itself play a role? Did the church building? The Gospels and altar objects were not brought to the episcopal place, the home of the *conversus*, or any other place. The church is the expressed location of the conversion, though *LV* XII.3.15 does not explain why. A potential explanation, however, further aligns this action with the metonymic conception of churches: locales of community gathering. The reason for this act's performance in a church likely owes to a desire to broadcast conversion and a recasting of the *conversus*' identity. The altar rests at the heart of the church. An oath sworn there was a visible act, made at the gathering point of true Christians. Thus, the altar and church facilitated the publicizing of a commitment made before community members. Understood in these contexts, Slate 39, the *condiciones sacramentorum* formula, and *LV* XII.3.15 can be seen as products of the Late Antique conceptions of the metonymic church, orthodoxy, and community. Yet, one final source discussion emphasizes that we may identify early steps in the changing conceptions of sacred matter and space; the prioritization of intangible belief over physical matter was not totalizing.

The code offers some evidence that altars stood in otherized space. However, the exact condition of the space is uncertain, perhaps having more to do with political and social messaging, derived from the Theodosian inheritance at the core of the Visigothic Code. These indications of a potential conception of sacred space pertain to the principle of invoking sanctuary. A measure found in *LV* VI.5.16 addresses the possibility that murderers might seek

[12] Jocelyn Hillgarth, "Popular Religion in Visigothic Spain," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford, 1980), 34-43.

refuge *ad altare sanctum*. The law explains that such action does not release the murderer from guilt and he still bears responsibility for the crime. Yet, the king's officers may not remove him from the church without consent of the priest:

> If the criminal should happen to flee to a holy altar, his pursuer may not presume remove him without consultation of the priest, yet with consultation of the priest having been given *and an oath exacted* that the criminal is likely to be publically condemned to death, the priest ought to remove him from the altar and throw him out, and thus, he who pursues the criminal may apprehend him, however, he who was ejected from the church shall not suffer pain of death, rather the sight of his eyes shall be totally extinguished.[13]

The law demands an oath that the person at the altar is indeed a criminal. With such an oath sworn, *LV* VI.5.16 compels the priest to expel the perpetrator. However, even after the expulsion, the officers may not execute the culprit; his protected status continues after his departure from the church space. Instead, he ought to be blinded or placed at the mercy of the victim's family.

This measure seemingly challenges the idea that the altar—as the resting space of scripture—reflects orthodox belief. The criminal does not flee to the Gospels. The code is explicit: he takes refuge at the altar (*contigerit eum ad altare sanctum fortassee confugere*). Did the altar offer protection because it was a source of sacred power by merit of consecration, or was it because the structure stood in a locale of collective worship? Panning out to address the issue of sanctuary in Late Antiquity more broadly, we may find answers. In so doing, we see that *LV* VI.5.16 is another example of the church as a representation of the community, thereby reinforcing its symbolic value.

[13] My emphasis. *LV* VI.5.16: "Si contigerit eum ad altare sanctum fortasse confugere, non quidem presumat eum absque consultum sacerdotis persecutor eius abstrahere, consulto tamen sacerdote ac reddito sacramento, ne eundem sceleratum publica mortis pena condemnet, sacerdos eum sua intentione ab altario repellat et extra eorum proiciat, et sic ille, qui eum persequitur, conprehendat; cui ab ecclesia eiecto non alias mortales inferat penas, nisi omnem oculorum eius visionem."

The origins of sanctuary are unclear. Perhaps it was a pagan custom adopted by Christians; there are certainly examples of people finding refuge at temples. What is clear, however, as Karl Shoemaker argues, is that sanctuary legislation in the late empire was less about the supernatural and inviolate nature of church spaces, and more about the (1) princely monopoly on justice and mercy and (2) bishops' responsibility for the stability of their communities.[14] Shoemaker stressed the writings of Augustine and John Chrysostom. These writers believed that centers of worship held symbolic value as morally clean space. Churches were void of the pollution of pagan society because wicked acts were not permitted within their precincts. It was the duty of bishops to protect the integrity of such spaces. That duty included ensuring their availability for sanctuary from lay authorities, in fulfillment of the clergy's role as earthly intercessor. Beyond this conception of intervention, Shoemaker also stressed the understanding of the church as a place for atonement and penitential display.

In the fourth through sixth centuries, emperors worked to legislate sanctuary through edicts in the *Codex Theodosianus* of 438 and the *Codex Justinianus* of 535. Fugitives were afforded asylum beneath the statues of emperors, thereby referencing and reinforcing the emperor's position as font of justice and mercy. Given the connections between the Theodosian Code and the Visigothic Code, it is unsurprising that measures like *LV* VI.5.16 appear in the former.[15] The king simply substituted his role for that of the emperor. In either case, the

[14] Shoemaker, *Sanctuary and Crime*, 10, 16-20, argues that sanctuary legislation helped consolidate the power of lawgivers and limit the scope of blood feuds. Iogna-Prat, *La Maison Dieu*, 43-44, addresses the issue as well, arguing too that it was the church's place as a locale for the consecration of the sacred mysteries that merited asylum, not the building itself. Barbara Rosenwein, *Negotiating Space*, 34-41, differs, arguing that in this period many altars and church buildings were coded as sacred, though the idea of sacred enclosure was not yet developed.

[15] Shoemaker, *Sanctuary and Crime*, 61.

legislation has less to do with conceptions of sacred space and more so to do with imperial/royal prerogative.

However, this political context should not be viewed in isolation. As discussed in chapter one, the sacralization of matter and space was underway by the time of the code's promulgation. We cannot know what additional associations were projected onto the measure. Ultimately, a clear answer concerning the quality of the church space in sanctuary episodes of seventh-century Iberia remains elusive without additional evidence. What can be determined, however, is that regardless of the associations elevating the prestige of altars, these structures were powerful and conditioned human action. Recognition that this power was connected to royal authority in the Visigothic period has value for discussion of the *condiciones* strategy, because, regardless of whether the kings envisioned altars as existing within sacred space or not, the more explicit connotation of altars' inherent sacrality was to come to the fore in the wake of the kings' disappearance. Thus, by the ninth century, judges saw these structures themselves as sacred objects imbued with holy power; the connection with royal power (kings being the earlier chief conduits of divine judicial authority) had vanished, allowing altars to exclusively represent the authority of God and saintly intercessors.

Reflection on the king's role and the implications of his absence following the collapse of the kingdom allows us to comment on the effectiveness of the Visigothic Code to actually create stability as we move toward the liturgical innovations of the ninth century, novel legal challenges, and the development of the *condiciones* strategy.

2.2.2. Authority in Gothic law before 711

The most important factor leading to the development of the *condiciones* strategy was the challenge ninth-century judges faced in sourcing sufficient authority to legitimate rulings and

foster investment in the courts. To understand the scope of this problem, it is necessary to establish the likelihood that the legal system functioned under the guidance of the Visigothic kings, an effectiveness jeopardized by their absence after 711. Proceeding requires caution, given that we lack the dispute records from this period that survive from later centuries.[16] This absence, mirroring challenges encountered when examining the place of oaths and altars, leaves the Visigothic Code itself.[17] Rachel Stocking showed that the maintenance of macro-level political stability ultimately failed.[18] This, however, need not be the final conclusion when looking at the efficacy of the law in disputes. There is reason to believe that as long as there was a king the law enjoyed the force of royal power and could be reasonably enforced by regional office holders, the counts, and their own subordinates. We begin with a brief description of the code's origins and its utility to its creator(s). This affords a view of how the law was *supposed* to function. I will then comment on the likelihood of its effective operation vis-à-vis standards outlined in the code.

[16] Collins, "Visigothic Law and Regional Custom," 86, shows that only fragments survive. For these, see Ángel Canellas López, ed., *Diplomatica Hispano-Visigoda* (Zaragoza, 1979), 119, 119a, 178, 192, and 229. Chandler, *Carolingian Catalonia*, 44, argues that despite limited Islamic acculturation in northeastern Iberia and the persistence of Christian administrative structures, ecclesiastical institutions suffered the brunt of the invasions and subsequent Islamic rule. This could be the reason for the dearth of surviving documents, as archives supporting ecclesiastical property holdings would have been a target.

[17] Faulkner, *Law and Authority*, 2-3, explains the shift away from reading the early medieval *leges* as prescriptive texts (an approach favored by the *Historische Rechtsschule*) in the wake of *The Settlement of Disputes*. He particularly highlights the impact of Patrick Wormald, "The *Leges Barbarorum*: Law and Ethnicity in the Post-Roman West," in Regna *and* Gentes*: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, ed. Hans-Werner Goetz, Jörg Jarnut, and Walter Pohl (Leiden, 2003), 21-53, which shows the priority given by early medieval *leges* to statements about the position of the king, the nature of the people subject to the law, and other ideological positions. Such a tone to the *Lex Salica* helps us understand the lack of citations to the text in disputes. Yet, Wormald himself acknowledges that this function within the Frankish cultural sphere did not correspond to that of the Visigothic, Lombard, or Burgundian polities. Given the great frequency with which the Visigothic Code was cited after 800, it is worthwhile to consider the practical application of the Visigothic Code prior to 711.

[18] Stocking, *Bishops, Councils, and Consensus*, 4-12, 118-44, 189-91, shows that a unique conception of consensus was an instrumental aspect of maintaining order alongside royal power. Bishops and councils were an important part of this, though she ultimately demonstrates it proved insufficient to foster stability in the kingdom.

Building on a Roman-derived legal inheritance based on the *Codex Theodosianus*, the *Codex Euricianus*, and the supplementary *Breviarum Alarici*, the first territorial code (applying to all peoples living in the kingdom) arose as a series of promulgations by King Chindasvind around 643/4, those of his son, Reccesvind, in 654, a final iteration under Ervig in 681, and minor revisions thereafter.[19] It expanded as ever more subjects were gathered under its purview. Its opening books reveal the central source of authority: the king as conduit for God's authority.[20] The monarch was the fulcrum of justice within the socio-political order. *LV* I.2.6 stipulates: "Indeed, the disposition of laws arises from the clemency of princes, from the disposition of the law arises the institution of morals, from the institution of morals arises the concurrence of citizens, and from the concurrence of citizens arises triumph over enemies."[21] These linked concepts lead to the king's guiding role in society. Of course, this sentiment was of tremendous political benefit to rulers.

[19] P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972), 21; P.D. King, "King Chindasvind and the First Territorial Law-code of the Visigothic Kingdom," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford, 1980), 131-35. Chandler, *Carolingian Catalonia*, 27, provides summaries of the code's evolution. In discussing the development of the code, Santiago Castellanos, *The Visigothic Kingdom in Iberia: Construction and Invention* (Philadelphia, 2020), 53, shows that Zeumer's edition (*LV*) has had a distorting effect on the field. That false sense of unity may mask diverse impressions of the law at various moments in its developmental history, particularly in terms of how measures and definitions taken from Roman law were handled by officials.

[20] King, *Law and Society*, 29.

[21] *LV* I.2.6: "Sicut ergo modestia principum temperantia est legum, ita concordia civium Victoria est hostium. Ex mansuetudine etenim principum oboritur dispositio legum, ex dispositione legum institutio morum, ex institutione morum concordia civium, ex concordia civium triumphus hostium. Sicque bonus princeps, interna regens et externa conquirens, dum suam pacem possidet et alienam litem obrumpit, celebratur et in civibus rector et in hostibus victor, habiturus post labentia tempora requiem sempiterna, post luteum aurum celestem regnum, post diadema et purpuram gloriam et coronam; quin pocius nec deficiet esse rex, quoniam, dum regnum terre relinquid et celeste conquirit, non erit amisisse reni gloriam, sed ausisse."

Yet, this politicization of the law need not have sullied the mechanics of the legal system itself, pulling judicial culture into the political maelstroms so prominent in narrative sources.[22] If the code was merely meant to advance the centrality of kingship in Visigothic politics, then Chindasvind's iteration would have sufficed. In other words, if the code did not have a *functionalist* grounding, then subsequent expansions would have been unnecessary because it had already presented its political messaging.[23] If such a message required re-emphasis, kings would have simply re-promulgated Chindasvind's code without significant expansions. A comparison is the history of England's *Magna Carta*. Following its first promulgation 1215, subsequent kings were obliged to re-issue the document in order to reiterate the principles it outlined. Despite the re-phrasing of terms, this was a symbolic gesture confirming royal obligations and baronial rights.[24] In contrast, by the promulgation of Ervig's iteration of the code in 681, only eighty percent of the text remained the same as the first iteration.[25] This suggests genuine effort to keep the code functional by re-tooling measures after almost four decades. This change was neither a complete reconceptualization of a derelict law code, nor a simple re-phrasing to update a political prop. It was living legislation undergoing expansion and clarification as need arose. In this context, we should entertain that the code's creators intended

[22] Ann Christys, "The Transformation of Hispania after 711," in Regna *and* Gentes*: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, ed. Hans-Werner Goetz, Jörg Jarnut, and Walter Pohl (Leiden, 2003), 225-26, explains that both Latin and Arabic sources describe significant internal turmoil within the Visigothic kingdom.

[23] Wormald, *Legal Culture in the Early Medieval West*, 1-43, explains the complex messaging programs behind early medieval, royal, legislative efforts. Indeed, for many rulers, this messaging took precedence over the practical application of the *leges*. Wormald (at 20-21) does note that the Visigothic Code is among the outliers in that courts cited its measures and the collection maintained its prestige and functionality into the Carolingian period.

[24] James Holt, *Magna Carta*, 3rd ed. (Cambridge, 2015), 314-34.

[25] King, *Law and Society*, 20-21.

for it to have an impact on justice in the kingdom. Beyond seeing a functionalist *intent* behind the Visigothic Code, there is reason to believe it enjoyed a significant degree of success in practice.

Delegation of royal judicial prerogative was an important feature of Gothic law, with bishops, counts, and judges assigned presidential or managerial roles in court proceedings (see *LV* II.1.13 and II.1.30).[26] Thus, even in lands further removed from the royal court, such as northeastern Iberia, delegation provided a proxy for the king's presence. Indeed, it is not hard to imagine that the judicial roles outlined in the code bore importance to the legitimacy supporting many magnates' hold on local power. This reminds us to not make too much of the political turbulence seen in the period's narrative sources, a consideration that must remain a factor of analysis in future chapters as well.[27] Even rebels at the end of the seventh century had incentive to acknowledge the code and ensure adherence locally. For example, Gothic law would have been useful to the rebel *dux*, Flavius Paulus (d. ca. 673). His enmity was targeted toward an

[26] Joseph O'Callaghan, *A History of Medieval Spain* (Ithaca, 1975), 66-67; Collins, "Visigothic Law and Regional Custom," 86, explains that the code provides a role for counts and bishops. The king delegated divinely granted authority to these officials. *LV* II.1.13 stipulates that no one may adjudicate cases except those who have been lawfully granted the authority to do so: "Nam et si hii, qui potestate iudicandi a rege accipiunt, seu etiam hii, qui per commissoriam comitum vel iudicum iudiciaria potestate utuntur, vices suas aliis, quibus fas fuerit, scriptis peragendas iniunxerint, licitum illis per omnia erit, similemque et ipsi, qui informati a iudicibus fuerint in iudicando, sicut et illi, a quibus determinandi acceperunt vigorem, habebunt in discernendis vel ordinandis quibusque negotiis potestatem." *LV* II.1.30 explains how bishop were to act as a check on iniquitous judges, dismissing corrupt rulings in favor of their own: "Quod si perversa contention iudex ipse permotus iniquum a se datum iudicium exhortante episcopo noluerit reformare in melius, tunc episcopo ipsi licitum erit iudicium de oppressi causa emitter, ita ut, quid a iudice ipso perverse iudicatum quidve a se correctum extiterit, in speciali formula iudicii suidebeat adnotari." In post-Visigothic disputes from the ninth through eleventh centuries, judges and bishops most often appear as tribunal presidents, while judges guide the business of the court.

[27] In the tenth and eleventh century, the *condiciones* strategy itself would face similar treatment. Rebels could flaunt comital authority while still participating in the tribunal structure that constituted the comital court. Historians must attend to context, identifying the potential pros and cons for litigants' participation versus non-participation (see Chapters 4 and 5). For a concise summary of the political challenges in the late Visigothic period, particularly issues surrounding the power of aristocratic families and problems of succession, see Ramon d'Abadal i de Vinyals, *Dels Visigots als Catalans*, ed. Jaume Sobrequés i Callicó, 2 vols. (Barcelona, 1969, repr. 1974, 1989), I: 59-62.

individual ruler, King Wamba (d. 680), rather than the concept of kingship or its sanction of the law. In fact, Paulus himself had royal aspirations, and broadcasting his fulfillment of royal judicial responsibilities would have helped him cement support throughout his powerbase in Septimania. It would be a mistake to assume that political intrigue and rebellion automatically rendered court proceedings ineffectual.[28]

Given comparatively sparse evidence for the period, it must be stated with caution, but may be stated nonetheless: the code before 711 was largely effective. Were the law to have been an abject failure from its inception, it would have not built up the clout to outlive the kingdom by nearly half a millennium nor been adopted by regions that the Visigothic kings controlled only briefly.[29] Nor should we consider it a mere ethnic marker.[30] As Chandler showed, issues of identity did not dictate legal adherence in lands that no longer experienced central authority.[31] The law was not a replacement for sovereignty; rather, adherence most likely owed to the actual utility of the code in dispute resolution. As long as the king existed and could deputize officials to hear cases, the law would maintain the weight of his authority and hold practical value.

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[28] For Flavius Paulus' rebellion and his attempt to make himself "King of the East," see Joaquín Martínez Pizarro, ed., *The Story of Wamba: Julian of Toledo's* Historia Wambae regis (Washington, D.C., 2005), 56-77. Much of the conflict between King Wamba and the rebels played out in the lands that would come to be the Province of Narbonne. For the conflict in context with the decline following the death of King Reccesvinth in 672, see O'Callaghan, *A History of Medieval Spain*, 49-50; Chandler, *Carolingian Catalonia*, 30-32. For the position of magnates and subordinates in the Gothic kingdom, see Castellanos, *The Visigothic Kingdom in Iberia*, 30-58.

[29] Collins, "Visigothic Law and Regional Custom," 104, notes the solidification of adherence to Gothic laws in peripheral areas, explaining, "It looks as if the grip of the *Forum Iudicum* and Visigothic judicial *formulae* was even stronger by the end of the first millennium AD than it had been at the time of the first compilation of the code, some three hundred and fifty years previously."

[30] Wormald, "The *Leges Barbarorum*," 23-28, shows that despite the ethnic character of Germanic law codes, kings readily legislated for all peoples living in their realms, following the Roman example.

[31] The use of the code has long been connected to questions of identity. Catalan-language historians, such as d'Abadal, *Dels visigots als Catalans*, 110-15, view the Visigothic period as a *Traditsionskern* for a Gothic identity that would persist, along with adherence to the code, up to the twelfth century. It formed the core of a subsequent Catalan identity. There has been recent pushback to this thesis by Chandler, *Carolingian Catalonia*, 28 n. 10.

Moreover, a dysfunctional legal system before the Islamic conquest would have spurred outside augmentation far earlier than the *condiciones* strategy of the ninth century. Approaches to repairing a flawed system would have differed substantially from later solutions. Though definitive answers are likely to remain elusive, these possibilities encourage us not to immediately discount Visigothic legislation as a failed attempt toward stability.

There were, however, consequences for grounding the authority of a law code on the relationship between the king and God. Indeed, ninth-century innovations suggest that the law lost much of its power after 711, in the kings' absence. The code fell into abstraction, and divergences of implementation and emphasis appeared between different regions of Iberia.[32] In the Province of Narbonne, it no longer effectively addressed certain needs that arose during disputes, providing only empty trappings of legitimacy to those invoking it. New sources of power were necessary to reinvigorate the text. The counts of the Carolingian and post-Carolingian period could preside over courts and did, but without royal sanction or a system of appeal to the king, implementation was always far from certain. As we shall see presently, case circumstances meant that some disputes were more affected by these developments than others. What is certain, however, is that we find examples of ninth-century judges, often in conjunction with comital and episcopal presidents, importing an external source of authority—external to the conceptual framework of the Visigothic Code—to buttress court rulings. That external source was in fact a strategic use of sacred space: the *condiciones* strategy. I argue that the history of the strategy during the subsequent three centuries outlines an effort by judges to make the code

[32] Collins, "Visigothic Law and Regional Custom," 85-86, showed the emergence of distinct legal traditions branching off of the originally even application of Gothic law prior to the Islamic conquests. An important contrast is Leon's requirement of the ordeal to substantiate oaths, while the lands of the Province of Narbonne did not feature such a measure.

functional once more, using principles largely antithetical to the temporal tone of the pre-711 history of Gothic law. This effort toward a functionalist resurgence is integral to the story of the region's legal history after the establishment of the Spanish March. It is to this narrative that we now turn.

2.3. The early history of the *condiciones* strategy

Map 4. Sites mentioned for ninth-century instances of the *condiciones* strategy

Two decades after Louis the Pious' conquest of Barcelona, the year 820 marked the political triumph of the Septimanian count, Gaucelm (d. 834). For decades, his chief rival in the Spanish March had been Count Bera of Barcelona (d. 844), and now that foe stood before a council at Aachen, accused of treason. Gaucelm had sent his lieutenant, Sanila (d. 834), to level the charge. Presently, the court afforded him the opportunity to prove his lord's case through judicial combat. With both men fighting on horseback, Sanila overcame Bera. Ultimately, Louis spared the disgraced count from execution and exiled him to Rouen, far from his powerbase in the march.[33]

This story depicts Barcelona's first Carolingian-appointed count, a man who could number himself among the most powerful lords of the Old Catalan frontier, toppled by the rivalries that characterized marcher politics during the first three quarters of the ninth century.[34] Bera's fate was not an isolated instance. Indeed, the Spanish March was subject to infighting between local magnate families, raids from Al-Andalus, and involvement in the political chaos of the Frankish world. Controversy also stemmed from the region's association with Adoptionism.[35] Scholars like Ramon d'Abadal and Michel Zimmermann saw such strife through

[33] Chandler, *Carolingian Catalonia*, 60-74, provides an adept summary of these events in context of both the march and the broader Frankish world. Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 45-48, shows that while the dual was enacted according to Gothic custom, it must be seen as part of the context of justice at the royal court. For this argument, see Aquilino Iglesia, *El proceso del conde Bera y el problema de las ordalías* (Madrid, 1980), 29-31.

[34] Gaucelm was at the center of much of the regional intrigue of the period, along with his brother, Bernard of Septimania (d. 844). Gaucelm was not only able to topple Bera, but also worked with Bernard to crush the rebellion of Bera's son Guillem (d. 827) and the mysterious power player, Aissó, in 826. For this story see Chandler, *Carolingian Catalonia*, 96-110. For a Catalan-language source summarizing ideas of Ramon d'Abadal, see Jordi Auladell, "Aissó i Guillemó, una revolta nacional a la Catalunya Vella del segle XI," *Fundació d'Estudis Històrics de Catalunya* (2009).

[35] John Cavadini, *The Last Christology of the West: Adoptionism in Spain and Gaul, 785-820* (Philadelphia, 1993), 71-72. The controversy surrounding Adoptionism (a Christological heresy in the eyes of the Frankish clergy) thrust Iberian theologians into the forefront of Frankish religious debate, drawing the ire of Alcuin of York, the papacy, and numerous other commentators. The position was declared heretical at the 794 Council of Frankfurt. The position

the lens of a Gothic *gens* casting off foreign rule.[36] Cullen Chandler more convincingly argues the march was just another theater of warfare in the ongoing revolts and controversies raging across the empire as Louis the Pious' hold on power deteriorated in the 820s. Its participation in northern controversies is unsurprising given its integration into the political and religious networks of the vast Carolingian realm.[37] This is the environment that generated the impetus for the *condiciones* strategy.

The involvement of the Spanish March in these broader struggles was coupled with pronounced instability in the region, turbulence that affected not just the dynamic between the king and his great subordinates (as we saw with Wamba and Paulus in the seventh century), but now also between local power-brokers *within* the march (as we find with Gaucelm and Bera and others). The almost permanent absence of the Frankish ruler is an important factor separating these political fractures from the struggles of the late seventh century. Seeing some of the period's well-studied judicial cases as episodes of the *condiciones* strategy allows us to better contextualize shifts in formulaic language and the insecurities presented by litigants and officials

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was particularly championed by the marcher bishop, Felix of Urgell (d. 818). In 792, Charlemagne condemned Felix and exiled him to Lyon.

[36] Ramon d'Abadal i de Vinyals, *Els primers comtes catalans* (Barcelona, 1958), 53-72; Michel Zimmermann, "La formació d'una sobirania catalana, 785-988," in *Catalunya a l'època carolíngia: Art i cultura abans del romànic, segles IX i X*, ed. Jordi Camps i Sòria, Eduard Carbonell i Esteller, and Montserrat Pagès Paretas (Barcelona, 1999), 43. Both scholars point to Bernat of Septimania's Gothic identity as a motive to create "an independent power in the ancient Gothic lands" (quotation at Zimmermann, 43). That said, Zimmermann's thesis demonstrates a more recent concern for nationalistic impulses in analyzing the wars between Pippin II of Aquitaine and his uncle, Charles the Bald, a struggle that lasted up to the defeat of Bernard of Gothia in 878 and the end of an independent kingdom of Aquitaine. Bernard, a lieutenant of Pippin, was the last to attempt outright secession of the south from royal authority. Following the Council of Troyes in 878 and the crowning of Louis the Stammerer, the southern *honores* were divided among different men. The chief beneficiary of this division was Guifré I the Hairy. Providing the strongest contrast to d'Abadal, Chandler, *Carolingian Catalonia*, 126-33, sees these events fully divorced from ethnic considerations. He attributes the strife to competition between delegated authorities in the region, each displeased with limitations placed on his power by local rivals.

[37] Chandler, *Carolingian Catalonia*, 62.

alike. In the lightly sourced world of the early Middle Ages, evidence of problem solving has the potential to define the shape and scope of the problem itself. A close reading of cases reveals that courts worried over the feasibility of appeals and whether the king's absence would hinder the royal channeling of God's authority into proceedings. The re-coding of earlier documentary practices at altars was a solution to which judges turned.

In this section, I address the development of the *condiciones* strategy as a legal subroutine. When assemblies required a greater sense of authority, judges exacted witness oaths called for in the code, but emphasized that performance within the churches that *dotalia* show were increasingly shaped by community belief in the special nature of sacred space. These supplementary sources reveal that the churches in this period had assumed a character distinct from the politicized conception expressed in the *Codex Theodosianus and LV* VI.5.15. Shoemaker's observation of princely prerogative connected to sanctuary and church altars disappears from view. The strategy granted judges access to community consensus to help buttress the force of rulings. Key cases featuring the two contexts of the *condiciones* strategy—in (1) non-contentious and (2) contentious tribunals—cases illustrates judges' concern for the political challenges gripping the region and the utility of sacred space to return authority to the code.

2.3.1. The emergence of the *condiciones* strategy and model uses

In order to explain the *condiciones* strategy's appearance and early success, we turn to individual cases, considering them against the backdrop of major events that affected the march. The first two examples come from 782 and 791.[38] The latter is terse. While it includes words

[38] Cros-Mayrevielle, *Histoire du comté*, 2, 3.

from *condiciones* oath structure, it lacks additional context with which to classify the legal action. The former is far more detailed, providing us with the course of a tribunal pitting Count Milo of Narbonne (d. post-782) against Archbishop Danielo of Narbonne (d. 798). The judges ask Milo if he can produce "*condictiones, aut recognitiones, aut judicium, aut testes*." When he cannot, the archbishop's mandatory produces witnesses for his side. Gathering in a church—if not already there—the witnesses provide their names, and the scribe explains, "Thus these men testified in the aforementioned judgment, before Count Milo, and swore this *serie condiciones* in the church of Santa Maria which is located within the walls of Narbonne."[39] The scribe provides no more information about the oath. Thus, these two eighth-century cases are challenging to classify as examples of the *condiciones* strategy, though their inclusion in the corpus cannot be ruled out. Moving to the next case, from 817, however, reveals more about what features of justice had changed in the region. I begin with this non-contentious circumstance, addressing how the judges may have approached the affair, before turning to a more nuanced and contentious example from 834.

2.3.2. The *condiciones* strategy before the *missi dominici*, 817

On 15 December 817, an assembly convened to collect an oath at the church of Sant Andreu de Borrassà, east of Besalú. The hearing was presided over by the *missi dominici* of Louis the Pious, who were also the archbishop of Narbonne and the bishop of Nîmes. Also present were judges appointed by the *missi* and the legal representatives of Bishop Gualaric of Girona (d. ca. 817/818) and Ragonfred, *comes palacio*. The bishop's advocate came forward to present eight witnesses who had participated in an earlier surveying of land at Bàscara, located

[39] Cros-Mayrevielle, *Histoire du comté et de la vicomté de Carcassonne*, 2: "Qui sic testificaverunt in supradictorum judicio, in facie Milone Comite, et serie condiciones hac juaverunt in Ecclesia Sanctae Mariae qui sita est infra muros civitatis Narbona."

just to the south. Now, they readily swore an oath that the property belonged to the church of Sant Feliu de Girona. Nathaniel Taylor notes the peculiarity of this action, primarily the recording of the oath using a Visigothic formula (in a non-testamentary context) before Frankish officials.[40] Placing this case within the context of the *condiciones* strategy helps us to understand that this was not on account of scribal convenience. There was more going on. The document hints at the convergence of two changes—one ritual, one political—that together define this hearing as an early non-contentious episode of the strategy aimed at helping the bishop maintain the property in perpetuity. Use of the strategy in this case constituted a supernatural solution to the question of who owned the Bàscara land and preemptive action to forestall future contention.

Beginning with the first change, the witness oath reveals a shift in emphasis that had emerged since the creation of Slate 39 and the Visigothic formulary. After introducing themselves, the eight men explain:

> We say these things by God the omnipotent Father, by Jesus Christ, his Son, by the Holy Spirit, which are together the one and true God, and in this place of veneration of Sant Andreu, founded in the village of Borrassà, in the territory of Besalú, above whose holy/consecrated altar we extended these publications (*has conditiones*) with our hands and each touch them in order to swear.[41]

They do not mention the Gospels, relics, or the numerous belief-based authorities (beyond the Trinity) prominent in Visigothic era sources. No mere documentary truncation, the altar was

[40] Taylor, "The Will and Society," 106-07, specifically notes this measure as one of the uses of the *condiciones sacramentorum* that has no connection to testamentary procedure. He explains, "This is interesting because it shows the adoption of a Visigothic diplomatic form in a Carolingian (Frankish) judicial setting; no doubt the scribe was more familiar with the Visigothic tradition than the *missi* sitting in judgment." Taylor's instincts about the scribe turning to a local documentary idiom are only part of the story. More may be said about this non-testamentary use of the *condiciones sacramentorum* oath procedure.

[41] *JRCCM* 2: "Dicimus per Deum Patrem omnipotentem et per Iesum Christum filium eius et per Spiritum Sanctum, qui est in Trinitate unus et verus, et ad locum venerationis Sancti Andree, que fundata est in villa Borraciano, in territorio Bisuldunense, super cuius sacrosanctum altare has conditiones manibus nostris continemus vel iurando contangimus."

their explicit focus. At this spot, the men extended a document outlining the bishop's claims over the structure, with each man touching the parchment (*vel iurando contangimus*), binding them to its contents. Within the framework of the understanding of real sacred space, the altar is the central point of transition between worlds. If this conception of churches was indeed active here, then the court was accessing the altar as a conduit of supernatural power. We see the same sense of spatial emphasis, not to mention language, inherent in Bonhom's later articulation of the Rite of the Guarantor. Further episodes this century reveal that such altered emphasis would become the norm, signaling a shift in thought that made the judicial actions of this century distinct to what had come before 711.

To understand the political change we must proceed with the witnesses' statement at the altar. They reveal that sometime in the past, the bishop claimed the land at Bàscara before Ragonfred, a northern lord whom Lluís To Figueras and Gabriel Roura described as a Frankish delegate sent south to help organize the area around Girona.[42] The 15 December witnesses had been present at Bàscara alongside Ragonfred, the judges, Donat and Ugabald, and eight other men who acted as witnesses that day. These earlier witnesses testified to the *villa* boundaries and swore an oath (*Nos vidimus testantes in omnibus... Et testificaverunt et iuraverunt…*). They then traversed the boundaries with the court, pointing out all that they knew, before Ragonfred was convinced enough to grant Gualaric the land. The record then abruptly transitions into a subscription list for the 15 December action. One further detail of note appears. In the list, the 15

[42] For a discussion of Ragonfred and his role in this case, see Lluís To Figueras, "La Girona carolíngia i feudal (segles VIII-XI)," in *El govern de la ciutat (I). De la Gerunda romana (segle I aC) a la Girona borbònica (segle XVIII)*, ed. Ajuntament de Girona (Girona, 2011), 95; and Gabriel Roura, *Girona carolíngia: Comtes, vescomtes i bisbes (del 785 a l'any 1000)* (Girona, 1988), 31.

December witnesses' oath is received by one Godald, likely the mandatory of Ragonfred (*Sig+num Godoaudi, qui hunc iuramentum recepi*).

The judge-centered approach allows us to read between the lines, and reflect on the political dynamic at play in this two-stage case. Yet, who were these judges? In the first hearing (sometime before 15 December 817) Ragonfred, an outsider, would have relied on local experts to help navigate legal norms. One hypothesis is that Donat and Ugabald helped the *comes palacio* in this capacity. This certainly seems to be the case for the judges advising the *missi* at the outset of the document (*et iudices qui iussi sunt de ipsos missos dirimere causas*). Perhaps those unnamed judges on 15 December were Donat and Ugabald themselves. Although the evidence does not let us know for sure, it is instructive to explore the implications of this possibility. This is an example of royal attention given to the region through the presence of delegates; Ragonfred and the *missi* together bore the weight of Louis' authority. In both circumstances these officials acted authoritatively, granting Bishop Gualaric's request. But our judges may have wondered what would happen when these officials departed the region. Would Girona's hold at Bàscara remain steadfast?

As judges, we can imagine that Donat and Ugabald knew the code (*LV* II.2.5) called for an oath in support of accepted testimony.[43] How did they interpret this call? Was the first oath sworn *in a church*? The document does not say. Nevertheless, we may be confident it was. If it had not been in a church, then we would likely see the bishop's mandatory later call back the

[43] *LV* II.2.5: "Quod ab utraque causantium parte sit probatio requirenda," "Quotiens causa auditor, probation quidem ab utraque parte, hoc est tam a petente quam ab eo, qui petitur, debet inquiri, et que magis recipe, debeat, iudicem discernere conpetenter oportet. Tamen si per probationem rei veritas investigare nequiverit, tunc ille, qui pulsatur, sacramentis se expiet, rem, vel si quid ab eo requiritur, neque habuisse neque habere nec aliquid de causa, unde interrogatur, se conscium esse vel quidquam inde in veritate scire nec id, quod dicitur, et illi parti, cui dicitur, commisisse; et postquam ita iuraverit qui pulsateu est, quinque solidos ille, qui pulsavit, ei cogatur exolvere."

original witnesses to swear at Borrassà, as their knowledge was first hand. Their oath at the altar would have been of greater gravity than that of the second pool. The mandatory did not call back *those* men. Rather, the objective on 15 December was to expand the number of ritual participants. Thus, it is plausible that Donat and Ugabald sought to combine a legal requirement with the power of sacred space in order to build an air of awe around Girona's tenure at Bàscara. While doing so may dissuade some future challenges, it could not guarantee absolute invulnerability. The strategy was more likely valuable as a means of entrenching local support and expanding the first witnesses' oath with additional ritual action. This would establish a chain of community resolve behind the bishop's position, validated before God in intercessional space. The weight of community pressure would ensure a stronger defense should a challenge arise. Bishop Gualaric seems to have seen wisdom in the strategy. In the second stage of the case, his mandatory called eight observers of the first oath to serve as witnesses themselves. At the altar, they too made commitments before God.

Thus, the scribe's use of the oath structure outside of a testamentary or recovery context was not about the scribe favoring a local documentary idiom for the Frankish-led court's actions. The oath structure and use of sacred space on two occasions served a pragmatic purpose. This case was non-contentious and Ragonfred was able to transfer the property to the bishop without incident at the first hearing. Yet, we find insecurity when we look at the judges' actions in tandem with the bishop's desire to bring forward the second set of witnesses. In uncertain times, and thinking of the future, the officials were planning for the worst. Doubling down on supernatural authority in sacred space was at the center of that effort. This case is an apt introduction into the political factors informing judges' decision to implement the *condiciones* strategy and how they hoped it could forestall disputes from escalating out of hand.

2.3.3. Searching for authority in the Narbonés, 834

The *condiciones* strategy remained viable in more volatile circumstances. An 834 case exemplifies this. The record, composed by a cleric called Boso, shows the centrality of action at an altar in effecting a final resolution after multiple attempts to litigate. It was an answer to unreliable temporal authority, both royal and local. Boso's document and description of events are dominated by the text of an oath sworn over the altar of the church of Santa Maria in Narbonne. The scribe begins with an explanation of how, in September 834, a local notable called Teudefred—defending his land tenure against the claims of another lord, called Dexter—submitted seven witnesses to a court presided over by a local viscount. The oath they swore opened with a formulaic statement virtually identical to that seen at Borrassà in 817.

> We, moreover, swear by the omnipotent father God, and by his son Jesus Christ, and the Holy Spirit, who are together the Trinity and true God, and through this place of veneration of Santa Maria, whose basilica is located inside the walls of the city of Narbonne, above whose sacred/consecrated altar, we extend these publications (*has condiciones*) with our hands and each touch them in order to swear, because concerning the *villa* of Fonts…[44]

Once again, contrary to Slate 39 or the *Formulae Wisigothorum*, the altar itself and the enveloping church are of prime importance. The altar constitutes the point at which divine forces become manifest and accessible for legal ritual. To best understand the oath's significance, we must place the case in its political context.

Following their opening, though still within the framework of the oath, the witnesses told of a decades-long disagreement over property holdings beyond the walls of Narbonne. At some

[44] *JRCCM* 4: "Iurati autem dicimus per Deum patrem omnipotentem et in Ihesum Christum filium eius Sanctumque Spiritum qui est in Trinitate unus et verus Deus, et per hoc locum venerationis Sanctae Mariae, cuius basilica sita est infra muros civitatis Narbonae, supra cuius sacrosancto altario has condiciones manibus nostris continemus vel iurando contingimus, quia de villare que vocant Fontes…" This oath leads directly into the account to which the witnesses swear as an oath confirming testimony.

point when Louis the Pious was still king of Aquitaine,[45] he recognized the *aprisio* claims of a Septimanian lord named Joan (Teudefred's father), who had then cleared land and built a *villa* at a place called Fonts.[46] Unsurprisingly, given Louis' frequent absence from the Narbonés, the king had not accounted for the local political landscape, as he was licensing Joan to build on land that was already claimed by the local count, one Sturmio.

This count immediately challenged Joan. The latter responded by offering a letter (*epistolam*) from Louis detailing the parameters of his tenure. Regardless of Sturmio's feelings on the matter, the count was unwilling to challenge the king's command and dropped the claim. Uncontested in his possession, Joan went on to clear the forest, build houses, and establish plots for cultivation. He dispersed these plots to key clients (each of whom the witnesses named) as benefices. The affair remained settled until Louis, having become emperor in 814, departed from

[45] Louis was King of Aquitaine from 781 to 814. Thereafter, he became emperor and the strife of imperial power struggles directed his attention elsewhere in Europe, drastically limiting his ability to apply direct attention to local property disputes.

[46] Put simply, *aprisio* was a claim to land ownership following one's clearance of wasteland. Beyond this, however, the place of *aprisio* in our understanding of landholding, law, and the political reach of the Frankish rulers has been subject to debate. Cullen Chandler "Between Court and Counts: Carolingian Catalonia and the *aprisio* grant, 778-897," *Early Medieval History* 11 (2002), 19-44, draws a connection between *aprisio*-holders and Carolingian interst in projecting power on the frontier through support of the *Hispani* (displaced Christian settlers from Muslim-held lands). He argues that *aprisio*, backed by capitulary legislation and in alignment with rules stipulated in the Visigothic Code, was a royal grant to *Hispani* with the aim of providing a military counterweight to supermagnates in the Spanish March. Jonathan Jarrett, "Settling the King's Lands: *Aprisio* in Catalonia in Perspective," *Early Medieval Europe* 18 (2010), 320-342, presents the most direct pushback against this idea. He shows that the connection historians draw between royal patronage of *Hispani* and the concept of *aprisio* owes to an assumption that finding references to both in the same sources implies conceptual linkage. Moreover, Jarrett shows that other concepts hastily connected to *aprisio* include the thirty-year property rule from Visigothic law and claims to immunity (at 324-34). He argues these false associations have influenced inaccurate chronologies for political and landholding developments in the ninth and tenth centuries (at 334-37). Divorced from this baggage, Jarrett provides a more colloquial definition of *aprisio*, emphasizing its local origins and subsequent adoption by court scribes. In its true meaning, it implies "no more than taking possession of wasteland with the intent to clear it for occupation." (quotation at 332). In its tenth-century usage, Jarrett shows that *aprisio* was a means to express that the advent of Frankish political control in the region had created a new slate for land tenure, invalidating previous claims and making way for new stakeholders (at 335). In practice, *aprisio* involved local people in search of new opportunity moving to unsettled land from a nearby base. Royal recognition—as seen in this 834 Fonts case—was just that: recognition. It was not a formal grant with firm legal implications blending Visigothic law and capitulary legislation.

the region and soon became embroiled in the chronic feuds with his sons and magnates that so defined his reign.

While the Frankish elite settled into the chaos of the 820s, a new count, called Ademar, came to power in the Narbonés. He challenged Joan's right to Fonts, likely disregarding Louis' letter. When the dispute could not be settled in Septimania, the parties traveled to the imperial court at Aachen for a ruling. Yet, if my estimation of the timeline for this case is correct, Louis was deposed or only recently returned to power following the second civil war of his reign[47] and the burden of adjudication fell to the palace judges (*iudices dominici*) and several counts acting as tribunal presidents. However, Joan had not traveled to Aachen alone. Thinking ahead, he brought witnesses with him.

We hear of what happened next from Teudefred's later witnesses in Narbonne. Continuing their oath, they explained that Joan's earlier witnesses at Aachen had "testified in the aforementioned court and sworn a series of publications (*serie conditiones hoc iuraverunt*) in the church of Saint-Martin which is located in Aachen."[48] The judges there appear to have ruled in favor of Joan, sending the parties home. Yet, despite imperial intervention—at least by Louis' delegated officials—Ademar's effort to gain Fonts continued in the Narbonés, with the count

[47] Deciphering the timeline here requires some guesswork, but is important to understanding litigants' motivations. Boso compiled the present document on 11 Sep. 834. This came only seven months after Louis had been restored to the throne on 1 Mar. 834. Several months would have been needed for the litigants to return from Aachen, for a renewed contention to have arisen, and for a tribunal at Narbonne to be organized. This would place the dispute at Aachen either before Louis had been returned to the throne or, just after his restoration. Either way, the emperor was preoccupied. It is therefore unsurprising that he did not appear in the account of the affairs in the imperial palace. The intervention of the emperor would surely have merited mention by Boso. That this does not come strongly suggests his absence. It is unlikely that the appeal at Aachen would have occurred years prior to the 834 tribunal at Narbonne. A resumption of the case by the losing side (in this instance the count) would have been most effective if raised quickly. Nevertheless, regardless of the exact date of the appeal at Aachen, preoccupation with other affairs from the time of Louis' marriage to Judith (of the Welf family) in 820 onward, would have rendered imperial attention to local affairs in the Narbonés in the region unrealistic.

[48] *JRCCM* 4: "Sic testificaverunt in supradictorum iudicio et serie conditiones hoc iuraverunt in ecclesie Sancti Martini, cuius basilica sita est in Aquis palacii."

likely attempting to take advantage of Joan's death and the passing of Fonts to his son, Teudefred.

This most recent threat to his family's tenure at Fonts (assumed by one Dexter) was the reason Teudefred now brought forth these new witnesses, whose oaths Boso so carefully recorded. They at last closed their account with the declaration that "today, by merit of law and justice, those *villae* with all that pertains to them and is adjacent to them ought to be held by Teudefred through the right of *aprisio* of his father Joan, rather than by benefice of the count, viscount, or any other man."[49] With this statement, Boso ends the document by reiterating the witnesses' assertion that their account was indeed in the form of both testimony and an oath sworn to God.[50] The scribe then provided the names of the witnesses and *auditores* in the subscription list.

An understanding of this protracted dispute as an early application (or series of applications) of the *condiciones* strategy requires contextualizing local events with the larger political and ecclesiological trends within the Province of Narbonne and in the broader Frankish world. To begin, it is important to scrutinize just how Boso chose to compose his record. The scribe saw his document as an oath publication occurring as the culminating episode of an extended legal battle. He opened with the words, *condiciones sacramentorum*, quickly listed those present at the church, and then encapsulated the entirety of the case history as part of the first-person oath of the witnesses at the altar.

[49] *JRCCM* 4: "Hodie per lege et iusticia ipse villares ab omne integritate cum omnes suos terminos et adiacentias eorum plus debet esse de Theudefredo per aprisionem patris sui Iohannem quam ad beneficio comitis vel vicecomitis vel de quolibet hominem."

[50] *JRCCM* 4: "Et ea quae scimus de hac causa iuste et fideliter testificamus atque iuravimus per supra adnexum iuramentum in Domino."

I argue that Boso and the court were attempting to establish a message to forestall future readers from carrying the case any further. When the reader examines the document, it is not the presidency of the viscount, dictates of the court officials, procedural maneuvers, nor any other form of human authority/action that stand out. Humans at Santa Maria's church in 834 are mere reference points, appearing as simple names in the introduction and the subscription list. Instead, Boso wished to draw the reader's attention directly to the oath as both the central feature of the 834 stage of the case and the framing device for the relation of all present and previous events occurring as part of the dispute. He was attempting to constitute incontrovertible truth. Generations later, perhaps as he wished, the only record of these events to survive did so solely within that quoted oath confirmed by Santa Maria at her altar. We must bear this in mind as we scrutinize the story the witnesses outlined, with special attention paid to how events supported the need for the structure that Boso employed.

The dispute opens with an invocation of royal authority, that of the king of Aquitaine. Indeed, this is quite in keeping with the ideology presented in the code (discussed above). Count Sturmio's assault on Joan's claim, likely occurring prior to 814, crumbled when faced with a lawful grant from Louis. The king was not present. Rather, his documentary proxy sufficed to influence events. This, again, is quite in line with the code's mandates (see *LV* II.1.13 and II.1.30). However, once Louis' attention was directed out of the region and the empire descended into a series of civil wars, local lords could more effectively resist such documentary proxies for royal power. We see this with Count Ademar's entry into the case.

It is reasonable to imagine that Ademar's demands were met with an initial attempt to resolve the matter locally. Any such mediation failed, however, and the parties agreed to appeal to Louis, now emperor. Their interest in doing so suggests they believed royal/imperial authority

was still considered a reasonable source of justice and was consistent with Gothic law. Nevertheless, circumstances were changing and they were learning a valuable lesson. While royal authority indeed remained a resource, it was no longer powerful enough to be used *in absentia*. Ademar would not be quieted by an old letter as his forebearer had been; Louis' authority could not be marshaled from afar. This becomes clear as events at Aachen unfolded. Louis does not appear in the witnesses' account of events at the capital. Surely, the direct participation of the emperor would merit both their and Boso's attention. Indeed, his intervention was the sole reason of the litigants' journey north. The imperial judges still ruled on the case and oaths were sworn (with Boso relating them in the local *condiciones* idiom of the Province of Narbonne). Nevertheless, his absence could have served as a pretext for resuming the case once the parties had returned to the Narbonés. That the case continued even after a ruling from this highest court reveals the ineffective nature of the appeals process itself. The significance of this is that further involvement of earthly powers in a meaningful way was not seen as a permanent solution. Boso even downplayed the role of the viscount as president. The only option available to the southern court was to invoke a higher authority than that of the emperor: Santa Maria and ultimately God. It is therefore, unsurprising that the scribe working on behalf of the court stresses that authority with the emphasis placed on the oath sworn by Teudefred's witnesses.

Boso also provides insight into how the courts understood the involvement of supernatural forces, and how connotations of oaths, altars, and churches had changed from those evident in earlier sources like Slate 39, the Visigothic formulary, and measures in the code. The power of the saints in their churches had achieved a heightened significance in the region's judicial culture; they had become supervisors of legal arguments recorded in documents presented to them during a ritual. This perception of saintly participation mirrors the

characterization of these figures in contemporary *dotalia*, particularly those describing saints as court advocates for humans at the Last Judgment. In the *condiciones* strategy, witnesses swore oaths directly before the saint's relics entombed in the altar. Yet, it is not incidental that the witnesses attend specifically to the altar, above which they extend the text of their oath, with each witness touching the parchment in order to swear. It was not merely their gesture and words that fulfilled the ritual. As this 834 case shows, the witnesses' elevation of the document describing the dispute's history and legal ruling in the negative space above the altar is an act that physically positions the text to be most legible to the saint and to God.[51] Before the gathered community, they call forth divine forces to approve of legal arguments and the case outcome. Would community members observing this action be more likely to support a ruling, knowing that a local intercessor approved? Court officials likely thought, yes. This action, and the community consensus it helped foster behind legal positions, supports the idea that altars stood at the center of real sacred spaces and held adjudicatory value. This is a well articulated example from early in the ninth century; by Bonhom's time, it would be considered a *ritum*.

Thus, this 834 case, building on what we saw in the 817 hearing at Borrassà, reveals a shift in the region's legal practice concomitant with the emergence of the community belief in sacred space discussed in the last chapter. Just as *dotalia* reveal that churches were understood as special locales for seeking salvation, dispute records show how the functional nature of these spaces encouraged judges to experiment with the power marshaled there, developing belief into a malleable strategy. This cultural change cannot be divorced from the ninth century as a time of political uncertainty, as Louis the Pious and his successors became less reliable as adjudicatory

[51] *JRCCM* 4: "Supra cuius sacrosancto altario has condiciones manibus nostris continemus."

resources. The idea that the law in the province was predicated on the king and human authority as the source of God's power was altered to include the securing of that same power through ritual means, such as oath exaction in Santa Maria's church. The growing emphasis on oaths, altars, and churches (previously supplementary features of the code) as centerpieces of procedure stands as evidence that royally-grounded Gothic law had begun to give way to a new way of conceptualizing the legitimacy and authority of tribunal proceedings. It was a novel mindset that granted greater attention to the normative value of ritual action taken in places of utmost community importance. With this foundation, we may explore how the *condiciones* strategy was used and experienced more broadly in the ninth century. Despite very few sources, the examples we do have present a pattern for the types of cases that most frequently warranted an implementation of the strategy. As we proceed, we stand to learn much from remembering our judge-centered perspective.

2.4. Contentious cases

The preceding case studies of the 817 Borrassà hearing and the 834 Fonts dispute together reveal the *condiciones* strategy used in its two contexts: the former preparing for conflict and the latter attempting to settle it. Courts in both situations convey a fixation with the authority-generating power of the altar to invoke divine assistance in law, compelling observers as to the gravity of the outcome through ritual presentation within sacred space. The next two sections build on these examples in order to discuss patterns in both circumstances. Moving forward, however, it is necessary to remember that the number of cases is small, and that the surviving records may be products of preservation biases at the institutions that cared for them.[52]

[52] Again, the warning of source distortion for the broader ninth-century documentary corpus provided by Jarrett, "The Earliest Documentary Culture," 90, 93, 96, merits consideration. This is particularly true for our case study

Of the nineteen examples from the long ninth century, only nine are contentious tribunals resembling the struggle over Fonts.[53] The remaining examples are preparations for potential conflict.[54] While patterns of use within these broader contexts are evident, resultant conclusions for the *condiciones* strategy in this century must remain hypotheses. Yet, I argue that such hypotheses provide us with our clearest readings of the dynamics at play in these documents, both on the individual level, and as a group. I begin with the contentious tribunals. We shall examine examples—largely representative of records from this grouping—in which the strategy was particularly successful. Then turning to the non-contentious episodes, I will discuss limitations officials faced as they struggled to predict what future challenges may face property claimants. The anxieties over effective deployment of the *condiciones* strategy will prepare further discussion of this phenomenon in the tenth century.

The ninth-century disputes featuring the *condiciones* strategy show that judges continued to face the authority sourcing problem stressed in the Fonts episode. The lack of effective royal appeal was pronounced in tribunals pitting local magnates against one another. In these situations, judges attempted to settle conflicts between regional power players of comparable resources and influence. These were neither small conflicts at the local level nor between a powerful lord and small holder, both circumstances we will encounter in tenth- and eleventh-century examples. On the contrary, some of the cases in question were between the very persons to whom the code explains the king ought to delegate legal prerogative: counts and bishops.

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from Empúries, *JRCCM* 7, 7, 8. The documentary survivals from this county are skewed by the loss of the records pertaining to Sant Andreu d'Eixalada (at 93)

[53] Cros-Mayrevielle 2; *JRCCM* 4, 6, 9, 13, 15, 16, 18, 21. *JRCCM* 22 may be seen as a continuation of *JRCCM* 21, and the exact context of Cros-Mayrevielle 3 is uncertain.

[54] *JRCCM* 2, 25, 26, 27, 28, 33, 43, 44.

Moreover, some situations also featured the presence of imperial officials, *vassi dominici*: figures that we do not find providing suffiencent authority to render ritual action unnecessary. Under such circumstance, the *condiciones* strategy was a tool at the disposal of judges. A case from the coastal town of Empúries in the summer of 842 is instructive and allows us to point to themes seen in other cases.

2.4.1. Dueling magnates in a time of civil war, 842

Three separate records together describe the course of events.[55] The dueling disputants also acted as joint presidents for the tribunal: Bishop Gotmar of Girona (d. 850) and the associate-count of Empúries, Alaric (d. ca. 844). At issue was whether Louis the Pious, through a precept, had granted one third of the pasture land and tolls from Empúries (both on land and at sea) to the bishopric of Girona. This position was asserted by the priest, Ansulf, acting as episcopal mandatory. Representatives for the two sides stated their cases before ten judges and other officials.

Of significant interest, we have a strong impression of the working mindset of the judges and their associates because *JRCCM* 7 is a rare example of a record in the first person (plural) voice of these officials. Indeed, following the comital mandatory's statement of his lord's case, we hear directly from the adjudicators: "Then we the *vasi dominici*, the *vicedomini*, and the judges inquired," whether the count's mandatory, Esclua, had proofs. He did not. The bishop's

[55] *JRCCM* 6, 7, 8. Each of these records is dated to 21 Aug. 842. The first presents the text of a *condiciones sacramentorum* oath (counting as our episode of the *condiciones* strategy). The second presents the course of the dispute. The third is a commemoration of the losing party's acceptance of defeat. It is unclear why these three records were not presented as a single documentary commemoration of the tribunal, as would be more conventional. One hypothesis, which I address below, is that the *condiciones sacramentorum* record (*JRCCM* 6) was not a documentary recovery at all, given the Louis' precept was extant and accessible to the court. Presenting it as a separate record would have accentuated its power. For a discussion of this case, see Roger Collins, "*Sicut lex Gothroum continet*: Law and Charters in Ninth- and Tenth-Century León and Catalonia," *The English Historical Review* 100 (1985), 492-94.

mandatory, however, was better prepared. The judges explained that Ansulf, "immediately presented to us the precept of the lord emperor and truthful witnesses, men from the county of true faith and also of means, whose names are provided in the *condiciones* document."[56] The judges' subsequent reaction to the different proofs available reveals much about how they approached the dispute and what resources they believed were of greatest value.

The imperial precept itself garnered less attention than these ten witnesses' narration of the case history (*JRCCM* 6 provides us with their number and names). Continuing with *JRCCM* 7, we find the judges listening intently to their testimony.[57] In the time of the previous bishop, Guimar (d. 834), Louis had issued the precept, granting Guimar rights over a third of the pastures and tolls from multiple counties. Then, or soon thereafter, Bernard of Septimania (d. 844) (count of Barcelona) confirmed the arrangement. Subsequently, Count Sunyer of Empúries (d. 848) did likewise, fostering consensus among the notable men of the region. Now, however, that consensus had collapsed and the presentation of Louis' precept did little to challenge the position advanced by the mandatory of Alaric. All eyes were on the witnesses. Recent political developments reveal a possible answer for why their verbal testimony garnered such import as

[56] *JRCCM* 7: "Ille autem statim obtulit nobis preceptum domni imperatoris et testes veraces, homines pagenses perspicui fide atque rebus pleniter opulenti, cuius nomina in suas conditiones resonant."

[57] *JRCCM* 7: "Illi autem secundum una legis ordinem singuli discussi et interrogati dixerunt: 'Quia nos testes sumus et bene nobis notum est in veritate de ipso pascuario et teloneo de Impuritanense et Petralatense, exinde intencio vertitur inter Ansulfo et Scluvane, vidimus atque presentes fuimus quando venit Wimar quondam episcopus, qui fuit antecessor predicti Gondimarii episcopi, ad Gerunda civitate cum gratia domni Lodovici imperatoris bone memorie, et sic recepit pleniter ipso episcopatu Gerundense necnon Bisildunense, Impuritanense et Petralatense una cum ipsos pascuarios et teloneos, id est, terciam partem tam de terra quam etiam de mare de ipsos teloneos quod de predictos comitatos exeunt. Unde et per iussionem predicti imperatoris revestivit Bernardu[s comes] quondam Wimarane episcopo de ipso epischopatu cum tercia parte de ipso pascuario et teloneo de Gerundense atque Bisuldunense. Et sic pervenit a Soniario comite hic in Impurias civitate et ostendit ei iussionem imperialem; tunc statim ipse Soniarius comes revestivit supramemorato episcopo de ipso episcopatu Impuritanense vel Petralatense cum tercia parte de ipso teloneo atque pascuario tam de mare quam etiam et de terreno. Et sic vidimus predicto episcopo quondam vel suos homines terciam partem prendere vel exigere de ipsos pascuarios vel teloneos de supradictos comitatos. Et quando ipse episcopus Wimar ab hoc seculo migravit, plenam vestituram exinde habebat de omnia que superius sonuit una cum terciam partem de teloneo de ipsos mercatos qui in predictos comitatos sunt'."

evidence. An appeal to a ruler was quite out of the question. Louis the Pious was now dead, and his son Lothair had only recently been defeated at Fontenoy, 841. Louis' other sons, Charles the Bald and Louis the German, were working toward a settlement, while the former was also campaigning against his nephew, Pippin II, across Aquitaine. The powerful regional lord, Bernard of Septimania, was equally unavailable, having become embroiled in the conflict and moved into open rebellion against Charles. The judges were on their own. They ordered an oath document be to drawn up for the testimony.

They asked the count's man, Esclua, if he could counter these ten men. Consequentially, he could not. The officials ordered an oath document to be drawn up, and the witnesses authenticated their testimony by swearing.[58] Yet, the officials also deliberated about how they should proceed. They stressed dual authorities that could help guarantee the tribunal outcome: "divine precept" and Gothic law. First, they quoted, from the Book of Wisdom, "Cherish justice, oh you who judge the Earth," and Psalm 57, "Judge rightly, sons of men."[59] They provide no explanation of these citations. Perhaps they were reminding themselves of their own role; perhaps they were hinting to the court president—and soon to be vanquished litigant, Count Alaric—that his duty to the tribunal was greater than his need of the incomes. Although the exact audience of these quotations is unclear, the judges and their associates felt them important enough to have the scribe highlight in the record. To supplement this religious call to judge righteously, they quoted from *LV* II.2.5: "Proof may be required from both parties, both from the

[58] *JRCCM* 7: "Precepimus scriber condiciones, ut ea que ipsi testes testificaverunt, ipsi testes ad seriem condicionum hoc iurare studerent, sicuti et fecerunt."

[59] *JRCCM* 7; Wisdom 1.1: "*Diligete iustitiam qui iudicatis terram.* Sentitie de Domino in bonitate et in simplicitate cordis quaerite illum," and Psalm 57 (58). "Si vere utique iustitiam loquimini: *recte iudicate filii hominum*." Italicized text denotes the part of the verse available in *JRCCM* 7.

plaintiff and from the party whose case the judge receives."[60] Because the mandatory, Esclua, could produce no proofs, we may presume that the see of Girona emerged victorious.

Yet, what of the *condiciones* document and oath that the judges ordered? This tribunal reveals the enaction of the Rite of the Guarantor as a legal subroutine more conventionally used to recover testaments and lost docuemnts. However, this was no recovery. The precept at the heart of the testimony had been produced by the episcopal mandatory (*Ille autem statim obtulit nobis preceptum domni imperatoris*). It existed for the court to see. The fact that judges considered testimony concerning the precept's reception by local magnates to be of greater interest than the royal document itself suggests that the oath structure the judges ordered was intended to accomplish something other than documentary recovery. I argue that this "something else" was the fostering of authority necessary to overcome the political uncertainty that arose in the wake of Fontenoy the previous year. With Bernard of Septimania at large, Aquitaine stricken with civil war, and Lothair's resurgence still a possibility, the court could take no chances.

Repurposing the recovery structure as an authority-garnering strategy was their best way forward. Therefore, at the court's order, the witnesses authenticated their testimony with the *condiciones sacramentorum* oath in the basilica of Sant Martí, within the walls of Empúries,

> We swear chiefly by God, the omnipotent father, and through Jesus Christ, his son, and the Holy Spirit, who are one in the Trinity and the true God, and by the relics of holy confessor Martí, whose basilica is known to be within the walls of the city of Empúries, above whose consecrated altar we extend these publications (*condiciones*) with our hands and each touch them in order to swear, because we the witnesses know and it was well made known to us concerning the truth of that pasture and the tolls...[61]

[60] *JRCCM* 7: "Et lex Gothorum de hac causa commemorat dicens: 'Ab utraque parte sit probatio requirenda tam a petente quam ab eo qui petitur iudex causam debeat recipi'."

[61] *JRCCM* 6: "Iuramus in primis per Deum, patrem omnipotentem, et per Iesum Christum, filium eius, Sanctumque Spiritum, quod est in Trinitate unus et verus Deus, et per reliquias sancti Martini confessoris cuius basilica sita esse dignoscitur infra muros Empurias civitate, supra cuius sacrosancto altario has conditiones manibus nostris

This oath closely resembles in form and emphasis that used in the Fonts case almost a decade earlier. It demonstrates the same marked contrast with Visigothic era sources, though here relics are also prominent. While Martí's relics come into play, they are intriguingly not within the same clause as the reference to his altar. The altar is not noted as a mere repository as it once had been for the Gospels. As in the two preceding examples, the altar is itself a power referenced. It constitutes the physical point within the church at which the witnesses extend their oath document for divine inspection. The judges' attempt to protect the court ruling through an invocation of Sant Martí's supervision was a success. In the final document made that day, Esclua formally quitclaimed the incomes and pasture, acknowledging the bishop's victory.[62] The case then closed.

This case, while presenting many unique features, is largely representative of the circumstance in which we see tribunal judges use the *condiciones* strategy. Two lords of significant strength and presence in the Spanish March squared off in court. Both possessed the means to press the dispute should they wish. Royal appeal in the present political climate was unrealistic. Indeed, the royal officials present at the tribunal (the *vassi dominici* and *vicedomini*) were not able to provide an easy settlement. With this reality facing the judges, a synthesis of legal citation and supernatural invocation in a sacred space allowed officials to settle the dispute in such a fashion that future resumption would prove more challenging. It is a circumstance in which we consistently find the strategy effective.

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continemus vel iurando contangimus, quia nos suprascripti testes scimus et bene nobis notum est in veritate de ipso pascuario vel teloneo…"

[62] *JRCCM* 8.

In her discussion of an 865 tribunal presided over by Count Salomó of Cerdanya-Conflent, Elizabeth Magnou-Nortier remarks on circumstances similar to those at Empúries. She particularly stresses the importance of a judicial use of the *condiciones sacramentorum* oath structure as the powerful abbey of La Grassa disputed the count's tenure of two *villae*.[63] The proceedings were held at Sant Esteve de Pomers and directed by thirteen judges, a *saio*, two abbots, and six priests. Intriguingly, the scribe-priest who composed this document conveys the story in the first person voice of the judges, as was seen above in *JRCCM* 7. The count's mandatory responded to La Grassa's challenge, but the monks' mandatory had better proofs. He offered a precept of Charles the Bald and witnesses. Once again—despite the presence of the royal charter, and its acknowledged authenticity—the focus was on confirming testimony with an oath. The judges' effective strategizing is confirmed by the fact that the comital mandatory received that oath, as we find related in the subscription list: "*Saraodus, qui hunc iuramentum re[cepiss]et*." Officials paired the authority garnered from the oath with multiple citations from code.[64] Thus, we again encounter a group of judges anxious over the possibility of a dispute reopening and taking steps to combine multiple forms of authority into a joint strategy: a synthesis of sacred space and Gothic law.

This synthetic approach to judicial procedure constitutes a recurring theme that appears to have worked at different scales. The year after the affair at Empúries in 842, eight judges heard

[63] Although the oath statement was an important aspect of this tribunal, *JRCCM* 15 presents a non-standard form of its exaction: "Qui ipsum proprium cum sua terminia cognitum ab[uis]sent viros onorabiles et circummanentes omines, qui ante nos hoc testificaverunt vel in ecclesia Sancti Stephani martiris Christi iuraverunt, dicentes qui sita est in castrum quod nuncupatur Sancti Stephani." This was addressed by Magnou-Nortier, *La société laïque*, 263-67: "Cette déposition solennelle et publique, dans un lieu consacré, de plusieurs témoins appelés à la jurer par les membres d'un tribunal, est un mode de preuve bien connu de la *Lex Wisigothorum*. Elle peut faire à elle seule l'objet d'un acte écrit dont les premiers mots sont toujours: *Conditiones sacramentorum*. Ici, comme le texte déborde largement cette phrase de la procédure, il ne mentionne à la fin de la déposition jurée que ceci" (quotation at 265).

[64] *LV* V.1.1, IV.5.6, V.2.2, X.3.5.

the testimony of a sizable party of twenty-one witnesses in the basilica of Sant Esteve d'Agusà (county of Rosselló) in order to break a stalemate between an aristocratic woman, Ravella, and Count Sunyer of Rosselló (d. 848). The witness oath is virtually identical to that sworn in Empúries.

> We swear chiefly by God, the omnipotent father, and through Jesus Christ, his son, and the Holy Spirit, who are one in the Trinity and the true God, and by the relics of Sant Esteve, whose basilica is known to be founded in the place which is called Agusà, above whose consecrated altar we extend these publications (*condiciones*) with our hands and each touch them in order to swear, because we the witnesses know that…[65]

Also, as at Empúries, such an oath helped to end the dispute, with the count's advocate formally receiving the oaths. Therefore, with Count Sunyer's mandatory having participated in the ritual, the judges could rest assured that a resumption of the case was less likely.

The remaining examples of the *condiciones* strategy used in contentious disputes feature similarly successful outcomes. The disputants were lords of comparable political strength, substantial holdings, and recourse to arms. With the code's stipulated royal oversight no longer a viable resource, litigants and court personnel appear to have readily accepted the judges' invocation of supernatural entities at altars. From the judges' perspective, the strategy served to keep individuals participating within the bounds of established legal norms, to submit to court authority, and to temper the influence of presidents who were also litigants in the case. Put simply, the use of sacred spaces in disputes gave judges (often working in groups) a degree of control in an environment where control was elusive. The use of churches and their altars in law—spaces of immense cultural weight, connected to community belief in sacred space—was a

[65] *JRCCM* 9: "Iuramus in primis per dominum Patrem omnipotentem, et per Iesum Christum, filium eius, Sanctumque Spiritum, qui est in Trinitate unus et verus Dominus sive et per reliquias sancti Stephani cuius basilica in loco ubi dicitur Acutiano fundata esse dignoscitur, super cuius sacrosanctum altario has conditiones manibus nostris tangimus vel iure iurando contingimus, quia nos iamdicti testes scimus…"

way to navigate those tribunals for which there was no easy avenue to higher appeal. The importance of that cultural weight is also evident in the visibility, and seeming consensus, that emerged around the strategy during this century.

Beyond judges, numerous other individuals, such as *saiones,* priests, scribes, and *boni homines* participated. Finally, a host of pious witnesses actually swore the oaths and accepted the risk of saintly sanction should they prove unfaithful. All of these people were part of these well-attended judicial assemblies. They saw their centers of salvation used as arenas of justice. They were party to a shift in the legal culture of the march: the role of the king as the law's conduit for divine authority was being replaced when circumstances warranted by that of the saints (ultimately God himself) accessed at churches. Courts used these locales to supervise oaths, legal arguments grounded in the code, and losers' ritual reception of damning evidence. Yet, one should not too hastily assume that this new exercise of law was an automatic success in all circumstances, or was invoked without anxiety over potential conflict. By the close of the century, there were hints that the *condiciones* strategy faced difficulties that would shape its development in subsequent generations. These weaknesses are most pronounced in non-contentious uses of the strategy.

2.5. Non-contentious cases

The 817 hearing at Borrassà reveals judges' concern for the long-term stability of decisions. Despite the non-contentious nature of Bishop Gualaric's claim at Bàscara, the parties at that hearing understood a counterclaim was possible. They were innovating to avoid it. Interweaving legal action and sacred space as a re-coding of the documentary recovery procedure (using the *condiciones sacramentorum* oath structure) could fortify Girona's claims. A handful of such non-contentious hearings feature discernable strategizing similar to that seen at

the Borrassà hearing. Some of these, however, constitute a grey area in which courts and property holders (be they ecclesiastical institutions or laymen) interwove different strategies of establishing lasting consensus around their holdings. Close examination reveals a degree of concern for the automatic efficacy of the *condiciones* strategy. In some instances, property holders worked to prepare for its most effective deployment.

The campaign of documentary recovery that followed the flood of the disastrous Tet River in 877 introduces the issue. The monastery of Sant Andreu d'Eixalada was destroyed and its archive lost to the flood waters. Together with an effort to re-establish the abbey as Sant Miquel de Cuixà, the monks strove to recover evidence of their property holdings. Jeffrey Bowman discusses the series of court hearings in which the *condiciones sacramentorum* oath was used to authenticate witness testimony and "restore" the lost records.[66] Yet, he also explains another form of ceremony that predated the flood. Bowman described an 876 formal reading of the house's property holdings to an assembly in an effort to secure future witnesses in the event of a calamity. The monks were attempting to forge community consensus. Also addressing events surrounding the flood, Josep Salrach and Jonathan Jarrett discuss that this sort of public reading ceremony may have been a regular facet of property-management in the region, though it remains impossible to determine exactly how usual the ceremony was.[67] The final case study in

[66] Bowman, *Shifting Landscapes*, 152-64, shows how the monks of the destroyed abbey at Eixalada worked with judges (drawing on *LV* VII.5.2) to recover lost documents after the abbey's re-foundation as Sant Miquel de Cuixà in 879. For the records pertaining to the document-recovery effort, see Ramon d'Abadal i de Vinyals, "Com neix i com creix un gran monestir pirinenc abans de l'any mil: Eixalada-Cuixà," *Analecta Montserratensia* 8 (1955), 58; *JRCCM* 25, 26, 27, 28.

[67] Bowman, *Shifting Landmarks*, 154-57. Salrach, *Justícia i poder*, 195, suggests that references to multiple assemblies in the post-flood hearings could imply that formal readings were regular events. Jonathan Jarrett, "Ceremony, Charters and Social Memory: Property Transfer Ritual in Early Medieval Catalonia," *Social History* 44 (2019), 290, concurs that it is possible that repeated readings were priorities for some landholders. Yet, he qualifies that it is impossible to determine how common this was. His reading of a handful of examples that are not connected

this chapter looks at the preparatory action—or at least a report of it—that some felt necessary to prepare for a defense that might include a judicial use of sacred space. We stand to learn that ensuring the *condiciones* strategy's success was not a simple process. In this case, a scribe associated a form of the broadcasting ceremony mentioned in connection with Eixalada with the swearing of oaths in a church. Moreover, the court ultimately required two episodes of oath-swearing before the judges were satisfied.

2.5.1. Court anxieties, 898

On a single sheet of parchment, in two sections, the priest-scribe, Ademir, composed a record of two judicial hearings from 28 and 30 May, 898.[68] At the outset, two judges named Bonaric and Teodosius met with the priests, Adalbald and Romà, convening a court at the cathedral of Vic. A layman named Boso (not to be confused with the scribe from the Fonts case) approached the judges, explaining that he had lost documents concerning two sales from August 893. The missing records detailed property he had purchased in Taradell, at the *villa* of Guadilà (south of Vic). He desired to repair his precarious tenure through a document-recovery.[69]

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to the flood reveals additional complications pointing to the possibility that the scribes of these records are drawing on some non-extant model and pointing to ideal or improvised practice, rather than a concrete norm.

[68] The original parchment, ACV, cal. 6, doc. 547, presents an oddity. The 30 May hearing (*JRCCM* 44) is in first position, while the 28 May hearing (*JRCCM* 43) appears in second position. For studies of these court sessions, see Jonathan Jarrett, "Pathways of Power in Late-Carolingian Catalonia" (Ph.D. Diss., University of London, 2005), 50-53; Jarrett, "Ceremony, Charters and Social Memory," 283-91; and Salrach, *Justícia i poder*, 200-02.

[69] The court hearings were organized at Boso's initiative and he may be seen as a layman with keen interest in documentation. Warren Brown, "When Documents are Destroyed or Lost: Lay People and Archives in the Early Middle Ages," *Early Medieval Europe* 11 (2002), 337-66, uses surviving formularies to show that the Carolingian period saw significant lay literacy, interest in documentation, and the keeping of archives, a trend into which we may fit Boso. Brown focuses primarily on the Frankish heartland and its immediate periphery. His study of formularies halts at the early tenth century, not accounting for Ripoll's tenth-century formulary and debate of its relationship to Frankish and Visigothic antecedents. See Zimmermann, "Un formulaire du Xème siècle," 39-41, Jarrett, "Comparing the Earliest Documentary Culture," 99; and Taylor, "The Will and Society," 44. Adam Kosto, "Laymen, Clerics, and Documentary Practices in the Early Middle Ages: The Example of Catalonia," *Speculum* 80 (2005), 54-56, explores issues of lay literacy and lay scribes in a Catalan context.

Luckily, this case had not expanded into a dispute, allowing us to scrutinize the utility of the *condiciones* strategy as a precautionary measure almost a century after the 817 hearing.

The case shows the importance of preparatory action by the claimant, and how judges, their priestly associates, and the scribe reflected on the strength of the ritual action at the heart of the *condiciones* strategy. Throughout our period of study, litigants strove to construct defenses based on documents. All too often, however, records were lost, and judges required that witnesses testify to their contents in order to recover them. Such circumstances had the potential to broaden into unwieldy disputes. Of course, such worrisome scenarios were not the exclusive concern of judges. Men like Boso could potentially lose property through litigation; better for all to recover documents before a challenge could occur. Indeed, one of the applications of the *condiciones* strategy was such strategic forethought.

In this particular instance, Boso told the court he was seeking to recover documents of sale from two couples concerning an estate at Gaudilà. Taking the matter seriously, he related events as part of a formal *condiciones sacramentorum* oath at the altar of Sant Pere.[70] Boso swore that scribes had recorded each transaction in a document, but both records were now lost. The first was written by a notary (*notarius*) called Alegrand. It concerned Boso's purchase from a man called Dominic and his wife, Quisilde. The second was written by the notary-priest, Joan. It involved a purchase from the late Ermoarius and his wife, Farelde. Boso related the penalty clauses (a fine of double) associated with the transactions. In both instances, he told the judges who exactly composed the sales and the names of those who heard the transactions

[70] Boso's oath is the subject of *JRCCM* 43, occurring on 28 May. "Iuro ego Boso in primis per De[u]m Patrem omnipotentem et per Ihesum Christum filium eius, Sanctumque Spiritum, qui es in Trinitate unus et verus Deus, et per reliquias sancti Petri Apostolus cuius baselica sita est in comitatum Ausona, in sede Vicho, supra cuius sacrosancto altario ubi abs condictiones manibus meis continuo vel iurando contango, quia ego Boso…"

(*audientes*/*auditores*). For the document of Alegrand, Boso named: Elderico, Argemiro, Guadila, and Elnias. These individuals had subscribed to Alegrand's lost charter. For the record of Joan, he named Fredelaico, Adalmare, Maurenco, Ucubaldo, Gontario.

After introducing his oath and conveying this property history, Boso ends with the phrase: "Thus, I Boso swear chiefly above the sacrosanct altar to that which is reasoned above. And I gave testimonies [of witnesses] before the judges so that a record might be published by them."[71] Thus, Boso reports that he brought forth witnesses to substantiate his claim. They were the *audientes* from the lost document drafted by Joan (the sale with Ermoarius). In this entry, these five men are said to stand by Boso's claims, but the text of their oath itself does not appear as part of this 28 May entry (*JRCCM* 43) on the parchment. In fact, the dating of the two entries shows that their oath was exacted only later, on 30 May (*JRCCM* 44), in the space above Boso's entry.

We will return to the issue of layout shortly. First, however, we must examine the text of the oath sworn by Boso's witnesses in *JRCCM* 44. These five men—described as *auditores* and then *firmatores* for the lost record produced by Joan—here act as witnesses, calling themselves *testes*. They include three of the men that Boso noted on 28 May and two newcomers. They demonstrate knowledge of both transactions and claim they were present when the two couples subscribed to the charters of sale. Following a repetition of Boso's *condiciones sacramentorum* oath at the same altar, they confirmed Boso's account and added details about the boundaries associated with the properties. They then describe a ceremony of property transfer with little parallel elsewhere in the region's documentary corpus. They explain, "We the witnesses saw and

[71] *JRCCM* 43: "Sic iurat ego Boso in primis super sacrosancto altario quod superius ressonat. Unde ego dedi testimonia ante supra scriptos iudices et ili a se fiat condictione."

heard those documents read, re-read and read, once, another time, and third time in the *villa* of Gaudilà."[72] With this account given at the altar of Sant Pere, the record closes. Just as he had received the oath Boso swore on 28 May, the judge, Teodosius, receives the witnesses' oath.[73]

Examining this double-entry sheet of parchment, we see three moments in time when ritual action was used to foster legitimacy around property transfer: (1) the publication ceremony in 893, when the property was first sold; (2) Boso's oath at Vic on 28 May; (3) and finally the oath of Boso's witnesses on 30 May. At their core, each of these attempts marks the court's effort toward generating community consensus to strengthen Boso's claim.

The details of the first ceremonial effort, in 893, are most elusive. If any of this action involved formal oaths in a local church at or near Gaudilà, the 30 May oath provides no mention. The witnesses do not relay earlier oath exactions in churches while describing the contents of the lost documents. Thus, if not an earlier strategic use of sacred space, what was this ceremony? Put simply, the pronouncement in 893 was a broadcast of the sale. Yet, as Jarrett shows, the details of the publication ceremony that the witnesses describe are suspect. Pointing to atypical vocabulary, he shows that the Ademir's use of the terms *notarius* and *cancellarius* are jarring for this period. Moreover, Jarrett shows no formulaic models, *ordines*, or specific legal mandates for this ceremonial practice survive (if ever any existed). This ceremonial display of a transaction's terms was not usual for property transfers. Owing to these factors, he finds it a real possibility

[72] *JRCCM* 44: "Et nos testes vidimus et audivimus ipsas scripturas legentes et relegentes una et alia et tercia vice in villare Guadila."

[73] *JRCCM* 43: "Teodosius iudex,qui hunc sacramentum recepi SSS." *JRCCM* 44: "Teudosius iudex, qui unc sacramentum recepi SSS."

that we are reading documentary or testimonial artifice: a description of what Ademir, or indeed the witnesses, thought should have happened in 893 to better secure Boso's claim.[74]

If the ceremony described was a fiction, what does its prominent inclusion in parchment's first entry tell us about court priorities at a hearing in which God and Sant Pere were called to confirm human oaths at altars, an episode of the *condiciones* strategy? Three conclusions stand out. First, truth could be bent during oaths without constituting a lie. The scribe-priest, Ademir, the witnesses, and perhaps the judges—it is hard to imagine they would have been ignorant of any augmentations—may have felt that the essential truth of Boso's tenure, backed by witnesses, extended to idealized narratives of earlier events. Second, a description of the 893 ceremony and the implications of its purpose—garnering community consensus, may in fact reflect the goal of the *condiciones* strategy that the scribe was actually observing and recording in May 898. The fictitious description being in service of the larger goal. Third, the fact that Ademir felt the need to enhance events with mention of the ceremony and archaic terms suggests that he and the judges may have worried that the all-important consensus factor was lacking at the cathedral of Sant Pere. We know little about the local politics surrounding tenures such as Boso's, but here there is a strong hint that not all was well. This final conclusion indicates a degree of insecurity on the part of the court. Perhaps they felt the action being taken would not prove enough in a future dispute. If that observation is correct, it casts a different light on Ademir's ordering of events in May 898.

While the exact circumstances of these two oath exactions elude us, there was a delay of two days in authenticating the witnesses Boso produced at Vic. The closing report of the

[74] Jarrett, "Pathways of Power," 51-53; and Jarrett, "Ceremony, Charters and Social Memory," 284-88.

auditores oath in the 28 May hearing may be an additional inclusion by Ademir, intended to link together the parchment's entries. This would help clarify why the first hearing appeared in second position on the parchment, with the more legally probative oath appearing first: as *LV* VII.5.2 stipulated, Boso needed *others* to swear for him. His oath alone would not stand. Furthermore, Ademir was guaranteeing that if someone attempted to cut the sheet in two, with the aim of hiding the more authoritative oath, Ademir's summary at the end of the 28 May entry would have provided some support to Boso's solo oath. This scheme appears to have been planned in advance, as the body text of each entry was composed in the same ink (now faded brown), while the subscription lists appear to have been created with a new mixture (see Fig. 2.3).

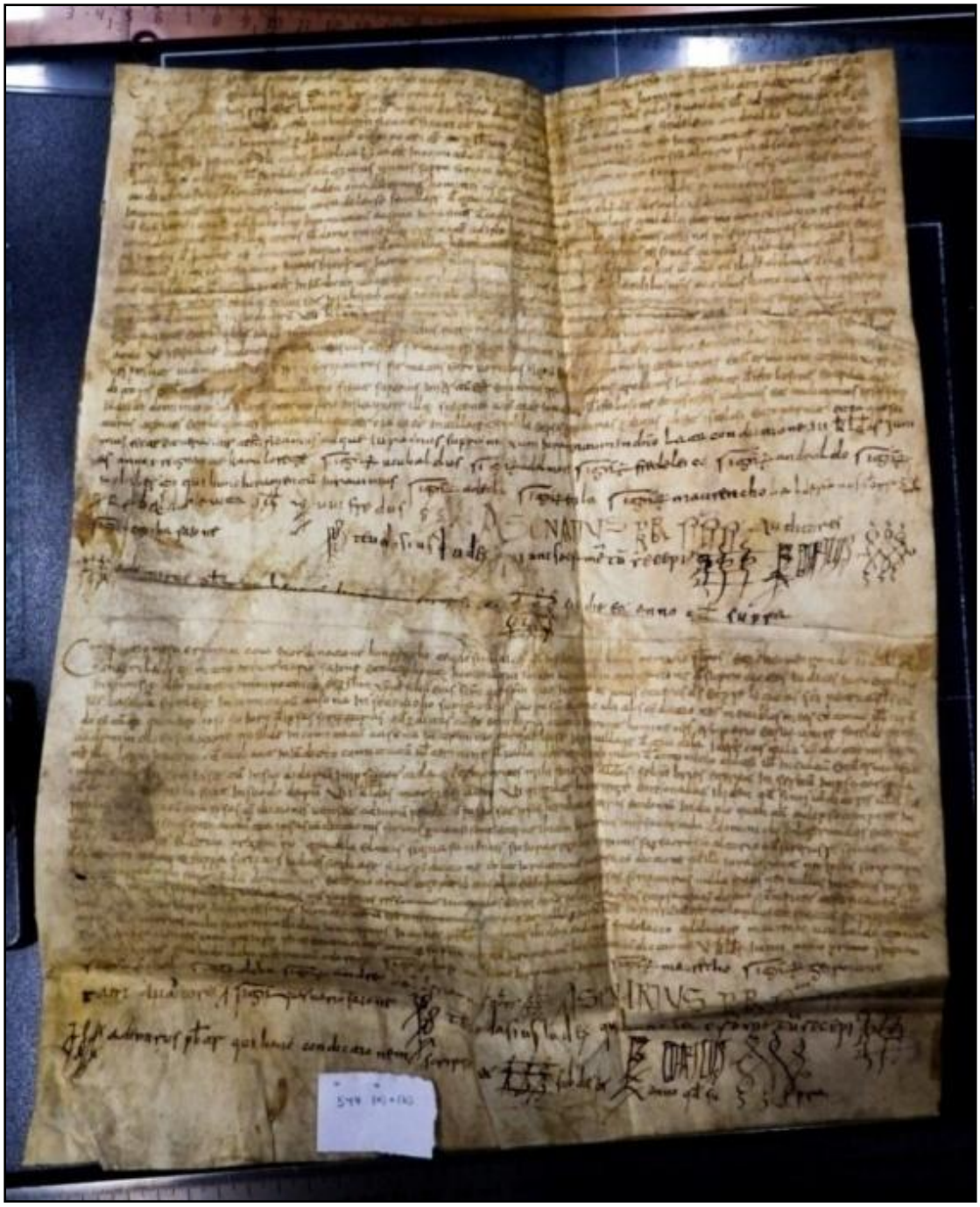

Fig. 2.2. ACV, cal. 6, doc. 547 (a & b)

These questions over the odd terminology, the conveniently detailed 893 ceremony, the two-day delay, and the defensive manner in which the document was drafted together illustrate a degree of insecurity affecting how the court handled this case. What is clear is that the *condiciones*

strategy, while it was potentially effective in solidifying Boso's tenure (we hear nothing more about his claim), was also not considered an automatic solution during the hearings. Even in non-contentious circumstances—when judges settled upon it as the best path forward—courts worried over potential challenges. As we continue to explore uses of the strategy, we will encounter examples of the types of problems that could arise.

2.6. Conclusion

The preceding explication of the *condiciones* strategy and its differentiation from Visigothic legal uses of churches must be qualified once more with an acknowledgment that surviving examples are few. Moreover, the broader body of the region's diplomatic sources from which we count our examples of the *condiciones* strategy has been distorted by priorities of sources preservation and archival loss.[75] Of the forty-eight legal actions that survive from the ninth century, just nineteen constitute an example of the *condiciones* strategy. When attempting to typify common circumstances for the two broad contexts of the strategy (contentious and non-contentious), numbers become even smaller. Thus, generalizing too broadly is unwise; the strategy does not signal some legal revolution in the region. Its invocation must be seen as unusual. Yet, as this chapter has shown, the surviving cases that we do have feature circumstantial peculiarities that suddenly make greater sense when we apply the *condiciones* strategy as an analytical tool in our readings of cases.

The ninth-century uses of the *condiciones* strategy show judges facing a legal environment that sometimes required creativity in order to furnish proceedings with a compelling sense of authority. Historians, therefore, should not take litigant participation or respect for the

[75] Jarrett, "The Earliest Documentary Culture," 90, 93, 96.

code for granted. When great wealth representing long family tenure was at stake—and sometimes after multiple litigations, as we saw in the 834 case over Fonts—what incentive might a losing disputant have to cooperate with or respect the ruling? The question likely puzzled judges as much as it does the historian. The era's political narratives do not depict a magnate class reluctant to pursue their interests through arms, and royal authority was certainly of debatable significance in these cases. The *condiciones* strategy, applied as a lens through which to read these cases, helps us identify a likely solution, as well as answering why the context of ninth-century oath exactions differs from earlier Visigothic models. While a documentary change need not signal a socio-political change in all circumstances,[76] the truncation of the authority-inclusive *condiciones sacramentorum* oath-structure from Slate 39 and the *Formulae Wisigothorum* to focus on the altar itself as a central source of power arose against the backdrop of political uncertainty and a time of significant liturgical innovation in the Latin West. I argue that these developments—political and religious—met in the formation of the *condiciones* strategy. While of course caution is always warranted, the possibility of a documentary shift resulting from a real change in cultural emphasis should be taken seriously in these cases.

As the Spanish March stabilized and the landscape filled up with churches servicing devoted communities, the same communities that gathered for assemblies, judges looked on these familiar structures through new eyes. Under the framework of the community belief in sacred space, they could use divine supervision of human legal action to compel rival lords to invest in proceedings and respect rulings. Moreover, they could use these spaces to strengthen claims not yet disputed, and help make any dispute that might emerge more manageable.

[76] Dominique Barthélemy, *La société dans le comté de Vendôme: De l'an mil au XIVe siècle* (Paris, 1993), 62-63.

Contentious episodes, like that at Narbonne in 834, Empúries in 842, or Agusà in 865, show powerful lords relenting and accepting the outcomes. The role of sacred space should not be overlooked in these cases. On the other hand, hearings like that at Borrassà in 817, those concerning the Tet River flood in 877, or Boso's affair 898, reveal individuals—both ecclesiastic and lay—concerned over the security of tenure. Here also, the power of re-coded church space was valuable. Judges could ensconce cases in the trappings of saintly legitimacy, meaning that to oppose a Bishop Gualaric or even a Boso was in fact an act of questioning the legal judgment of a Sant Andreu or a Sant Pere. As we will see in future chapters, this did not always prevent a dispute from emerging, and anxiety over that possibility is evident. But non-contentious deployments of the strategy did provide an additional layer of security to help litigants maintain property.

These contexts and their sub-circumstances help define the *condiciones* strategy in the ninth-century. As we press forward to study the subroutine's value to courts in the next two centuries, the circumstances outlined above never fully disappear, but do not remain the dominant instances in which we find judges drawing on sacred space to marshal authority. Discussion of the *condiciones* strategy in these coming decades necessitates greater focus on the descendants of Guifré the Hairy, a count who was a new power player in the march toward the close of the ninth century. After nearly a century defined by political competition beyond and within the march, Guifré's successors would come to hold political hegemony over the region's counties and bishoprics. His family's power signaled both novel sources of presidential authority in disputes to aide judges. At the same time, new political dynamics presented challenges to those same officials. With the great stability of the community belief in sacred space that we saw

in Chapter One, judges could count on the *condiciones* strategy to help them adjudicate. Yet, the circumstances of enaction did not always look the same.

Chapter Three

The *condiciones* strategy and the political world of the tenth century

3.1. Introduction

At the outset of the tenth century, the manner and two broad contexts in which judges deployed the *condiciones* strategy continued unchanged. They convoked proceedings in churches, called for witnesses, and guided the Rite of the Guarantor at the altar. We encounter the same synthesis of codified law and liturgical ritual first seen in ninth-century cases. The change that we *do* find centered on the circumstances of the strategy's invocation: those disputes in which judges deemed the tool operable. Owing to the consolidation of comital and episcopal power in the region, increasingly disconnected (but not severed) from Frankish oversight, judges considered anew when and how they could use the strategy to keep authority grounded in the strictures of the Visigothic Code. Despite greater political stability, we find continued need for the *condiciones* strategy as novel hurdles emerged. There were also moments in which judges avoided the strategy's use, having recognized that ritual action would prove ineffectual or even damage court legitimacy. The tenth century presents a complicated judicial landscape in which officials continued to incorporate supernatural forces, but tied their relevance to political vicissitudes within the region. Owing to the importance of counts, bishops, and select others holding delegated public authority,[1] we must adapt our judge-centered approach to consider the relationship between judges and such officials acting as court presidents. The evolving dynamic

[1] Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018), 62, dated to 917, presents a tribunal president who was neither a count nor a bishop. Abbess Emma of Sant Joan de les Abadesses (d. 949) presided at an assembly after having received public rights in the Vall de Sant Joan and Vallfogona (discussed below).

between these parties influenced when judges chose to pursue the *condiciones* strategy. The overarching impression of that relationship as seen through these cases is one of ambivalence on the part of judges early in the century, before solidifying into a partnership at the turn of the millennium (a defining theme of Chapters 4 and 5).

As that partnership loomed after 950, novel uses of the *condiciones* strategy were interwoven into its dynamics, helping to stabilize a system grounded on comital and episcopal presidencies regardless of the character of such leadership. This process inaugurated a tonal shift for the strategy's implementation: by the time of the first two episodes of litigants flagrantly rejecting judicial commands at the end of the tenth century (980 and 997), the tribunal system struggled as some people lost faith in court impartiality and contemplated extra-judicial solutions.[2] Judges reacted with supernatural power marshaled in sacred space. Used defensively, the *condiciones* strategy became more about protecting the institution of the courts and comital/episcopal interests than it was about cultivating resolutions that could foster legal balance. In this regard, my observations fall in line with those of Josep Salrach, who argued that one of the chief legal issues of the tenth century was the struggle between the lay aristocracy and clergy over possession of goods and who could exercise fiscal/public rights.[3] The contest

[2] *JRCCM* 90, 132.

[3] Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 58-61. This is unsurprising given who held leadership positions in large ecclesiastical institutions. Adam Kosto, "Oliba, Peacemaker," in *Actes del congrés internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del Ir mil·lenni*, ed. Immaculada Ollich i Castanyer (Vic, 1999), 136, explains that "Abbots and bishops from comital families were by no means unusual in tenth and eleventh-century Catalonia; in fact they were the rule." Stefano Cingolani, "L'Abat Oliba, el poder i la paraula," *Acta historica et archaeological mediaevalia* 31 (2013), 117-118, echoes Kosto's argument and further outlines an alliance between the *potentes* (counts, bishops, and abbots) and aristocratic families. This was a manifestation of the Carolingian social ideal, contrasting the *potentes* with the *pauperes* (those holding no power in society). As Josep Camprubí Sesnsada, "El patrimoni immoble conegut del comte Oliba, el futur abat i bisbe, i la confusió historiogràfica que ha provocat," in *Els usos del patrimoni a Pirineu: quinzenes trobades culturals Pirinenques* (Andorra la Vella, 2019), 11, argues that individuals from elite families would never have attained powerful ecclesiastical positions if their families did not believe they would advocate for

eventually led to a loss of confidence in the system for small-holders, with some frontier settlers believing that the courts were biased toward large ecclesiastical institutions with connections to the comital family. Some institutions, such as the monastery of Sant Cugat del Vallès, would come to enjoy full immunity from the jurisdiction of judges, and participated in the court system at their own pleasure.[4] Beyond such exemptions, as Jonathan Jarrett shows in his study of the abbey of Sant Joan de les Abadesses (discussed below), in special cases, alliances between counts and clerical leaders could occasionally form judicial juggernauts that systematically forced villagers out of valleys or burdened them with onerous exactions.[5]

The records from the province support this interpretation of overreach by elites, growing discontent, and incipient cynicism. I show, however, that a close examination of the *condiciones* strategy allows us to take the discussion further. By noting when the strategy was used, when it was not, and who benefited, we can determine that judges played an active role in this process; their decisions carried both positive and negative consequences for the efficacy of the system they represented. How scribes describe their efforts to overcome novel impasses in disputes reveals much about these officials' conception and practice of law. Yet, a caveat is warranted: we should not treat these men as a monolithic class. Despite sharing a similar worldview and

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their lay kin's interests. In this sense, a cooperative relationship privileging ecclesiastical and comital interests at the expense of lesser families and the peasantry was the norm.

[4] José Rius Serra, ed. *Cartulario de Sant Cugat del Vallès*, 3 vols. (Barcelona, 1945-1947), I: 173, dated to 986, is a precept from Lothair III (d. 986), granted in the wake of a raid against Barcelona in 985 by the warlord, Al-Manṣūr (d. 1002), confirming rights and privileges for Sant Cugat. It excludes the monastery from the jurisdiction of counts, bishops, and any public judge (*iudex publicus*) concerning a list of named properties. Salrach, *Justícia i poder*, 102-08, noted the advantage royal grants of immunity gave to some ecclesiastical litigants over laymen. For the relationship between regional religious houses and royal patronage, see Cullen Chandler, *Carolingian Catalonia: Politics, Culture, and Identity in an Imperial Province, 778-987* (Cambridge, 2018), 236-42.

[5] Jonathan Jarrett, *Rulers and Ruled in Frontier Catalonia, 880-1010: Pathways of Power* (Woodbridge, 2010), 23-72.

toolkit of judicial strategies, judges were individuals of varying degrees of talent and corruptibility. Distinct perspectives are evident in contradictory uses of the *condiciones* strategy by different judges. The full consequences of the burgeoning doubt noted above would not be felt until the opening decades of the eleventh century. What may be emphasized here, however, is that the effort to address such doubt was made using the same synergized tool that we saw in the ninth century: the *condiciones* strategy. Though the circumstances of its application may have been changing, the ritual core of the strategy remained constant. In seeking to better understand its inherent adaptability as a legal instrument in emergencies, as well as other contexts, we must recognize how judges deployed it to meet the challenges of a changing world. That story belongs to the tenth century.

3.1.1. Tenth-century cases

In seeking to navigate these shifting contexts for the strategy's use, I define six framing questions to consider in case studies. (1) What factors continued to recommend the *condiciones* strategy as a valid legal tool? (2) How do the circumstances of invocation compare to ninth-century contexts? (3) To what extent did presidents provide the political capital necessary to maintain the stability of the legal system, a role the code expected to be performed under royal oversight? (4) In those assemblies in which judges deployed the strategy, what were the relative socio-political positions of the litigants? Were disputes frequently between equals, as we saw in ninth-century courts, or did they feature stark socio-political imbalances? (5) How did humbler parties view tribunal proceedings, the integrity of judges, citations to the code, and the feasibility of obtaining justice through the courts? (6) How did various interest groups react to rulings; did people depart assemblies vindicated, resigned, or embittered? In search of answers, we must

account for ways in which political dynamics affected the conjoined factors of presidents' personal interests and procedural choices made by judges.

Date range	900-949	950-999	Tenth century total
All judicial cases	27	64	91
Disputes featuring the *condiciones* strategy (with percentages of above column)	5 (18%)	12 (19%)	17 (19%)

Figure 3.1. The frequency of the *condiciones* strategy in the tenth century

Before bringing these questions to bear, we must address the state of the evidence for the century. Of the ninety-one contentious legal actions dated to the tenth century, the *condiciones* strategy was used on seventeen occasions (19%).[6] Though remaining cognizant of source survival distortions within the ninth-century documentary corpus, 19% marks a reduction from the ninth century by half (41% of ninth-century cases present the strategy).[7] Intriguingly, the percentage derived from the century total does not differ substantially when dividing the period in two, with 950 marking a rough watershed when the circumstances of the *condiciones* strategy change again. Between 900 and 949, only five disputes feature an iteration of the strategy (18% of the half century). Two of these examples, were episodes of judicial reflection, similar to our study of Boso's documentary recovery.[8] Between the years 950 and 999, the number of cases more than doubles to twelve distinct episodes (19% of the half century). Put directly, the

[6] *JRCCM* 49, 59, 64, 68, 79*bis*, 90, 93, 100, 102, 119, 123, 125, 127, 129, 132. Note: *JRCCM* 49 contains reference to an earlier documentary recovery following the 878 flood of the Tet River, but the scribe provides no specific venure of the dispute.

[7] Jonathan Jarrett, "Comparing the Earliest Documentary Culture in Carolingian Catalonia," in *Problems and Possibilities of Early Medieval Charters*, ed. Jonathan Jarrett and Allan Scott McKinley (Turnhout, 2013), 90, 93, 96.

[8] *JRCCM* 49, 68.

condiciones strategy remained an infrequently invoked tool. It was the circumstances of use that changed.

There were two new circumstances in which courts employed the *condiciones* strategy. The first was rooted in the world of the early tenth century and has to do with starkly imbalanced *placita* assemblies: when political elites squared off against smallholders. We see it invoked just twice. One usage saw judges protect the weak against comital overreach, while the other shows the strategy helping to mask an episcopal circumvention of villager rights in court. That such tonally opposite uses emerged from a similar circumstance (the humble versus the powerful) tells us much about the varied disposition of judges. This new circumstance was a response to a political reorientation in the region at the turn of the tenth century. The tenures of Guifré I the Hairy (d. 897) and his immediate successors (a dynasty termed the Bellonids[9]) mark the dominance of a single family over large swaths of Old Catalonia. Such consolidation contrasts with the dynamics of both intra-regional and pan-European infighting that characterized ninth-century politics. There was relative political stability in these early decades that allowed elites to consolidate holdings. The Bellonid sway featured not only the family's tenure of the comital offices, but also its grip on regional bishoprics and religious houses. As presidents, their reach also extended into the courtroom.

The second circumstance arose after 950. It involved instances in which the *condiciones* strategy was necessary to compensate for moments of comital and episcopal impotence. The family's growing weakness, displayed in these tribunals, owes much to its success during the previous decades. By mid-century, two competing branches had arisen: the house of Barcelona

[9] Martin Aurell, *Les noces du comte: Mariage et pouvoir en Catalogne, 785-1213* (Paris, 1995), 39-43, 209. The dynasty (Cat: Bel·lònides), commonly associated with Guifré I the Hairy, is named after Belló (d. 810), an influential lord from the time of the solidification of the Spanish March.

and that of Cerdanya-Besalú. Rivalry between the two may have been among the factors that allowed previously restricted comital prerogatives to slip into the hands of untitled lords, empowering a magnate class with consolidated holdings.

We may add these innovative uses of the *condiciones* strategy to the circumstance prominent in ninth-century *condiciones* cases: occasions when litigants were of roughly equal strength, outstripping the ability of judges to compel consistent respect for rulings. This context, a dynamic Salrach aptly termed horizontal disputes, is all but absent in tenth-century episodes.[10] Instead, regional elites began to resolve conflicts between themselves outside the normal bounds of law, exchanging legal proofs for armies and intrigue. However, this change should not dissuade us from seeing what remained constant. Despite transformed contexts, signaling judges' adaptability when it came to application, the ideological hybridization of codified law and liturgical ritual remained unshakable. The synergized interplay between written law, documentary practice, ritual, and the personal/group piety of those involved undergirded the *condiciones* strategy. Indeed, it is during this century that the *condiciones sacramentorum* oath-structure that was so central to the Rite of the Guarantor found its way into the Ripoll formulary.[11] The consistency of the *condiciones* strategy's performance is unsurprising considering that the community belief displayed in *dotalia* stood resolute during and well past this century (see Chapter 1).

As this chapter reveals, the continuity of the strategy's synthetic nature is most striking when juxtaposed with the altered circumstances of application. Such comparison underscores just how flexible and compelling the hybridization of community belief and codified law truly

[10] Salrach, *Justícia i poder*, 39.

[11] Michel Zimmermann, ed., "Un formulaire du Xème siècle conserve à Ripoll," *Faventia* 4:2 (1982), 81-82.

was. Therefore, the narrative of comital consolidation giving way to intra-familial competition is an important part of the *condiciones* strategy's history. To show the interrelation of these stories, I address cases from the first half century together, before turning to those of the latter half. Beyond the general outline noted above, multiple factors were at work in making the second half of the century distinct from the first, in terms of the ability of counts and bishops to act as stabilizing forces in legal disputes: (1) an acceleration of the resettlement effort in areas like the counties of Osona, Barcelona, and southern Urgell; (2) military setbacks against Al-Andalus; and (3) the rise of untitled challengers to the public appearance of comital and episcopal authority. Each of these factors, and the heightened competition they educed, will enter the discussion as they become pertinent.

3.2. The plight of the weak, 900-949

Map 5. Select sites referenced in early tenth-century records of the *condiciones* strategy [12]

3.2.1. Public power and *servicium regis*

Comital and episcopal influence is pronounced in *condiciones* cases. As noted above, judges' decision to employ or omit the strategy was a reaction to these individuals' involvement and how they styled their presidential authority and personal legal claims (sometimes in the very same cases, as it was not uncommon for a president to also be one of the litigating parties).[13]

[12] Italicized place names indicate the site of the *condiciones* strategy's performance.

[13] Kosto, "Oliba, Peacemaker," 139-40, notes it was not uncommon for presidents to be party to the dispute.

Josep Salrach recently defined the judicial system in which these presidents operated as a manifestation of public authority. Given the historiographical controversy surrounding public power, a brief clarification of how it will be used within the context of this study is warranted. There are two tempting options. For tenth-and eleventh-century Catalonia, Salrach associated public order with the existence of the professional judicial class which gained its legitimacy through a power network culminating in the person of the king. It gave structure to a landscape of unequal classes that were able to work with one another. This *marc públic* was run by office-holders, such as the counts, bishops, viscounts, judges, *saiones*, and the mandatories/advocates of the litigants. Equally central was the Visigothic Code; the text provided the boundaries within which office-holders enacted justice. Salrach argued that this system was stable and effective until the crisis of central control that arose around the turn of the millennium, when some litigants began to reject court jurisdiction.[14] Under this definition, a count's public authority would thus stem from his place in this judicial structure.

While there is much that is agreeable about Salrach's definition, and the organization described is readily visible in disputes, we should not assume the legal system was as well-defined and immutable in the minds of presidents, judges, and mandatories. I propose an understanding of the system Salrach describes that accounts for the organizational flexibility that adaptive use of the *condiciones* strategy represents. As in ninth-century cases, here too there was thoughtful reflection on the parameters of the law and sources of authority. To think of the system as wholly public (in Salrach's sense) belies the openness to other forms of power, such as God, his saints, and the community belief in sacred spaces. Early uses of the *condiciones*

[14] Salrach, *Justícia i poder*, 41-43, 58-59 (at 58-59 for the issue of the rejection of court authority).

strategy, such as the 834 tribunal over property at Fonts, showed judges' impulse toward a synthesis of different authorities. Early tenth-century documents reveal this same impulse directed to new circumstances.

This nuance may be maintained by rooting public power in contexts found in the documents. In so doing, we can, as Jonathan Jarrett does (and as Salrach does when he uses "public" in a technical sense), more specifically define such authority as the right to exact payments/tributes and military service—among a longer list of more nebulous demands—as a recognized representative of the king.[15] Such authority would be the prerogative of counts and bishops,[16] rather than judges and mandatories. In the opening decades of the century, we see this display of power called *servicium regis, regale servicium,* or, more simply, *servicium.*[17] As Jarrett shows, it is important to note that this collection of privileges could be delegated further

[15] Jarrett, *Rulers and Ruled*, 36 n. 58, 37, 41-43, discusses cases that featured contestation of fiscal rights, claims of privileges traditionally associated with the comital office, military participation, and other services "that look like public burdens." These manifestations of public power may be seen as of importance alongside the judicial contexts for public authority espoused by Salrach. See Salrach, *Justícia i poder*, 87-90, 110-12, 126-32, and 242-43, for his more targeted discussion of public rights, services, and the status of lands and people.

[16] Paul Freedman, *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia* (New Brunswick, 1983), 19, explains that one of the defining political characteristics of Catalonia in this period was the close partnership between bishops and counts, sharing numerous administrative and military duties. It is not surprising that we find some bishops who were also counts.

[17] Salrach, *Justícia i poder*, 48-61, discussed "béns i drets fiscals" in the context of disputes. Salrach (at 87-90) explores potential separation between a general sense of "service" owed and "royal service." While these concepts may be situationally distinct as to which dues are connected to which lands and people, Salrach posits a common origin as public dues connected to lands of the fisc. Under certain circumstances, the contingent factor of land status appears to have been less important. Discussing the comital demand of *servicium regis* in *JRCCM* 59 (dated to 913), Salrach shows that certain personal services such as hospitality to public officials (*paratas*) and guard duty (*scubias, guaitas*) were exactions that the count did not believe were depended on whether individuals lived and worked on lands of the fisc. As that dispute (discussed below) shows, however, this interpretation was resisted in court. For a discussion of the *servicium regis* in greater context, see Élisabeth Magnou-Nortier, *La société laïque et l'Église dans la province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle* (Toulouse, 1974), 112 and Carlrichard Brühl, *Fodrum, Gistum, Servitium Regis: Studien zu den Wirtschaftlichen Grundalgen des Königtums im Frankenreich und in den Fränkischen nachfolgestaaten Deutschland, Frankreich und Italien, von 6 bis zur Mitte des 14 Jahrhunderts*, 2 vols. (Cologne, 1968), 74 n. 281, 85, 87 f., 97, 99 f., 173, 177, 179 n. 249, 193 n.304, 288, 348, 444, 535, 537 ff., 723, 769.

by the count.[18] Guifré the Hairy's sons, Miró II of Cerdanya-Besalú (d. 927) and Sunyer I of Barcelona (d. 950), did so on behalf of their sister and political partner,[19] Abbess Emma of Sant Joan de les Abadesses (d. 949), in 913.[20] Thus, public authority constituted enjoyment of certain privileges. This narrower definition—not precluding the judicial prerogative of these officials, as outlined in the code, has important implications for when and how judges invoked the *condiciones* strategy. As we will see, that strategy, with its sourcing of supernatural authority, could be used not so much as a replacement/support for public power, but as a means to curb its overreach.

3.2.2. Comital and episcopal presidencies

Counts and bishops acted authoritatively in early tenth-century courts. That leadership, however, did not imply they necessarily assumed an engaged role in proceedings (though we do see them do so on occasion later in the century, such as an ambiguous *condiciones* case featuring Count Ramon Borrell).[21] Scribes do not regularly depict presidents personally interrogating

[18] Jarrett, *Rulers and Ruled*, 132 n. 17; Michel Zimmermann, "Naissance d'une principauté: Barcelone et les autres comtés catalans aux alentours de l'an mil," in *Catalunya i França meridional a l'entorn de l'any mil*, ed. Xavier Barral i Altet, Dominique Iogna-Prat, Anscari Manuel Mundó et al. (Barcelona, 1991), 123-27.

[19] Besides these events in 913, Nathaniel Taylor, "An Early Catalonian Charter in the Houghton Library from the Joan Gili Collection of Medieval Catalonian Manuscripts," *Harvard Library Bulletin* 7 (1996), 40-41, argues that the family positioned Emma to become among the most powerful women in the region, with Miró II taking the rare step to name her as his first executor in his will (dated to 927).

[20] Jarrett, *Rulers and Ruled*, 35-42 n.56, explained that *JRCCM* 60, 61 involve the counts, two viscounts, and seven judges acknowledging that the lands around the abbey do not owe service to the count, but rather owe it to Abbess Emma. For other work on the 913 case, see Jarrett, *Rulers and Ruled*, 36 n. 56; Gaspar Feliu i Montfort, "Sant Joan de les Abadesses i el repoblament del Vallès," in *Miscel·lània Fort i Cogul: Història monàstica catalana. Història del camp de Tarragona*, ed. Miquel Coll i Alentorn (Montserrat, 1984), 129-35; Gaspar Feliu i Montfort, "Sant Joan de les Abadesses: Algunes precisions sobre l'acta judicial del 913 i el poblament de la vall," in *Homenatge a la memòria del Prof. Dr. Emilio Sáez: Aplecs d'estudis del seus deixebles i collaboradors*, ed. Salvador Claramunt and Maria Ferrer i Mallol (Barcelona, 1989), 421-34. Also see Salrach, *Justícia i poder*, 84-92.

[21] Toward the end of the period, in the year 996, *JRCCM* 129 depicts Count Ramon Borrell acting assertively in advocating for a woman called Sesnanda. Her late lover, Unifred Amat (described as *vir suus*), had served the count's father, Borrell II. Ramon Borrell works along alongside the four judges, but remains personally engaged in the course of proceedings. The count himself references the Visigothic Code, showing concern for its strictures. This

witness pools, organizing oath exactions, scrutinizing documents, or making decisive pronouncements. Such tasks were generally left to judges. It is more likely that comital and episcopal presidents, enjoying the power associated with possession of public rights and military strength, were considered sources of legitimacy and guarantors that any settlement would be enforced; they often deputized enaction of rulings to a court officer called a *saio*.[22] This aloof stance in the records may have been intended to provide an air of impartiality to their office, further enhancing the impression of legitimacy for the proceedings. Yet, given the context of many disputes discussed below, it belied presidential involvement behind the scenes.

The president's role was most convincing in localities where the counts and bishops held concentrated landholdings and explicit royal privileges. It is unsurprising that we find a degree of success in their performance early in the century. In February 938, just outside of the town of Manresa, Count Sunyer I of Barcelona and Viscount Guadall I of Osona presided over a tribunal of their own orchestration. They successfully compelled 100 inhabitants of the district of Artés to render *servitium* to Bishop Jordi of Vic (d. 947). The count's consolidated power at Artés was

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case is an ambiguous instance of the *condiciones* strategy. The court rules that the property in question belongs to Sesnanda, but substantial pressure is exerted "suggesting" that she offer it piously to Sant Cugat at the altar. The decision to convene the court at the church seems connected to the eventual mention of the altar, with the normative weight of the space, together with the assembled elite of the county, intended to place Sesnanda into an uncomfortable position. Donation was not commanded, but heavily encouraged. Such orchestration raises intriguing questions as to Ramon Borrell's participation, his friendliness toward Sesnanda, and relationship with Sant Cugat as a favored house. Jarrett, *Rulers and Ruled*, 149-50, details the evolution of the relationship between Sesnanda and Unifred Amat. She was a landowner at Òdena, acknowledging Unifred as her *senior*. By the time of his death, however, Jarrett explains that she had become "something like a common-law wife," gaining significant property holdings through his testamentary bequests.

[22] Adam Kosto, "Versatile Participants in Medieval Judicial Processes: Catalonia, 900-1100," in *Judicial Processes in Early Medieval Societies: Iberia and its European Context*, ed. Isabel Alfonso, José Andrade, and André Evangelista Marques (Leiden, forthcoming), 9-11 n. 35. The *saio* was an officer of the court with specified duties in the code; some of these relate to enforcement. Kosto (at n. 35) provides a list of passages in the code that discuss the responsibilities of *saiones*. Jarrett, *Rulers and Ruled*, 42-43, also explores the responsibilities of *saiones*. In context of the office in Vallfogona (within the county of Osona), he argues the position likely held a term of four years. It is not clear whether the community elected the *saio*, or he was chosen by authority figures.

unmistakable. Without the means to resist, villagers readily recognized that their lands were under Sunyer's control by royal precept, and that they now ought to transfer the service they owed to the count as the king's man to the bishop, as the count demanded.[23] Though not as powerful or authoritative as kings, their physical presence on the frontier, networks of subordinates, and localized pools of armed retainers could make these lords reasonable guarantors of enforcement when disputes pertained to property or rights associated with their power-bases (factors which I will address below).[24] On the other hand, as was the case at Artés, judges also took a risk in working with counts and bishops; their authoritative influence could serve to guide the court when their own interests were directly at stake.

As Jarrett explains, Guifré the Hairy's reconstitution of the county of Osona in 879 and the larger effort to extend the frontier southward spurred processes in which lords and ecclesiastical institutions sought to knit parcels of land into semi-autonomous "preserves" through purchase, donation, pledge, and litigation. At issue was a series of narrow valleys in the frontier zone of northern Osona that was a budding land market. Jarrett's case study of Sant Joan de les Abadesses' campaign to dominate Vallfogona and the Vall de Sant Joan is an important example of the broader phenomenon and can be used as an entry point into discussions of the influence of lordly land consolidation on court procedures.[25] Jarrett explains that Guifré the

[23] *JRCCM* 70: "Nos quoque supranominati veraciter nos recognoscimus quod nos tenemus ipsos domos cum curtis et ortis, terris et vineis, molinis et mulinaribus, [cultum et eremum, unde isto mandatariu]s nos petiit, et scimus recte quod rex preceptum terminatum legitime concessit ad predictam ecclesiam et a cunctos episcopos eidem ecclesie servientes et [hodie hec omnia debent esse per legem et iusticiam de prelibata ecclesia eiusque episcopis], cum terminis et aiacentiis eorum quam aut de nullum alium hominem."

[24] Direct evidence for the composition of comital entourages is sparse. Jarrett, *Rulers and Ruled*, 66, shows that counts do not appear to have had retinues so as much as pools of "local followers who turn up in the sources as the counts entered their area."

[25] Jarrett, *Rulers and Ruled*, 23-72.

Hairy encountered an established, landholding "old guard."[26] Abbess Emma, the old count's daughter, purchased properties adjacent to her nunnery and throughout the larger Vall de Sant Joan in which it was located. Carefully waging a campaign of concerted property acquisition, Emma bought additional holdings and extended obligations of service on those inhabiting lands already held by the house.[27] Of course residents were not bound to the land, and many chose to seek *aprisio* opportunities in the valleys to the south.[28] As Jarrett argues, it was not possible to remain indifferent to the monastery; one submitted to its dominance in the valley(s), or moved on. The records show that settlers defined their relationship to the house by participating in its disputes and witnessing documents of new acquisition. Once the house's momentum of expansion was established, it was quite difficult to resist.[29] Judicial cases during this same period provide hints that these sorts of campaigns were not limited to Vallfogona and the Vall de Sant Joan. A look at evidence for a similar effort in the county of Empúries suggests that the intensity

[26] Jarrett, *Rulers and Ruled*, 46-49.

[27] Jarrett, *Rulers and Ruled*, 35-42. Emma won this right through a complex settlement in 913. See *JRCCM* 61. Technically, Emma's brother was her opponent at the assembly. However, Jarrett argues convincingly that the count's aim in bringing the suit was to help Emma to establish a narrative (the audience being all those living in the twenty-one villages of the Vall de Sant Joan) that their father, Guifré the Hairy had granted the valley to Emma and her nuns.

[28] Jarrett, *Rulers and Ruled*, 41. Serfdom was not a feature of the tenth-century Catalan frontier. Any exactions owed were due to representatives of the king. Building off of arguments first introduced by Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76), I: 215-256, Paul Freedman, *The Origins of Peasant Servitude in Medieval Catalonia* (Cambridge, 1991), 61-65, argues that the peasants of this period often lived at a vulnerable subsistence level, but were legally freemen. He tempers, but did not entirely dismiss, earlier arguments about our ability to apply Roman and Visigothic legal categories (see, Freedman, *The Origins of Peasant Servitude*, 61 n. 23, 24), including Eduardo de Hinojosa, *El Régimen Señorial y la Cuestión Agraria en Cataluña Durante la Edad Media* (Madrid, 1905; repr. in Hinojosa, *Obras*, vol. 2., Madrid, 1955), 75, 163-64 (of repr.); Aquilino Iglesia Ferreirós, "La creación del derecho en Cataluña," *AHDE* 47 (1977), 258-60. Freedman shows that serfdom, as it is commonly understood, had antecedents in the eleventh century, but arose as a formal institution between the twelfth and early fourteenth centuries.

[29] Jarrett, *Rulers and Ruled*, 49-58.

of land acquisition on the part of the powerful (in this case the bishop of Girona) affected judges' court strategies, including when to avoid the *condiciones* strategy.

3.2.3. Victorious presidents and avoiding the *condiciones* strategy

A dispute from September 900 is a good example of dramatic power imbalances in some early tenth-century courts, and why officials avoided the *condiciones* strategy in certain circumstances.[30] Implementation of the strategy was most necessary when judges believed that a defeated party could ignore the court's decision. Protecting the rights of litigants was of secondary concern. Court records that do not feature the strategy, such as this one, reveal that risk of litigant recalcitrance was not as common as it had been in the more politically tumultuous days of the middle ninth century. The majority of tribunals in the first half of the tenth century depict the powerful handily defeating the weak. In this case, the litigious Bishop Serfdedéu of Girona (d. 907) easily removed the hurdle presented by a small landholder called Elared, who had claimed a vineyard in the district of Ullà (county of Empúries).[31]

[30] *JRCCM* 47.

[31] Bishop Serfdedéu, a contemporary of Guifré the Hairy, participated in eight judicial cases between becoming bishop in 888 and his death in 907: *JRCCM* 36 (1 Mar. 889), 37 (13 Nov. 892), 38 (27 Nov. 892), 39 (1 Dec. 892), 40 (15 Apr. 893), 41 (1 Dec. 893), 47 (10 Sep. 900), 50 (31 Jan. 903). Serfdedéu's legal career shows him acting as an adept litigant facing experienced opponents who could marshal significant resources against him. He understood the importance of weaving documents into his arguments, questioning the authenticity of his opponents' proofs, and asserting public privileges that could be supported by royal precepts. He based his court strategies on deploying the diocese's royal and papal confirmations/exemptions. Indeed, Serfdedéu continued to gather additional precepts while disputes were ongoing. Taken together, *JRCCM* 37, 38, 39, 40, 41 are each stages of protracted judicial struggles to maintain the see's holdings at Bàscara (county of Empúries). The campaign lasted until 893 and involved a man named Revell as the bishop's chief adversary. The dispute series ended after Serfdedéu had obtained immunities for numerous possessions and public rights in his diocese. For these documents, see Ramon Martí, ed., C*ol·lecció diplomàtica de la Seu de Girona, 817-1100* (Barcelona, 1997), 22, 23, 24, 25. The bishop secured further privileges after resolving the Bàscara issue. In each of the Bàscara tribunals, the bishop also presided, likely contributing to the consternation of his opponents and encouraging them to resume the contest, despite the involvement of numerous judges and the presentation of documents. For a separate treatment of the Bàscara issue, see Salrach, *Justícia i poder*, 75-81. For further discussion of Bishop Serfdedéu, see Ramon d'Abadal i de Vinyals, *Els temps i el regiment del comte Guifred el Pilós* (Barcelona, 1989), 67-84. Serfdedéu laid an important legal foundation for the defense of the see's property at Bàscara. *JRCCM* 65 (from 921) shows that his successors, well after his death, his successors were working with the counts, chipping away at the rightsof the people there.

Elared was destined to lose from the moment the court assembled. The affair was arranged by two judges and a *saio*. The bishop, who it should be remembered was also the plaintiff in the case, sat in presidency. The judges called forth the current episcopal mandatory (*mandatarius*), Bonaric, and permitted him to lay out his charge: Elared unlawfully held property belonging to the see of Girona. Elared responded to the mandatory's accusation by explaining how he had bought the land from a group of eight men and women, each of whom the scribe named in the document. The judges then asked Elared if he had a bill of sale with which to substantiate his claim of purchase. When he admitted that he did not, the court compelled him to quitclaim the property. The cursory nature of the document belies deeper complexity and a power imbalance that loomed over the proceedings. Were Elared's procedural rights truly exhausted? Why not reach out to the eight people who sold him the vineyard and marshal them as witnesses to support his case? Perhaps a bill of sale could be recovered by *reparatio scripturae*. Given the scope of the law, the system's tolerance of delays to gather evidence, and how often men in Elared's position pressed on with their claims, it is clear that this defendant was not out of options. So why did he give up?

There are a couple of possible answers. Perhaps, Elared was a known liar whose case was so flimsy, and reputation so fragile, that proceeding would have been futile. Indeed, maybe the sale had never occurred and therefore no one was willing to swear to it on his behalf. Yet, we have no indication that the judges themselves were aware that Elared was false, and therefore deviated from procedural norms. The scribe, called Adilà, does not note any accusations of infamy. In many circumstances, judges at least asked the defendant if he could produce witnesses; they might assume he could not, but the request was made nonetheless. That the judges in this case did not even propose the option suggests that they did not wish to move

forward with this case, implicitly conveying to Elared that he should not suggest the introduction of witnesses for them. Put simply, the judges were not willing to use the *condiciones* strategy to help this man. It appears likely that the court knew that the presentation of witnesses was impossible in this case and the inclusion of supernatural authority would only complicate the affair, angering the bishop and taking the strategy into uncharted waters. Why they likely thought so tells us much about the danger self-interested power-holders posed to the effective operation of the judicial system and also the limitations facing strategies like the *condiciones* strategy.

The probable explanation for Elared's resignation to his defeat and why the judges did not invoke the strategy is that Elared was simply a "nobody." More specifically, he was a nobody in conflict with a significant somebody: the bishop of Girona, one of the most powerful men in the province and a veteran of extended judicial campaigns. The judges perhaps made a calculation that to invite Elared to call witnesses and potentially use the strategy to force the bishop, before a saint and God, to conform to the court's decision would be more trouble than it was worth for the community. Moreover, it would subject those witnessing on Elared's behalf to the bishop's ire.

As creators of sacred spaces (through performance of the consecration rite), we never see bishops in the role of receiver of oaths sworn against them. Quite reasonably, bishops appear to have been wary of spiritually humbling themselves before the people of their diocese, thereby undermining their religious authority. As discussed in previous chapters, to receive oaths against one's case was to admit the illegality and immorality of one's actions before a supernatural entity. To raise the prospect that Serfdedéu—a man who would go on to consecrate at least two parishes in his career (both in 904)—might have to do so if witnesses were gathered, was probably seen as either too risky, too likely to encounter intense opposition, or simply

inappropriate.[32] Therefore, to protect the integrity of the court, maintain amicable relations with the prelate, and retain control over proceedings, it was easier for the judges to force Elared's quitclaim. Given the great power disparity between Serfdedéu and Elared, they could easily expect that the unfortunate man would not persist in the case. Indeed, his persistence might earn him excommunication, as happened in select other cases.[33] The scribe provides us with a cursory summary of the tribunal. The care for composition and close attention to detail with which the scribe from the 834 case wove his document concerning the dispute over the *villa* of Fonts, or that of the 898 document recording Boso's two-stage recovery is absent here, and in many disputes like this one.

Elared's defeat in court, however, was not the end of fighting over vineyards at Ullà. Three years later, Serfdedéu and his new mandatory, Revell, opened a conflict with another local man who had purchased vineyards from two women.[34] This time, the accused, a man called Renulf, brought his bill of sale with him. For this reason, he could have reasonably considered himself to be in a stronger position than Elared had been. However, the scribe reports, without elaboration, that the judges simply declared his document unlawful upon reading it. No attempt

[32] *Dotalies* 29. Both are dated to November 904.

[33] For an example, see *JRCCM* 86, dated to sometime between 971 and 977. Though occurring in the next half century, this case reveals that bishops could deploy this tool in property disputes. In this case, Bishop Sunyer of Elna (d. ca. 978), son of the count of Empúries, excommunicated numerous people who had infringed upon the see's rights in Vallespir and Conflent during the chaos following the 971 assassination of (Arch)bishop Ató of Vic. Sunyer also placed all churches in the area under interdict. For more details surrounding the political dynamic of the assassination, see Josep M. Salrach i Marés, *L'assassinat de l'arquebisbe Ató (971) i les lluites pel poder en els orígens de Catalunya: discurs de recepció de Josep Maria Salrach i Marès com a member numerari de la Secció Històrico-Arqueològica, llegit el dia 30 de maig de 2018* (Barcelona, 2018), 5-27; Freedman, *The Diocese of Vic*, 19-20, explains how, beginning with Ató, three successive bishops of Vic met violent ends. Ató and Frujà were assassinated, while his successor, Arnulf, was killed during the campaign against Córdoba in 1010.

[34] *JRCCM* 50. This case is dated to 903.

appears to have been made to explain why this was so.[35] The court then immediately compelled Renulf to quitclaim. Bishop Serfdedéu won again, adding Renulf's vineyard to Elared's.

These two cases are not outliers. Rather they stand as examples of a common pattern in disputes: one party, with a clear objective and a long history of winning court battles, employing experienced judicial aides, and bearing far greater influence in the province, forced a vulnerable small-holder to give up. To these two examples we may also add a dispute heard by two judges in 904 and presided over by Count Miró II of Cerdanya (d. 927), brother to Abbess Emma.[36] The mandatory of the abbey worked to obtain the property of two humble men with possessions at the village of Estèguel (*Stegale*), in the county of Cerdanya. As we saw with the tribunals involving Bishop Serfdedéu, the scribe of this document did not depict the losers raising much resistance, nor the judges inviting them to present witnesses. The two men, as well as the judges, appear to have been resigned to their loss of the land. They dared not make enemies of the growing nunnery, especially—with Jarrett's conclusion taken as correct—if Count Miró was working with his sister in her campaign of property consolidation. To oppose this front presented by the region's most elite family would be to sever any access they might otherwise have to the circle of power-holders in the province. A similar calculus appears to have been made in 921 when Bishop Serfdedéu's successor worked with Count Miró and a viscount to isolate a party of

[35] Serfdedéu was aware of the power of combining both witness testimony and documentary evidence. These dual proofs had been used against him in the first judicial action in which he was involved after becoming bishop. See *JRCCM* 36. It is impressive that in that case he was still able to force his victorious opponents, the monks of Banyoles, to make concessions. For the interdependence of proofs, see Jeffrey Bowman, *Shifting Landmarks*, 177-182.

[36] *JRCCM* 51.

nineteen villagers, forcing them to acknowledge the illegality of building their houses and vineyards at the see's jealously guarded holding in the district of Bàscara.[37]

It appears that in such circumstances, when so much was at risk for lesser property-holders, and ecclesiastical and secular authorities had presented a unified front in court, judges went along with pressure campaigns without exhausting their procedural tools. Ecclesiastical lords like Abbess Emma and Bishop Serfdedéu were determined and could command great resources to keep cases going as long as necessary to achieve their objectives. If things became very challenging for them, they could introduce allies, like Count Miró. Even if by some miracle Elared, Renulf, or the villagers from Estèguel or Bàscara could successfully plead their case, their opponents' mandatories would return with new judicial schemes. Lords like Count Sunyer I of Barcelona were so powerful in particular localities and so consistently protective of ecclesiastical interests in the area that resistance was out of the question for humble people; as happened at Artés, whole districts capitulated to comital and episcopal demands.

The examination of such court cases in context with processes of land consolidation in this half-century illustrates an important point about judges, their goals, and the place of the *condiciones* strategy in their toolkit. These professionals, who had a range of contingency strategies to help those with decent claims to property process their rights, were also pragmatists who had to navigate the political landscape of the province. Cases such as the examples reviewed above suggest that judges' goals in court were to maintain community stability and to prevent the escalation of disputes. Sometimes, when no strategies could sway the powerful to respect the rights of the weak, it was in the community's broader interest for those more vulnerable

[37] *JRCCM* 65.

property-holders to fall, rather than fuel protracted disputes which would invariably end in the same result anyway. They understood that damaging the court's authority by having a prelate or magnate ignore a ruling would undermine the court system and lead to further abuses. As discussed above, implementation of the *condiciones* strategy was a choice, and that choice was not always made. These cases begin to help us understand why: judges were reflecting on the status of the system itself and how best to safeguard it. Sacred space was not a blunt instrument, and not all cases presented an opportunity for its use. Legal need and community belief were not the sole considerations; judges reconciled those factors with political expediency.

3.2.4. Using the *condiciones* strategy

Yet, judges could decide to take a stand against powerful lords, if the circumstances were just right. That this seems to have occurred just once in our sources suggests the extreme rarity of such opportunities. A high-profile case from the spring of 913 shows that when whole communities were at risk, rather than just the property holdings of a few, judges could develop and harness community consensus in order to permit the party in whose favor they ruled to exhaust all options.[38] Reading between the lines in this case (another from Empúries) and appreciating the logistics necessary to organize the large number of participants, we may imagine that much planning and strategizing went into organizing this tribunal and guaranteeing a stable outcome. This is a testament to the ability of a group of judges who were determined.

On 6 May, Guibert, the mandatory of Count Gausbert I of Empúries (d. 931) appeared before a court at the village of Vilamacolum to demand that the villagers of the place submit to the count and provide the *servicium regis* they owed him as the public representative of the king.

[38] *JRCCM* 59.

The tribunal was held at the church of Santa Maria of Vilamacolum. Ominously for the villagers, Count Gausbert himself acted as president. Yet, they were not left at his mercy. The proceedings themselves were arranged and run by nine judges and a *saio*. Indeed, as I will explain below, it was probably at these men's request that the court was gathered at Vilamacolum's church rather than in the *civitas* of Empúries, further down the coast. Thus, from the outset, it would seem that this sizable pool of judges sought to ensure a fair hearing for the community and to establish the case on friendly ground.

To face the comital mandatory's assertion, a large party of thirty-five villagers stepped forward to challenge the truth of the count's right of service from Vilamacolum. They were not alone; the scribe explains that these villagers testifying (*testificant*) produced a remarkable thirty-two witnesses who readily swore oaths at the church altar before the judges:

> We the named witnesses swear, first by God the all powerful father and his son Jesus Christ, and the Holy Spirit, who are in the Trinity one and the true God, and by the relics of the holy Virgin Mary, in whose honor this basilica is located in the territory of Empúries, and is known to be founded in Vilamacolum, above whose consecrated altar we extend these publications (*has condiciones*) with our hands and each touch in order to swear, that we the witnesses know and have noted it well and in truth that we saw with our eyes, heard with our ears, and were present in the territory of Empúries, in Vilamacolum, and within its boundaries, when those people there were holding and possessing their houses, yards, orchards, lands and vineyards, meadows, pastures, pools, fish ponds, garric forests (*garricis*), and everything which was held within them peacefully, justly and legally by their own full right, because neither did the people ever perform castle guard (*scubias),* as it is called in common usage, within the city of Empúries, nor did they do so for the ancestors of Count Gausbert. They never gave him *calcinas*, hospitality to public officials (*paradas*), or their heirs. They neither gave nor devoted to him any rent, work, tribute, or service. But the village held everything in full, with their inherited assets (*eredes*), with all boundaries and borders.[39]

[39] *JRCCM* 59: "Iuramus nos supradicti testes, in primis per Deum Patrem omnipotentem et per Ihesum Christum eius Sanctumque Spiritum, qui est in Trinitatem unus et verus Deus, sive per reliquias sancta Maria Virginis, in cuius honore basselica sita est in territorio Impuritano, in villa Mocoron fundata esse dinoscitur, supra cuius sacrosancto altario has conditiones manibus nostris continemus vel iurando contangimus, que nos iamdicti testes scimus et bene in veritatem notum habemus, occulis nostris vidimus et aures audivimus et presentes eramus in territorio Impuritano, in villa Mocoron vel infra eius termines, tenentes et possidentes illorum domos, curtes, ortos,

The witnesses had made things very clear: the community was resolute in its understanding of its relationship with the count and believed he had gone too far with this demand. The community also felt that he could be resisted if they banded together. They claimed that they justly possessed their property and had done so for more than thirty years. The villagers also firmly denied that they owed any guard duty, military service in the comital host, rent, tribute, or any commitments at the *civitas* of Empúries. This testimony received legitimacy through the witnesses' oath, an act that—as a possible precursor name to Bonhom's *Ritum fideiussoris*—the scribe termed: the "judgment of the publication" (*iuditium conditionis*).[40]

Likely taking his cue from the count, the mandatory, Guibert, was left with a decision. Should he press forward, ignore the court's authority, undermine the judges, alienate the whole of Vilamacolum (and possibly the surrounding villages—the probable source of the villagers' witnesses), and go against the Mother of God? Compelling the villagers to submit would likely

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terras et vineas, pratis, pascuis, stagnis, piscatoriis, garricis, omnia et in omnibus quidquid ibidem abent, quieto ordine et iuste et legaliter per hos triginta annos seu et amplius, quia nec scubias quod usitato vocabulum dicunt quaitas nunquam exinde fecerunt ad Impurias civitatem, nec ad antecessores de Gauceberto comite in ostem nunquam perrexerunt, nec calcinas nec paradas nec eredes nunquam eis dederunt, nec nullum censum nec functionem nec tributum nec nullum servitium eis nunquam impenderunt nec fecerunt, sed ipsa villa iamdicta sic tenuerunt ab integre cum illorum eredes cum omnes fines et termines suos." For the technical terminology used, see Eulalia Rodón Binué, *El lenguaje tecnico del feudalismo en el siglo XI en Cataluña* (Barcelona, 1957), 187 (*paradas*), 135-36 (*eredes*); Salrach, *Justícia i poder*, 89.

[40] *JRCCM* 59: "Et eam que vidimus et audivimus et presentes eramus, recte et veraciter testificavimus et iuravimus hec omnia superius inserta in hoc iuditium conditionis supranixium iuramentum in Domino." This sentence immediately follows the text of the oath, summing up the ritual action. Salrach, *Justícia i poder*, 52-53, n. 10, stresses that this phrase also appears in *JRCCM* 20/Pere Ponsich and Ramon Ordeig i Mata, eds., *Catalunya carolíngia 6: Els comtats de Rosselló, Conflent, Vallespir i Fenollent* (Barcelona, 2006), 92. That case features a quitclaim by the mandatory of Bishop Odesind d'Elna (d. 885), who recognized unjust possession before the comital *missus* of Bernat de Gòtia (d. 880), count of Rosselló: "Et ego Auvaldus respondi quod non iniuste, sed partibus comitis et ad servitium regis exercendum hoc retineo, et hanc meam responsionem praesentiae vestrae iudicium conditionis ostendit saepedictus Fredemirus, mandatarius de Audesindo episcopo, qui legibus ductus est atque ibidem resonat, ex qua auctoritate praedictus locus Sancti Felicis sub ditione Sanctae Eulaliae esse debet…Manifeste verum est quia dictus locus Sancti Felicis cum claustra et terminia eius, sicut suus resonat iudicius, a praedecessores Audesindo episcopo, videlicet Vinedario episcopo, Ramno episcopo, Salamone episcopo et isto praesente Audesindo, per hos annos quinquaginta seu et amplius iure ecclesiastico possessum fuit per successionem Sancti Felicis, sub ditione Sanctae Eulaliae, et ipse suus iudicius condicionis verus est in omnibus et legibus factus."

require coercive action; perhaps the count would even need to use force. Consulting with his lord, the mandatory decided it was not worth it.

However, not only did Guibert abandon the count's claim to the service, he also participated (on his master's behalf) in the oath ritual. The signature list at the close of the document recording this case provides us with this information: "the mandatory, Guibert, who received this oath and subscribed."[41] Context taken from the larger corpus of the *condiciones* cases reveals that this reception likely involved Guibert standing at the altar and ritually receiving the oaths of the thirty-two witnesses. Peace—both in a practical and in a spiritual sense—was of the utmost importance.

What can be made of this high-stakes tribunal and what does its outcome say about how judges used the *condiciones* strategy in relation to public power in the early tenth century? Answers require a degree of informed speculation about the role the judges played in this dispute. First, we can reasonably imagine that the case was likely not brought to nine judges all at once. It is more probable that the villagers introduced the complaint to one or two judges who, after a review of the affair and noting its complexity, solicited the aide of colleagues. Second, the fact that more than fifty people played some role at the hearing suggests that significant advance planning, notification, and scheduling went into arranging the final proceedings at Vilamacolum's parish church. It is also not unreasonable to think that the judges would have wished to meet with parties prior to the tribunal. This would have given the villagers time to make their feelings on the matter known and convey to the judges just how unified the residents were in their opposition to his *servicium* demands. My suspicion is that the judges became

[41] *JRCCM* 59: "Guibertus mandatarius, quo os sacramentum recepit suprascripsit."

convinced of the justice of Vilamacolum's plight when faced with a potential thirty-two witnesses, and they therefore arranged the case to be heard on ground friendly to the villagers, before their saint. Thus, before the mandatory spoke the first word of the count's demands in court, the judges had decided that they would pursue a resolution strategy based on the power of a sacred space.

The judges and villagers alike knew that Count Gausbert could be a formidable opponent and resisting his exactions ran the risk of creating a dangerous enemy. If the count was set on seizing rents and compelling military service, people could be hurt. Yet, everyone believed the comital demands were as onerous as they were sweeping. The judges needed to find a way to compel the count to accept the unlawfulness of his requests and admit defeat openly. If Vilamacolum's independence was to be preserved, there could be no risk that the exactions would be requested anew in the future. The judges required a guarantee. Without access to royal appeal, or some other form of supplementary human authority, the *condiciones* strategy and Guibert's reception was their surest bet.

Their predecessors, decades earlier, had used the strategy to settle affairs between great lords of roughly equal strength and to prevent recourse to military action. The Vilamacolum affair reveals this new context and use for the exaction of oaths in sacred space. As frontier lords consolidated power across Old Catalonia and attempted to define their relationships with neighbors, judges could use the *condiciones* strategy to protect the weak against the strong, even when the strong were in the position of legal authority assigned to them by the code. I argue this was judicial innovation at work: the broadening of the strategy's application. Yet, why could the judges reasonably rely on this strategy in this case, while it was not even considered in the case of Elared and Renulf?

This case using the *condiciones* strategy is noteworthy in that nine judges were present and ran the tribunal together. It is possible that a substantial percentage of the county's judicial class was at Vilamacolum. Such solidarity afforded their position the appearance of professional consensus. That position was then enhanced by two large groups of people standing for the villagers' rights. A block of thirty-five defendants able to compel thirty-two witnesses was akin to a unified front in the county. In other words, the count of Empúries and his mandatory stood alone. That multi-part consensus—capitalizing on both the code and community belief in the power of the sanctuary at Vilamacolum—was not available to Elared and Renulf, or even to the smaller number of villagers from Estèguel or Bàscara. They stood isolated, and the use of sacred space was not an option that the judges of those cases could have reasonably hoped to invoke. Perhaps in the judges' minds, they thought: "Best not to risk it." Sacred space was powerful, as is evident in Guibert's willingness to publicly receive the oaths; it could not be ignored without spiritual and social consequences. However, judges do not seem to have thought it potent enough to stop a multi-stage judicial campaign to secure consolidated property holdings on a competitive frontier.

3.2.5. Political reality and co-opting the *condiciones* strategy

Taken together, both the Vilamacolum example of use and instances of avoidance, these cases exemplify the position of the *condiciones* strategy in early tenth-century legal practice: judges were expanding the subroutine's utility while simultaneously recognizing its limitations. This process of adaptation occurred at a time when the lords of the province shifted their gaze from broader Frankish affairs to focus on local opportunities for wealth and power on the

frontier.[42] The fates of Elared, Renulf, and the villagers at Bàscara and Estèguel were not unique. These case studies represent a broader phenomenon as the political elite expanded the scope of the exactions they claimed under their tenure of public authority. They mark instances in which judges deemed nothing could be done to protect their procedural rights, including a use of the *condiciones* strategy. One final case study for this period shows that, in merely losing one's property, individuals like Elared could even be considered lucky.

A mysterious 921 example of the *condiciones* strategy, occurring in the church of Sant Cebrià d'Esponellà (county of Besalú), shows three judges using the Rite of the Guarantor to exact oaths from thirteen witnesses introduced by a man called Optat, the mandatory of Bishop Guiu of Girona (d. 941), a successor to Bishop Serfdedéu. Cursory examination suggests a non-contentious documentary recovery. Yet, the subscription list includes a curious entry: "SSS

[42] Chandler, *Carolingian Catalonia*, 231-36, explains that Catalan-language scholarship has positioned the tenure of Guifré the Hairy as a pivotal moment in the creation of the region's modern identity and the beginning of an effort to sever the Spanish March from the broader Frankish kingdom. Most notably, Ramon d'Abadal i de Vinyals, *Dels visigots als catalans*, vol. 1, ed. Jaume Sobrequés i Callicó (Barcelona, 1974), 153-172; Ramon d'Abadal i de Vinyals, *Els primers comtes catalans* (Barcelona, 1958), 291-341, argued Guifré sought to move the Catalan counties toward independence. His work was supported by Josep M. Salrach i Marès, *El process de formació nacional de Catalunya, segles VIII-IX*, 2 vols. (Barcelona, 1978), II: 115-16, who noted a firm Gothic identity was central to this process. This position, however, cannot be divorced from the socio-political context of Francisco Franco's policies toward Catalonia. Yet, the identification of the late ninth and early tenth centuries as a moment of change dates to discussions from the seventeenth century, such as the writings of Pierre de Marca. An important entrenchment of the topic in scholarly circles came with the work of Dom Joseph Vaissette and Dom Claude Devic, *Histoire générale de Languedoc* (Toulouse: re-print. 1875). Following the work of d'Abadal and Salrach, Michel Zimmermann, "La formació d'una sobirania catalana, 785-988," in *Catalunya a l'època carolíngia: Art i cultura abans del romànic, segles IX i X*, ed. Jordi Camps i Sòria, Eduard Carbonell i Esteller, and Montserrat Pagès Paretas (Barcelona, 1999), 43; Michel Zimmermann, "Hugues Capet et Borrell: à propos de l'indépendance de la Catalogne," in *Catalunya i França meridional a l'entorn de l'any mil*, ed. Xavier Barral i Altet et al. (Barcelona, 1991), 59, 64, tempered the nationalistic tone of previous scholarship, while endorsing theses about the significance of Guifré's consolidation and his successors' interest in distancing the region from royal oversight. Chandler presently stands as the strongest opponent of arguments that the counts were seeking independence. Most recently, however, Adam Kosto, "Un diplôme inédit de Hugues Capet, a. 991: Un nouveau dernier diplôme royal franc pour les comtés catalans?" *Journal des Savants* (2020), 539-61, shows that the scholarly consensus around a break in contact between the Catalan counties and the Frankish royal court has not accounted for a 991 renewal by Hugh Capet of a 953 privilege granted to Sant Pere de Rodes (county of Empúries).

Quedred, who received this oath."[43] This mysterious Quedred appears nowhere else in the record. However, we can determine his role through a process of elimination. Generally, we find only two parties receiving oaths: defeated litigants and judges. The fact that the name corresponds to none of the judges, leaves us with the distinct possibility that Quedred was a rival claimant who had lost to the bishop. The scribe, an archdeacon called Aderic, deprioritized his claim to such an extent that he was virtually forced from the narrative, his only value being his ritual acknowledgement of defeat. It is possible, of course, that Aderic composed the document later, editing it to fit the bishop's preferred narrative. Yet, the subscription list is extensive, with multiple marks hinting at distinct signatures.[44] If it was the case that the document was made on the very day at Esponellà, with each of the three judges signing, then we can conclude that those same officials permitted this depiction of Quedred's participation. Should Bishop Guiu have won his case based on the soundness of his argument, obfuscating Quedred's claim would have been unnecessary; his opponent's weak case or non-existent proofs would have been self-evident for future judges. Suspicion grows when we look at another record dated to the same day (25 February) and involving most of the same parties—notably Quedred is absent. Twelve of the thirteen witnesses from the first record re-appear. Quite unlike witnesses, they now quitclaim the property themselves.[45] They had obviously played a more significant role in the whole affair:

[43] *JRCCM* 64, "Quedredus qui hunc iuramentum recepit."

[44] With the original lost, the earliest copy of the record is from the thirteenth century, ADG Cartoral de Carlemany, 80-83. Yet, the transcription appears to have attempted the preservation of distinct indicators of a signature, "SSS" and "Sig+num."

[45] *JRCCM* 64: "In omnibus sumus professi et facimus nostram evacuationem, quia non possumus probare nec hodie nec ullo tempore nec per testes nec per scripturam nec per ullum inditium veritatis quod ipsas domos vel vineas unde predictus Obtadus nos petivit a partibus nostris deffendere possumus per termines de villa de Muls; et quantum nos domos, curtes et hortos hedificavimus, vineas complantavimus infra terminos de iamdicta villa Baschara, contradicentes supradicto episcopo vel alios antecessores suos, iniuste et contra legem hoc fecimus; et vera est nostra professio vel evacuatio in vestrorum supradictorum presentia."

they were disputants. As it relates to Quedred and these men, we can have an intentional mischaracterization of their participation in an effort to obliterate memory of counterclaims and potential proofs.

Moreover, this rare level of documentary opaqueness and deliberate subterfuge likely masks procedural imbalances that the judges did not wish to have commemorated in a document. As we will see in the next chapter, their future counterparts would have no such qualms. Procedural bias would become endemic in eleventh-century *condiciones* disputes, and neither judges nor scribes made such attempts to hide uneven treatment. That the effort was taken here underscores changes occurring in the system and judges ambivalence toward comital and episcopal influence on law. Bishop Guiu was accompanied by Count Miró II, two viscounts, and many other individuals as *boni homines*. The dismissal of Quedred's rights was the will of the local elite made manifest. With the bishop's mandatory demanding witnesses swear oaths, and the other lords readily agreeing, the judges were not in a position to resist. Thus, where in earlier cases judges deemed they could not realistically use the *condiciones* strategy to defend the weak, here we see officials actively use it to harm them. Not only was Quedred's account of the matter suppressed, but he was threatened with the ire of God. What factor was so important that Guiu convinced the judges to take such extreme action? It was the place of further plots at Bàscara in the dispute. Once again, we see the impact of land consolidation campaigns on dispute norms and how judges implemented the *condiciones* strategy.

In this context, the fact that the Vilamacolum case is *not* representative says much about its significance to the *condiciones* corpus. It marked a novel use of the *condiciones* strategy that could indeed provide balance in vertical disputes, but ultimately saw few opportunities for enaction. With reasonable claim to public prerogatives, alliances between comital family

members and religious institutions, and with the power of bishops holding important privileges in the ascendency,[46] judges were almost never in a position where the strategy might place the weak on even footing with elites. In the unique 913 case where it was possible, judges used the *condiciones* strategy to overcome the count's royally-derived public authority with that of God and his saints, invoked at an altar and backed by overwhelming local support. This last element at Vilamacolum was critical. Solidarity between multiple villages and the county's judicial establishment was everything. Invoking sacred space may have been one of the few ways to instill confidence in such a collective. Indeed, considering the broad and stable belief evident in *dotalia*, we see here how the strategy could transform consensus around church sacrality into a potent consensus around villager rights.

As Jarrett shows with his analysis of Abbess Emma's push toward hegemony in the Vallfogona and Vall de Sant Joan, such consolidated landholdings placed many frontier villages under the thumb of powerful lords. Opportunities for collective resistance, backed by judges, like that at Vilamacolum were rare. The affair at Sant Cebrià d'Esponellà stresses this. Indeed, the case represents the flip side of the coin; a coin representing the use of the sacred space in imbalanced vertical disputes rather than horizontal ones. It emphasizes an intensification of the mindset that convinced judges to avoid the strategy, as we saw in the cases against Elared and Renulf. Not only were Quedred and the villagers unable to find help from neighbors and judges, but they were forced to participate in the *condiciones* strategy's use against them. In an evolving political climate, the procedure and power of the strategy remained constant, but its application

[46] We most frequently see bishops in positions of judicial strength, appearing in court well prepared with impressive proofs. Yet, they still could lose. In *JRCCM* 58, dated to 913, Bishop Guiu of Girona lost against Abbot Guitzà of Santa Maria de La Grassa in a dispute over the church of Sant Esteve de Canelles. The abbot's papal privilege, confirmed by royal seal proved too great for the prelate to overcome.

and the implications of its use for humble peoples was changing. As we turn to the next half century, we will find that it was the use at Sant Cebrià's church that won out in the minds of judges, not that at Vilamacolum. Prompted by further changes to the regional political dynamic, we will explore how judges forged ever closer partnerships with public power-holders as the appearance of this dynamic began to have consequences for how litigants comported themselves at tribunals.

3.3. The failure of the strong, 950-999

Map. 6. Select sites referenced in late tenth-century records of the *condiciones* strategy[47]

Our expanded judge-centered approach has revealed how political developments in the early tenth century—particularly comital and episcopal solidification of power—affected when judges chose to implement the *condiciones* strategy and when to avoid it. Many of the

[47] Italicized place names indicate the site of the *condiciones* strategy's performance. Note: *JRCCM* 100 states that the witnesses swore in the church of Santa Maria, located in the suburbs of Barcelona. The candidates for this church before 1000 are Santa Maria de Sants, Santa Maria de Pedralbes, and Santa Maria del Pi. For a map of the suburban area around the city, see Jordi Bolòs and Víctor Hurtado, *Atles del comtat de Barcelona, 801-993* (Barcelona, 2018), 110-11.

circumstances that led judges to defer to comital and episcopal authority in imbalanced circumstances continued into the later tenth century. In 962, Count Sunifred II of Cerdanya (d. 968) presided over a tribunal in which one of his *fideles* was the mandatory for the abbey of Sant Martí de Les (county of Fenollet). In a similar fashion to what we saw at Esponellà, judges used the *condiciones* strategy to isolate and silence the monks' opponent, a woman called Troitila and her son, compelling her to receive the witness oaths the count's son had marshaled against her.[48] With the elites of the region rallying against her, Troitila had little alternative. Nevertheless, use of the strategy suggests another example of judges' discomfort with such vertical imbalance, though no longer to an extent that they considered masking case details. This likely indicates that such behavior was becoming normalized, and judges were increasingly connected to comital/episcopal presidents and their interests. Gone was the circumstance seen at Vilamacolum. Judges no longer considered how to defend the humble (or at least relatively so), instead bringing their former tools to bear against them. A circumstance resembling Troitlia's defeat arose in 987. Count Oliba Cabreta (d. 990) quickly sided with the mandatory of Sant Joan de les Abadesses, who claimed an alod near the castle of Mogrony, and the *condiciones* strategy was used to rid the court of the nuns' opponent.[49] This man, called Admir—representative of the men of Gombrèn—also accepted defeat and received the oaths at Sant Cristòfol de Campdevànol (in the county of Besalú).[50]

[48] *JRCCM* 79bis. For the mandatory's connection to both the count and the monastery: "Testificant testes prolati quas profert Bernardus a vice seniori suo domne Suniefredo, gratia Dei comes, qui est adsertor vel mandatarius de cenobium Sancti Martini monasterii."

[49] For the history of Sant Joan's attempt to claim Mogrony, see Jonathan Jarrett, "Power over Past and Future: Abbess Emma and the Nunnery of Sant Joan de les Abadesses," *Early Medieval Europe* 12 (2003), 240-41.

[50] *JRCCM* 102.

Yet, as this section reveals, not all litigants were as defenseless as Troitila and Admir. An increasingly fraught political environment created situations in which comital/episcopal powers became vulnerable. Some litigants, embittered by the apperance of bias, felt that they could resist rulings. The *condiciones* strategy—ever adaptable as a response to weak court authority—emerged as a tool for judges to stave off the worst consequences of such crises and help defend the legal system. Indeed, this is the context seen for the region's first two episodes of withdrawal/non-appearance in 980 and 997 (discussed below).[51] The strategy could neutralize rebellious litigants, but did little to address the biased structure of some courts that had first led to their recalcitrance. Before we explicate these cases and the failure of the strong, we must set the political stage on which these legal dramas played out.

3.3.1. Political context: competition on the frontier

Jarrett showed that the strength of late tenth-century counts and bishops was far from absolute, and they had to work with lesser lords in order to realize their ambitions; power on the frontier was a negotiated phenomenon, governed by compromise. Comital and episcopal aims to consolidate influence sparked competition among these elites and their immediate subordinates. The result proved violent. By 951/952, with the old generation of power-holders dead, Viscount Unifred I Falquet of Cerdanya had led a rebellion against comital rule. The sons of Miró II quelled the revolt, but subsequently found themselves embroiled in a long struggle over Unifred's property.[52] It could not be decided locally, and, in a rare royal appeal, Miró's sons

[51] *JRCCM* 90, 132.

[52] Jarrett, *Rulers and Ruled*, 136.

secured confirmation from Louis IV Outremer (d. 954) to dispossess Unifred.[53] Yet, as late as 975, the comital family still faced opposition in this. Indeed, the needs of working with subordinates, such as Unifred's brother, Viscount Bernat of Conflent (d. 1009?), compelled the counts to return portions of the estate.[54]

Further, an over-concentration of resources created zones where traditional authority was less immediate. Judicial records reveal that the strength of comital and episcopal presidents in one tribunal often belied weakness in another. In some areas, threats to villager rights were no longer as daunting as in the previous generation. For example, in 977 when Count Borrell II of Barcelona (d. 993) attempted to exert ownership over all land and buildings in the area of Vallformosa (in the county of Barcelona), the judges did not use the *condiciones* strategy to aid the resistance.[55] Rather, faced with a block of disgruntled villagers, the burden of proof fell to the count. His mandatory readily admitted that he could not prove that the land belonged to Borrell. This case exhibits neither the desperation seen at Vilamacolum in 913, nor the cynical resignation to comital authority of the burdened villagers at Artés in 938. The imbalances found in early tenth-century cases were now reversed in some areas. In an attempt to project influence

[53] Ramon d'Abadal i Vinyals, ed., *Catalunya Carolíngia 2: El domini carolingi a Catalunya* (Barcelona, 1926-1952), 2, pieces together the existence of a lost royal precept issued at Reims in 952, showing the king's agreement. d'Abadal draws on secondary references to communication between Louis IV and the comital family of Cerdanya-Besalú to reconstruct the diploma. Miró's sons strove to legitimate their seizure and donate the property to the monastery of Ripoll. For the political context of the rebellion and the comital response, see, Jarrett, *Rulers and Ruled*, 136-41. Jarrett stresses the relative independence of viscounts and the reality that the counts had to work with such men. For further mention of Unifred's rebellion in the context of regional insurrections, see Salrach, *Justícia i poder*, 46.

[54] Jarrett, *Rulers and Ruled*, 136-41. Viscount Bernat of Conflent found himself in a strong position after his brother Unifred's failure and the comital family was unable to sweep him from the political stage. His chief political ally in the later tenth century was his second brother, Bishop Sal·la of Urgell (d. 1010). The documents of the see of Urgell and the monastery of Sant Miquel de Cuixà show him operating independently, never appearing in unison with a count and acting largely autonomously in his powerbases within Conflent and Urgell.

[55] *JRCCM* 85.

more evenly, counts nominated local representatives called vicars (*vicarii*), to whom they further delegated rights associated with the comital office and guardianship of public land.[56] The empowering of these men signaled further troubles.

One vicar, a man called Sal·la, became remarkably powerful. He styled himself "the egregious prince" and headed a castle-network extending across the county of Osona between 920 and 967.[57] Lords of this stature emerged as rivals of comital authority, challenging their interests when and where possible. Salrach showed that other competitors were not vicars, but emboldened descendants of ninth-century landholders. For the traditional powers that did retain significant control—particularly ecclesiastical institutions—their humbler opponents at tribunals began to doubt whether they could receive fair hearings of their cases, leading to further incongruities in the judicial landscape.[58]

[56] Jarrett, *Rulers and Ruled*, 129. For a discussion of the origin and operation of the office of vicar and the right of castle-holding, see Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 59-64. The vicar administered a castle on a district known as the *castrum*, explaining that the vicar of the tenth and eleventh centuries combined the roles of the earlier Visigothic official known as a *tiufath* and the Frankish *centenarius* or *vicarius*. For the *castrum*, see Flocel Sabaté i Curull, *El territori de la Catalunya medieval: Percepció de l'espai i division territorial al llarg de l'Edat Mitjana* (Barcelona, 1997), 87-94.

[57] Jarrett, *Rulers and Ruled*, 144-51, provides a case study detailing Sal·la's consolidation of power in various zones throughout Osona. He described him as "a more or less independent magnate." Although he is well attested in the documentary record, his origins remain hazy. For additional political context concerning Sal·la, see Jeffrey Bowman, "The Bishop Builds a Bridge: Sanctity and Power in the Medieval Pyrenees," *Catholic Historical Review* 88 (2002), 1-16.

[58] Salrach, *Justícia i poder*, 59.

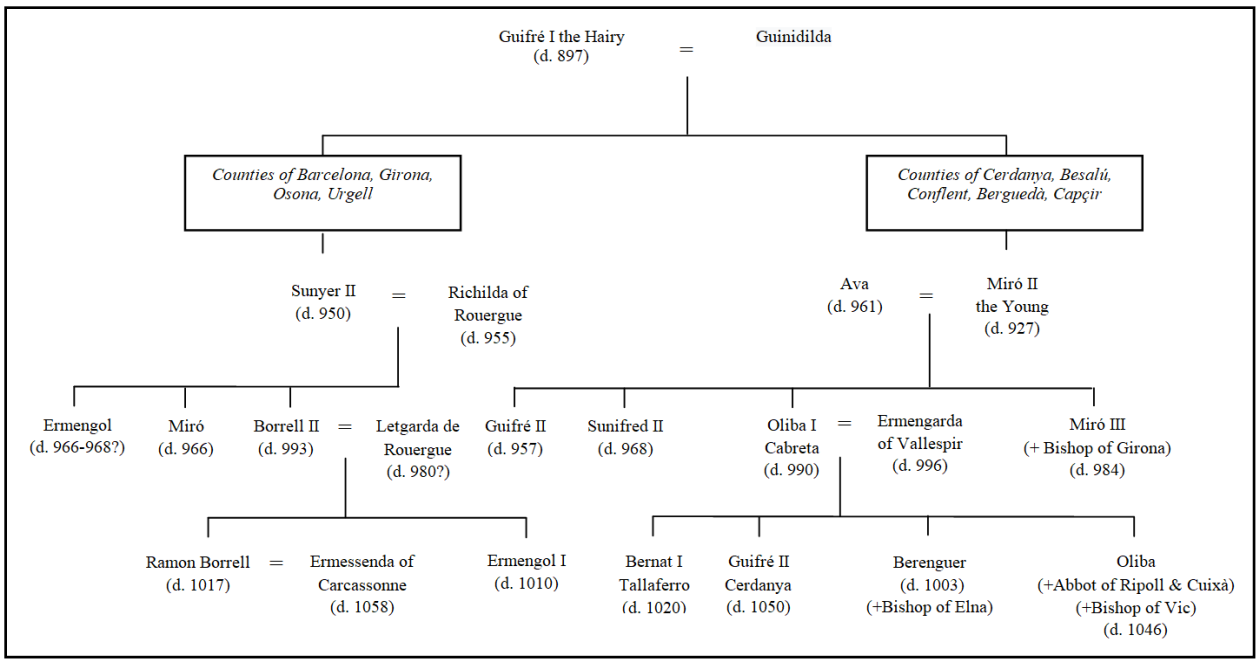

Figure. 3.2. Simplified chart of the successors of Guifré the Hairy (*select counties and individuals*)

Map 7. The political alignment of counties during the second half of the tenth century[59]

These challenges from subordinates occurred against the backdrop of mounting antipathy within the line of Guifré the Hairy, as two competing branches of the family emerged: the house of Cerdanya-Besalú and that of Barcelona (see Figure. 3.2).[60] We find Old Catalonia divided into

[59] This map shows the disposition of the political alignment of the Catalan counties during the second half of the tenth century.Counties shaded in yellow were under the control of the house of Barcelona while those shaded in red were under the sway of the house of Cerdanya-Besalú. The figure is based on the maps provided by Jordi Bolòs and Víctor Hurtado, *Atles del comtat de Barcelona, 801-993* (Barcelona, 2018), 24, and Kosto, *Making Agreements*, xx.

[60] The house of Cerdanya-Besalú descended from Miró II. At Miró's death in 927, his wife Ava (d. 961) served as regent for their children, gradually associating the sons in her rule of the counties. One son, Sunifred II (d. 968), took full control of Cerdanya in 942, along with Conflent. It appears that his younger brother, Oliba I Cabreta (d. 990) assisted as a deputy of sorts. Another, Guifré II acceded to Besalú. At his death in 957, Besalú also passed to Sunifred. When Sunifred himself died in 968, Besalú and Vallespir went to the youngest brother, Miró III Bonfill (d. 984), who would become bishop of Girona in 970. The remaining possessions passed to Oliba Cabreta. It was not until Miró Bonfill's death in 984 that the house's counties would again be united under one ruler. He proved a competent count, gaining at least the Ripollès and Capçir (possibly also Berguedà). However, Oliba Cabreta's retirement to the Italian monastery of Montecassino in 988 signaled new divisions among his own sons. Meanwhile,

two power blocks, with both sides controlling a series of counties and rivaling one another in strength (See Map 7). By the 950s—with a history of contention stretching back to the early days of the century—political competition over tenure of counties and influence over abbacies in the Ripollès had turned violent.[61] The documentary record reveals that two further rebellions against the Cerdanya-Besalú branch emerged against the backdrop of this competition, with Salrach hypothesizing that Borrell II acted as an instigator.[62] The first occurred in 957 and resulted in the death of Count Guifré II of Besalú. A mob led by two priests surrounded and killed the count as he attempted to escape from his castle in the town of Besalú.[63] Albert Benet i Clarà dated the

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the second branch stemmed from Sunyer II of Barcelona (d. 950). When he retired to monastic life in 947, he left his lands—the counties of Barcelona, Girona, and Osona—to his remaining sons, Borrell II (d. 993) and Miró (d. 966). Borrell gained Urgell from his heirless uncle, Sunifred II of Urgell (d. 948), and emerged as sole ruler of his father's possessions at Miró's death in 966. For a fuller evaluation, see Chandler, *Carolingian Catalonia*, 246-48.

[61] Salrach, *L'assassinat de l'arquebisbe Ató*, 6-9, argues that the conflict had its roots in the division of Guifré the Hairy's holdings in 897. A rough equilibrium among Guifré's sons emerged. This balance survived the death of the eldest brother, Guifré Borrell in 911, at which time Miró II the Young agreed that his youngest brother, Sunyer (d. 950), could succeed to the lands of Guifré Borrell on the condition Miró receive Besalú and influence in the Ripollès region of northern Osona, see Federico Udina Martorell, *El archivo condal de Barcelona en los siglos IX-X: Estudio crítico de sus fondos* (Barcelona, 1951), 2-A; Ramon Ordeig i Mata, ed., *Catalunya carolíngia: Els comtats d'Osona i Manresa* (Barcelona, 1999), 120; and Chandler, *Carolingian Catalonia*, 176 n. 119. However, fractures became evident at Miró's death in 927. Sunyer II of Barcelona attempted to capitalize on the moment, violating the terms of shared administration of the Ripollès monasteries. When Abbess Emma died, Sunyer excluded the family's Cerdanya-Besalú branch from the appointment of a successor to her position at Sant Joan. Though evidence remains sparse and conclusions rely on speculation, we may add to this struggle over the administration of the family's religious houses the death of Sunyer's eldest son, Ermengol, between 939 and 943. We know that Ermengol fell in battle within Cerdanya, but against which adversary remains a mystery. While Muslim or Magyar forces remain possible candidates, Salrach (at 8-9) hypothesized that Ermengol was killed while fighting his cousin, Count Sunifred of Cerdanya, son of Miró II. Potential causes of an intra-familial war may have been the Ripollès disagreement or even the succession in the county of Urgell (Guifré I's son, Count Sunifred of Urgell had died without a male heir). Following Sunyer's retirement to the monastery of La Grasse in 947, his son, Borrell II, maintained his father's inimical stance against his cousins of the Cerdanya-Besalú branch of the family.

[62] Josep Salrach, "El comte Guifré de Besalú i la revolta del 957," in *Amics de Besalú II: Assemblea d'estudis del seu comtat* (Olot, 1973), 3-30; Salrach, *Justícia i poder*, 103 n.27, stresses the plausibility of this assertion, but recognizes the lack of direct evidence that the Barcelona branch of the family was a direct instigator. Yet, when factored alongside the broader climate of antagonism and conflict within the lineage descending from Guifré the Hairy, Salrach's hypothesis merits serious consideration.

[63] Salrach, *L'assassinat de l'arquebisbe Ató*, 14-15, shows that while the exact makeup of the opposition and the movement's motives remain unclear, comital leadership in mid-tenth-century Besalú faced internal and external pressures. From within, a group of magnate families—possibly descended from Radulf (d. 920), brother of Guifré the Hairy—felt excluded from power and resisted comital authority. Their status as *fideles regis* already somewhat

second insurrection to sometime between 979 and 981.[64] Borrell II was able to trigger operatives to seize strategic castles in contested Berguedà from Count Oliba I Cabreta (d. 990).[65] Borrell perhaps hoped this would pave the way for his own invasion of his cousin's lands. Oliba—who had been campaigning against Count Roger I of Carcassonne (d. 1012)—managed to stave off the worst effects of this near disaster. Taken together, these rebellions show that the cousin-counts did not view the court system as a viable arena for solving conflicts of this significance. Not even the *condiciones* strategy could marshal the authority necessary to provide balance, as it had in similar situations in the ninth century.[66] As with the epilogue of Viscount Unifred's revolt, it was only later, after the comital houses had quarreled (extra-judicial, horizontal conflicts), that judges were brought forth to address the property of the rebels (more traditional, though vertical, disputes).[67]

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removed them from comital control and laid the groundwork for tension. While the hypothesis that these families participated in the 957 revolt is plausible, we lack confirmatory evidence. Externally, Count Borrell II served as a competitor of Guifré. Salrach also draws connections between the priest, Adalbert, and the see of Girona, a bishopric that was, at that time, loyal to Count Borrell. In Salrach's estimation, the revolt was likely part of the broader competition between the branches of the comital family.

[64] Albert Benet i Clarà, "Una revolta Berguedana contra el Comte Oliba Cabreta," *L'Erol: Rivista cultural del Berguedà* 6 (1983), 31.

[65] For the territorial status of Berguedà, see Josep Camprubí i Sensada, "La indivisibilitat del bloc comtal Cerdano-Berguedà en època d'Oliba (Cabreta) i dels seus fills (finals del segle X inici del l'XI)," in *Actes del congrés internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del 1r mil·leni*, ed. Immaculada Ollich i Castanyer (Vic, 1999), 151-62; Armand de Fluvià, *Els primitius comtats i vescomtats de Catalunya* (Barcelona, 1989), 47; Josep Camprubí i Sensada, *Conquesta i estructuració territorial del Berguedà (s. IX-XII): la formació del comtat* (Lleida, 2006), 29-49; and Jarrett, *Rulers and Ruled*, 70. Like the status of the Ripollès, it is ambiguous whether Berguedà was a stand-alone *pagus*/county in this period. However, it may be grouped among the holdings of the house of Cerdanya-Besalú.

[66] *JRCCM* 4, 6, 9, 13, 20, 33.

[67] For the records detailing the 957 Besalú revolt, and the subsequent dispute over the rebels' property, see *JRCCM* 80 and Ramon Martí, ed., C*ol·lecció diplomàtica de la Seu de Girona, 817-1100* (Barcelona, 1997), 116. For records detailing the Berguedà insurrection of ca. 979-981, see *JRCCM* 92, 105, 186.

What these events collectively show is that the *condiciones* strategy was not used in horizontal circumstances at the highest levels of society, a sharp contrast to circumstances before the Bellonid consolidation. Instead, such competition was navigated with armed conflict, intrigue, assassinations (the fate of a few high profile bishops), castle construction, or some other means of extra-judicial action not preserved in the record.[68] Moreover, a great many conflicts that were not brought to tribunals or delayed for strategic purposes may be unknown to us.[69] Those instances in which we do see the *condiciones* strategy used are occasions when counts and bishops attempted to act as presidents, but—with the above-described challenges to elite power being widely known—found that litigants lacked confidence in their impartiality and/or believed they could resist their authority. I argue that judges, worrying over the integrity of the judicial system, adapted the strategy to meet this new adjudicatory reality. We now turn to examples of such implementation.

[68] With a focus on the tenth-century struggles between the branches of the Bellonid family, Salrach, *L'assassinat de l'arquebisbe Ató*, 15-16, 20-26, examines how these extrajudicial tactics became political tools to undermine the position of rivals and take advantage of precarious relationships between the counts and their subordinates. He shows that legal actions often took place only in the aftermath of extrajudicial conflict, as the parties sought to restore equilibrium or capitalize on the resolution. The most dramatic action Salrach addresses was the 971 assassination of "Archbishop" Ató of Vic, arguing that this murder was a response to the scheme by Ató and Borrell II to elevate the bishopric of Vic to the level of an archdiocese (as a replacement for the long defunct archdiocese of Tarragona). This would remove the Catalan bishoprics from the jurisdiction of Narbonne. The success of this scheme would have signaled a dramatic realignment of power on the frontier, granting Borrell II great influence over the region's ecclesiastical institutions. Explaining these circumstances, Salrach attributes a strong motive to Borrell's chief rivals, his cousins in the house of Cerdanya-Besalú in Ató's murder.

[69] Adam Kosto, "The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert," *Viator* 47 (2016), 89-91, shows for the mid-eleventh century, that circumstances could present incentives to delay judicial action against an opponent. Litigants factored considerations, like the projection of "soft power" (broadcasting the deployment of traditional authority while also contrasting the litigant's fulfillment of and his opponent's rejection of mandated social roles), into their court strategies. Count Ramon Berenguer I (d. 1076) waited six years to pursue his suit against Mir Geribert (d. 1060). At the eventual confrontation in 1058, the count wanted to be able to project to onlookers that he had given the rebel every chance to conform to the proper relationship with his lord. If political considerations were taken in the mid-tenth century (of course apart from conceptions of lordship more appropriate to the eleventh century), then this could be a possible explanation for why some cases were drawn out over several years.

3.3.2. *Castellnou and saintly catharsis, 993*

In the fall of 993, Countess Ermengarda de Vallespir (d. 996), the widow of Count Oliba I Cabreta, joined members of her family and partisans at the fortress of Castellnou dels Aspres, in the hills west of the town of Elna. For the gathering she was joined by her son, Bishop Berenguer of Elna (d. 1003), her daughter-in-law, Countess Toda-Adelaide of Besalú (d. post 1020), one Viscount Oliba, and numerous notables (*proceres*) from the county. The gathering also marked the occasion to hold a tribunal and resolve a complaint submitted by Abbot Sentill of the monastery of Santa Maria d'Arles over the nearby alod of Torderes. For the dispute, the group was joined by two judges and a *saio*.[70]

The abbot first carefully established his monastery's ownership of the alod, which he claimed he could support with records of sale. He then asserted that "within the aforementioned boundaries no man may build an edifice or do any work without the permission (*blandimento*) of the abbot or his monks who governed the said monastery under the Rule of Saint Benedict."[71] This restriction on the actions of locals is where trouble had arisen. Abbot Sentill complained that he had directly asked those living around the newly purchased alod to show him the boundaries of Torderes. Facing the potential loss of their buildings and limitation on what land they could work, the local people unsurprisingly refused to reveal the boundaries. The abbot had become convinced that this un-neighborly behavior would lead to abuses and had come to ask the countess to force the people of the valley to comply with his demands.

[70] *JRCCM* 123. For a discussion of this case, see Salrach, *Justícia i poder*, 100-02.

[71] *JRCCM* 123: "Et infra predictos terminos nullus homo non debet edificium facere nec ullam laborationem sine blandimento de ipsos abates vel monachos qui regunt predictum cenobium sub regula almi patris Benedicti."

Upon hearing the abbot's predicament and the villagers' effrontery, Ermengard turned to the judges and assembled lords, asking them what could be done to help the monks (*requisivit consilium ad predictos iudices et seniores*). The judges stepped forward and responded with a paraphrased citation of *LV* II.4.2.

> If anyone who has been admonished by a judge shall not wish to give testimony concerning a matter about which he knows, if he is a nobleman, no man ought to receive any other testimony from him; if, truly, he is a lesser known person, he ought to go without dignity or testimony, and this infamous one should receive one hundred lashes.[72]

When the judges had finished explaining the law—with its frightening punishment of 100 lashes—the countess and lords decided that there was sufficient legal backing to force the monastery's neighbors to testify. Thus, without summoning the accused to Castellnou to hear their account of the matter, and without probing the abbot's narrative further, the comital court sided with the monks of Arles. Ermengard and the judges then set about finding a way to compel the abbey's neighbors to reveal the boundaries.

The court sent out orders to those living near the villages of Tàpies and Forques, demanding that the people appear at the church of Sant Martí de Forques, located a few kilometers southeast of Castellnou and on the edge of Torderes. The countess' orders were not ignored, and sometime before Christmas of that year, the villagers assembled for the judges at the sanctuary. With all gathered before the church, the judges demanded that the people

[72] *JRCCM* 123: "Si amonitus quisquam a iudice de ea re que noverit testimonium peribere noluerit, si nobilis persona est, nullus homo non debet ulterius suum testimoniurn recipere; si vero minor ingenua persona est, et dignitatem et testimonium debet carere et centum flagella infamatus suscipere."

nominate three witnesses with knowledge of the boundaries. They then brought these three men into the sanctuary and had them swear. The documentary scribe, Adalbert, explained their oath,[73]

> And at the height of the morning, they (the villagers of Tàpies and Forques) gathered before the church of Sant Martí, which is seen to be located at the border of the stated alod of Torderes. And they elected from among them three witnesses who swore the aforementioned oaths in the stated church of Sant Martí, with their hands above his altar as well as above the martyrs (*in iamdicta ecclesia Sancti Martini supra eius altare sive supra sanctos martires*) Abdon and Sennen, and they noted and showed those boundaries.[74]

The passage illustrates that the witnesses swore not only over the relics of the saints, Abdon and Sennen (obvious examples of sacred matter), but *also* over the altar itself. By stressing both the relics and the altar as distinct and in immediate succession, the judges—aware of the villagers' prior obstinance—were clearly attempting to shift the community's attention to the relationship between local intercessors and the church as a place of intercession. The emphasis on the salvational power of the locale worked, and the witnesses outlined the boundaries of Torderes.

When their oath was at last given at this threshold of Heaven, the witnesses immediately departed with the court officials to point out the boundaries. To begin, "they exited that stated church, and went up to the hill which is above the church."[75] For what must have been the remainder of the day, they traversed the rough and wooded terrain noting in great detail those

[73] *JRCCM* 123 notes that the scribe worked under the direction of Abbot Sentill, but did so in the presence of the parties to the case: "Adalbertus, qui hunc relatum transcripsit, iubente domno Sintillo abate, in presencia virorum ibidem circum adstantium, XI kalendas aprelii, anno V quod cepit Rodobertus regnare in Francia." This document was made on the very day, when matters were fresh in Adalbert's mind. The scribe's emphasis that he compiled the document in the presence of all present shows that, despite Sentill's command the record be made, the abbot would not have had the opportunity to orchestrate inaccurate augmentations.

[74] My emphasis. *JRCCM* 123: "Et fuerunt summo diluculo congregati ante ecclesiam Sancti Martini, qui situs esse videtur in sepe iamdicto alode Tordarias. Et elegerunt inter se tria testimonia qui supradictum sacramentum in iamdicta ecclesia Sancti Martini supra eius altare sive supra sanctos martires Abdon et Sennen manibus iuraverunt et ipsos terminos insinuaverunt et demonstraverunt."

[75] *JRCCM* 123: "Exierunt de iamdicta ecclesia, et ascenderunt in ipsa serra qui est supra ipsa ecclesia." The circumambulation of property boundaries was not an uncommon practice in episodes of legal property definition. There are clear cases dating back to the ninth century. Kosto, "Versatile Participants," 11 n. 38.

landmarks (mostly churches) which had been named in their oath before the saint. Indeed, the listing of the various property features and adjacent holdings amounted to a substantial portion of what would become the document recording this dispute. Upon the survey party's return, the court, including the countess, formally signed the charter and the tribunal closed.

This case leaves us with a series of important questions concerning the capacity of the *condiciones* strategy to compel a recalcitrant party of disputants to adhere to a court order and to restore a sense of harmony among neighbors. How did the judges obtain the villagers' cooperation? Why did the judges stress *LV* II.4.2, but ultimately favor a judicial use of sacred space instead of the whip, as was legal? What message did the unified front presented by the countess, her family, and the monks of Arles convey to their opponents? And finally, what does this dispute, representing a novel use of the *condiciones* strategy, tell us about the state of comital legal authority in the province during the later tenth century?

On the face of the matter, this episode shows a direct and convincing manifestation of comital power. Having been moved by the affront to Abbot Sentill and the code's prohibition of withholding information from officials, Countess Ermengarda resolved that the villagers would define the boundaries of Torderes for the monks. By the end of the case, they had. Yet, the eventual comital victory belies uncertainty about the scope of the countess' authority early in the case and the need for complex strategizing on the part of the judges; Ermengarda's order was not as easy to institute as it first seems. She did not simply send a messenger to direct that the abbot's neighbors define the boundaries, with such a command being quickly obeyed out of automatic respect for comital authority. Rather, Ermengarda faced the distinct possibility that the villagers would simply scoff at her command, just as they had refused Sentill's request. She may have feared that her snap decision at the outset revealed comital bias in favor of an ecclesiastical

institution, without the villagers' position having even been aired at Castellnou. We must not forget that village representatives had not been among the initial parties gathered at the fortress. What could she do; institute mass punishment of some sort? What might be the consequence of such a move? The judges had to weigh strategies and navigated the matter with care. The *condiciones* strategy afforded the court that delicacy by transferring focus from ambiguous comital authority to the emotional resonance of the space.

When Ermengarda first consulted the judges, they informed her that uncooperative witnesses of low birth (the people of Tàpies and Forques certainly fit this description) could be subjected to a brutal punishment of 100 lashes. Yet, this was not the eventual solution; nor do we see the eventual witnesses simply walk the court officers around Torderes unprompted, after a mere mention of the unsettling details in *LV* II.4.2. If the punitive measure was proposed at Forques and affected the villagers' decision to cooperate, we have no record of the judges having directly issued such a threat. This omission would be surprising given the impressive level of detail elsewhere in the record. Yet, this raises a question: why was the citation mentioned at Castellnou and transcribed into the record once the scribe knew it played no role in garnering villager cooperation? The intended effect of its first mention at the fortress may have been to encourage the court that the abbot's position was in fact just and worth advancing: according to *LV* II.4.2, if someone had information, it was unlawful to conceal it from judicial officials. In this regard, the villagers were clearly in the wrong. It gave the countess a tool to declare for the monks.

When the order to reveal the boundaries finally came, it was not accompanied by the threat of bodily torment. Instead, the community was referred to its own local intercessors resting in the church of Sant Martí. They could serve as guarantors of oaths made in good faith and

sanctioned by God's power. Any doubts or discontent surrounding comital authority and the whip could thereby be dispelled. Beyond supporting questionable comital authority, this strategy exhibits the judges' consideration for the stability of the community around Torderes and how trust for the newcomer monks—clearly lacking in these villages—might be built among locals. Lashes may have helped extract the information Sentill desired, but a gruesome scourging would have shackled any rapprochement with the villagers' pain and resentment. An exaction of oaths confirmed by important community saints, however, could get the abbot what he wanted, invigorate the countess' authority, and placate the villagers. The power of the saints consulted in a consecrated church became a step toward catharsis. Consulting the local intercessor ensured that the villagers took their oath seriously and answered concerning the boundaries honestly. At the same time, it showed that Abbot Sentill was willing to engage with and invest in the holy patrons of his new neighbors. The judges gave him an opportunity to join this community and to help look after its welfare.

This episode reveals a new circumstance for the *condiciones* strategy. The judges employed the strategy to supplement comital authority which, in stark contrast to the dynamics of the opening decades of the century, lacked the potency for Ermengarda to order automatic compliance. We should take this impression seriously, and not doubt the capacity of the villagers to devise strategies of their own. Indeed, there is no reason to think that in the wake of their precipitating confrontation with Abbot Sentill, the people did not foresee his appeal to the comital court. Perhaps they planned some manner of resistance to any order from the countess. It is reasonable to conclude that, to some degree, they felt they could withstand the weight of the abbey, the countess, and her court. This attitude placed considerable onus on the judges, as they

were responsible for the integrity of the system being flaunted. This point brings us to a final issue concerning this case.

In its base structure, the dispute resembles the Vilamacolum affair: a group of villagers stood united in opposition to comital demands, resulting in a use of the *condiciones* strategy. Yet, much had changed since 913. The Vilamacolum residents prevailed, while their counterparts living around Forques did not. This difference had everything to do with the disposition of the judges in 993. In both disputes, they came to a decision early in the process; much of the proceedings were about how to devise a ruling that would stick. The key distinction between these cases, however, is that while the judges supported the villagers at Vilamacolum, they stood in resolute support of comital judicial power at Forques. Attention had moved away from how to maintain balance in court (a sense of consistency by which parties were afforded even procedural rights) and toward how to protect the security of the system itself. Showing the great adaptability of the *condiciones* strategy to various circumstances, the judges in both instances felt that ritual-based strategy was their best way forward. The 993 judges invoked the intercessional authorities permeating the space to head off any argument the people might advance. No delay was granted to hear the villagers' case or to invite them to offer proofs of their own. The judges believed this to be a moment of danger for the court. The people's violation of *LV* II.4.2, withholding information, sealed their fate; the judges would not permit them to advance a case. They must submit. The scribe conveyed the judges' confident use of the strategy in this imbalanced manner, without any of the embarrassed obfuscation seen in the 921 Esponellà case. The tone of the *condiciones* strategy had changed, revealing deepening partnerships between judges and their comital lords, both figures whose power was invested in the functionality of the system. Yet this case, introducing a tonal shift, was not the most extreme instance of recalcitrant litigants or the

most sophisticated defense of comital court authority constructed using the *condiciones* strategy. Those developments are evident in the first two instances of disputants' scoffing at the court's authority. To address these two cases together, we must back up a decade from events at Forques.

3.3.3. Rejecting the Court: Bias, control, and appeals to Heaven, 980 and 997

We begin at the town of Besalú. In May 980, Count-Bishop Miró III Bonfill—Ermengarda's brother-in-law—presided over a tribunal concerning alodial property at a place called Prujà.[76] While certainly occurring during a time of prolonged competition, the case was more specifically coeval with the Berguedà revolt against his brother, Oliba Cabreta.[77] The record includes no reference to broader conflicts, but the course of the tribunal and flagrant rejection of court authority stand out as exceptional. The course of the dispute and the count-bishop's ineffective presidency are better understood with this background in mind. Miró Bonfill acted no differently than presidents had for much of the tenth century, and the dismissal of his authority cannot be explained as the product of a specific lapse in judgment on his part. My reading of this dispute illustrates how, taken together, the political climate of the time and the appearance of bias in these proceedings—specifically court favoritism for an ecclesiastical house with links to the president's family, and enjoying his protection as bishop[78]—led one side of the dispute to reject the court's jurisdiction and believe they could weather any consequences. This

[76] *JRCCM* 90. The property in question was located in a valley called Vallcanera, to the northwest of the town of Besalú, where this case was heard. This man is sometimes referred to as Miró III of Cerdanya and sometimes Miró II Bonfill of Besalú. He was also bishop of Girona between 970 and 984. I here refer to him as the former—Miró III—so as to not confuse him with his father, Miró II the Younger (d. 927).

[77] Benet, "Una revolta Berguedana," 31, dated the revolt to sometime between 979 and 981. It is uncertain whether this case, occurring in May 980, arose just prior to, during, or just after that insurrection in neighboring Berguedà.

[78] Ramon Ordeig i Mata, *El monestir de Ripoll en temps dels seus primers abats, anys 879-1008* (Vic, 2014), 121, explains that as bishop of Girona, Miró Bonfill was established as the monastery's episcopal protector by this time.

joint consideration of political factors and conflicts of interest informs our judge-centered approach, helping to explain why the judge, a man called Joan, used a sophisticated deployment of the *condiciones* strategy to preserve the integrity of the proceedings. Judge Joan's foremost concern became the defense of the legal system. A synthesis of law, liturgy, and sacred space afforded him a degree of success.

To support Miró Bonfill's presidency, he was joined by Viscount Guandalgot (d. 988?) of Besalú.[79] Five clerics, two *saiones*, and a number of both named and unnamed laymen assisted Judge Joan. This was an impressive array of traditional political and judicial power; the count-bishop, as president, lent his authority to the support structures that had been a staple of courts in the lands adhering to the code for centuries. Before the court, the mandatory of the late Abbot Quilisclo of Ripoll, one Teudebert, submitted a complaint against a man called Ató and his son, Sunyer. Teudebert asserted that Miró Bonfill's mother, Countess Ava, had given properties at Prujà to Ripoll "on the day that she died," accusing Ató and Sunyer of wrongfully taking her gift for themselves.

Thus far, everything the scribe, a priest called Baldric, had outlined in this case conforms to expectations. Indeed, it was not even out of the ordinary for the president to have a personal connection to one of the disputants, as Miró Bonfill clearly had with Ripoll. Yet, subsequent events (or rather the lack of them) reveal that the conventional acceptance of the president's investment was either undergoing social recoding as unacceptable bias, or comital political distraction was making the voicing of such discontent a more realistic prospect; the reality was likely a mixture of the two. In this context, it is unsurprising that the record reveals an

[79] For the regnal dates of the viscounts of Besalú, see Jordi Bolòs and Víctor Hurtado, *Atles del comtat de Besalú, 785-988* (Barcelona, 1998), 65.

unprecedented challenge to the standard operation of court proceedings in the province up to this time, though not one unforeseen by the creators of the code centuries earlier. It was the first example of a troubling trend that would become common in the subsequent century: a litigant's rejection of a court's authority and subsequent non-participation. It also showcases yet another example of a judge's *reactive* use of the *condiciones* strategy to compensate for enfeebled comital power—though in more dramatic fashion than seen in the previous case study. The judge's invocation of the strategy in a moment of emergency displays the synergy of codified law, community conceptions of sacred space, and the power of ritual action in the minds of these judicial professionals. This synergy, forming the underpinning of the *condiciones* strategy, was a constant in an otherwise changing judicial landscape. In time, Judge Joan would illustrate the value of its consistency.

Almost certainly having been notified of the charges against them, the accused parties—Ató and Sunyer[80]—failed to appear to hear Teudebert's accusation, simply ignoring the court's intrusion into this dispute. Count-Bishop Miró Bonfill's role as president meant that he was to act as guarantor for the legitimacy of the proceedings. The court was depending on his authority to make both parties amenable to the proceedings. However, Miró Bonfill proved incapable of compelling the father and son. Because of this, Judge Joan and his assistants turned to the code for a path forward. With his opponents absent, the court decided that Teudebert ought to prevail in the case. The mandatory had appeared for the proceedings, acknowledged the court's jurisdiction in the affair, and submitted evidence for the judge's consideration; he had played by the rules. Yet, there was almost certainly anxiety that Ató and Sunyer would not accept Ripoll's

[80] It appears that the complaint issued by the monks of Ripoll was primarily directed against Ató. Yet, as the dispute unfolded, it became clear that the court was dealing more directly with his son Sunyer as a decision-maker in his father's affairs. This could owe to infirmity or age on Ató's part.

victory. Perhaps force would be necessary to dislodge them from Prujà. If the monks were to obtain the property without future challenge, then Joan needed to ensconce Teudebert's case in as much authority as possible, thereby garnering community consensus for any action the count-bishop might have to take. In so doing, Joan could more easily broadcast the illegality of the father and son's actions to the community. For this, the judge knew that witness testimony was essential. Yet, as will be detailed below, the code had strict rules for the introduction of witnesses into a dispute, and Joan was aware that Ató and Sunyer had a right to respond to these witnesses, even if they themselves were absent. The matter could become far more complicated if Joan merely gathered witness testimony, received their oaths, and ruled in favor of Ripoll. He had to account for the losing party's response to his ruling and the feasibility of enforcing the decision. This case exemplifies how judges carefully weighed the factors of cause and effect when it came to use of ritual action in law.

Navigating these obstacles, Judge Joan implemented the *condiciones* strategy as an interpretation of the code's mandate for witness testimony. In terms of objectives: it was a way to legitimate a ruling built on the code and to shore up Miró Bonfill's presidency. Joan's decision-making process merits closer consideration. Just like the judges from Boso's documentary recovery in 898,[81] Joan knew that action in a sanctuary was not an automatic solution. Its implementation required finesse to meet case circumstances, and it needed to generate community consensus. The judge had to illustrate how use of the *condiciones* strategy achieved a legal necessity mandated by the code. This was a multi-stage process requiring care. Joan wished to build his case while also providing every opportunity for the rogue defendants to

[81] *JRCCM* 43, 44.

participate. It must be stressed: the mere inclusion of supernatural authority was not enough. Oaths and their exaction through the Rite of the Guarantor had to be interwoven as a support structure upholding a legal argument. This required a complex interplay of mutually reinforcing a citation from the code and ritual display. Judge Joan began with the latter.

The first step taken was to ask Miró Bonfill to send a messenger to the defendants with an official letter. We lack the text of that letter, but the record's scribe explains this step in the voice of the count-bishop: "From the aforementioned judge and *saio*, we sent our messenger with a letter and seal to the man called Sunyer, who is the son of Ató, saying that [Ató] ought to present himself in the said court through his son so that he might present his testimony in that place of the court."[82] Did Joan truly expect Sunyer to appear with witnesses on behalf of his father? Likely not.[83] The judge knew that if the pair had wished to participate, they would have appeared for the initial proceedings. A clearer indication of Joan's purpose in having the count-bishop send the letter comes from a legal citation that he presented in court. The scribe wrote this citation into the record, just above the discussion of the letter. The judge paraphrased from *LV* II.1.25:

> And in that very place we brought in the Book of the Goths (*Libro Gottorum*), in the second title, chapter twenty-one: "Namely the judge should pass judgment; if witnesses of one party come forward, the judge ought to receive them, and when the other party of the judgment withdraws from the judgment fraudulently, it shall be entirely illegal for he who did so to produce any witnesses; and if he should have cause to reasonably challenge those accusing him, he should be fully heard

[82] *JRCCM* 90: "Unde supradictus iudex vel saione misimus nostrum missum cum epistola vel sigillum ad omine nomine Suniario, qui est filius de iamdicto Atone, que se presentavit in iamdicto placito per iamdicto filio suo et inibi de placito presentabat suo testimonio."

[83] *JRCCM* 90: "Et invenimus in eos mendacium et falcitatem, et iamdictum Suniarium noluit venire ad consultum iudicium in castro Bisilduno et sic se substraxit fraudulenter de iamdicto placito pro iamdicto filio suo."

> by the judge." And the judge ought to receive further and better witnesses from the one who brought the claim.[84]

This citation is an excerpt from *LV* II.1.25 which, in its full form, explains: (1) how a judge ought to proceed depending on the scope/significance of the matter, (2) how and to whom documents recording the proceedings should be issued, (3) what to do when litigants abandon the court, (4) the conditions for accepting testimony from a party, (5) prohibitions for accepting witnesses from those who quit the proceedings, and (6) the right of defending oneself from malicious testimony. It is worth examining the measure in full:

> If the suit concerns resources and matters of great importance or indeed a dispute of worth, the judge shall, with both parties being present, write two pronouncements of the matter discussed, which both parties of the quarrel should accept with similar text and requested subscription. Surely if the action was stirred by lesser matters to which are sworn by him whom the victor brought forward, they shall have only the publication (of the oath) by order of the judge. Yet concerning those publications, he who was defeated shall have a copy of the testimony of the witnesses requested. But if a party, who was brought into the dispute for whatever reason, should declare before the judge, that it is not necessary that the plaintiff offer testimony, however small the matter may be, the judge must write a record of the judgment requested with his own hand, lest the matter be raised again in the future. If truly, with the judge making arrangements, one party comes forward and receives the testimony they produced, and the other party should withdraw from the judgment, it shall not be permitted for the judge to accept witnesses later brought forth by he who withdrew, and those men who were brought forward should remain firm in their testimony and subscribe. Now, concerning he who fraudulently withdrew from the judgment, it is completely prohibited for him to produce another witness; namely one who might have knowledge of the things conceded, so that before those witness who gave testimony should die. Thus the withdrawing party should have the right to address any reasonable accusation against him, which the judge shall patiently hear. And if the accused witness were to be convicted, his testimony should not stand. And whence, if not one of the two witnesses should remain worthy in his testimony, the party that first brought forth the witnesses, within the span of three months, ought to produce other witnesses who might confirm his case. He should

[84] *JRCCM* 90: "Et in ibidem loco invenimus in Libro Gottorum, in titulo secundo, era vicessima prima: 'Iudex, qualiter faciat iudicium; si de una parte testes aduxerint, debere recepire, pars altera de iudicio se absque iudicio se substraxerint fraudulentis, producere testem alium omnino inlicitum erit; et si abuerit quod racionabiliter in eis acusant, potenter audiatur a iudice;' et ei testimonium recipere debat pluriores vel meliores."

> not cease to inquire. However, if he cannot find any new witnesses, he who was formerly in possession of the property ought to receive it back. Of course the judge who adjudicated should arrange to keep records of all these matters, to prevent the resumption of the controversies.[85]

The text, dating to the seventh century, imagines the possibility that a litigant could withdraw from a tribunal. While this contingency was foreseen by the code's creators, such instances of defiance—if they occurred before 980—were not recorded. That this was the first overt instance after more than three centuries of the law's use helps to highlight the unprecedented circumstances Joan faced. An analysis of how he capitalized on this paraphrased measure is instructive. Moreover, comparison of the excerpt included in the court document for this case and the full citation from the code reveals that Joan was selective in what he wished the count-bishop to communicate to Sunyer in his letter. Indeed, that selectivity allowed him to place emphasis on certain aspects of *LV* II.1.25 and thereby hopefully guide Sunyer's next move. It is a useful exercise to imagine the sort of information that might have made its way into the letter:

> *The mandatory of Ripoll has issued charges against you and wishes to submit witness testimony to defend the monks' claim. You have a right to appear and present counter witnesses. If you wish to do so, you need to come to Besalú at once and defend yourself in court. If you chose not to do so, however, Ripoll's*

[85] *LV* II.1.25: "Si de facultatibus vel de rebus maximis aut etiam dignis negotium agritetur iudex, presentibus utrisque partibus, duo iudicia de re discussa conscribat, que simili textu et suscriptione roborata litigantium partes accipiant. Certe si de rebus modicis mota fuerit actio, sole condiciones, ad quas iuratur, aput eum, qui victor extiterit, pro ordine iudicii habeantur. De quibus tamen condicionibus et ille, qui victus est, ab eisdem testibus roboratum exemplar habebit. Quod si pars, que pro negotio quocumque conpellitur, professa fuerit aput iudicem, non esse necessarium a petitore dari probationem, quamlibet parve rei sit action, conscribendum est a iudice suaque manu iudicium roborandum, ne fortassee quelibet ad futurum ex hoc intention moveatur. Si vero, hordinante iudice, una pars testes adduxerit, et dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se absque iudicis consultum subtraxerit, liceat iudici prolatos testes accipere, et quod ipsi testimonio suo firmaverint, illi, qui eos protulit, su instantia consignare. Nam ei, qui fraudulenter se de iudicio sustulit, producer testem alium omnio erit inlicitum; qui scilicet hoc sibi tantum noverit esse concessum, ut antequam testes illi, qui testimonium dederant, moriantur, si habuerit quod rationabiliter in eis accuset, patienter audiatur a iudice; et si accusatus testis fuerit evidenter convictus, eius testimonium pro nihilo habeatur. Unde et si duos testes non remanserint, qui digni in eodem testimonio maneant, ille, qui primum testem obtulerat, infra trium mensium spatium testes alios, qui ceptum negotium firment, inquirere non desistat. Quod si invenire nequiverit, rem universam ille recipiat, qui eam ante visus fuerat possedisse. Iudex sane de omnibus causis, que iudicaverit, exemplar penes se pro conpescendis controversiis reservare curabit."

> *witnesses will be accepted without challenge and you will lose the alods at Prujà on account of no contest. Nevertheless, we must acknowledge that the law permits you to submit a later claim against the truthfulness of these witnesses and ask for the mandatory to present new ones*.

This last point concerning a challenge of the witnesses' character appears at the tail end of Joan's citation in the document. It is an important part of *LV* II.1.25 (one that some later judges strategically omitted from their paraphrased citations, as we will see in chapters 4 and 5) that granted someone in Sunyer's position the right to continue the dispute in defense of his or her reputation. The catch was that Sunyer, in order to do so, would have to acknowledge the court's authority to adjudicate the matter. As the line "*et si abuerit quod racionabiliter in eis acusant, potenter audiatur a iudice*" suggests, Judge Joan would be obliged to hear Sunyer's challenge of Ripoll's witnesses. Yet, that obligation also implies that Sunyer would need to acknowledge that Joan—as the appointed judge—held lawful jurisdiction over the matter, and therefore submit to the process and system. For the judge, this point was central: Sunyer's only path forward compelled him to agree that the court could rule in the case, even in his father's disfavor.

This legal argument was the cornerstone of Judge Joan's strategy in this case. However, his next step illustrates that it could not stand on its own merit. In this environment of political and judicial uncertainty, it required supplementation from an outside source of authority, an authority that could cultivate broad community support to isolate Sunyer and Ató should they persist in their obstinance. The absence of the defendants at the outset of the proceedings made it clear that Count-Bishop Miró Bonfill had failed to provide that surety. This is where the Rite of the Guarantor and saintly power came into play; the use of a sacred space to validate the testimony of Ripoll's witnesses gave Joan a means to settle the case even if the reaction to the count-bishop's letter was negative. As the judge likely expected, Sunyer responded to the letter with silence, thus conveying his refusal to appear with counterwitnesses. Joan, therefore, took

the five men that the mandatory Teudebert had brought with him to Besalú into the castle's chapel and had them swear oaths confirming the validity of their testimony on the altar of Sant Joan.

> And these are the names of the witnesses who testified and in the same manner swore: Sendred, Sort, Durand, Flodev, and Ienito. We swore in the house of Sant Joan next to the castle of Besalú, above his sacrosanct/consecrated altar, where we extended these publications (*has condiciones*), with each of us touching them with our hands in order to swear that those alods, lands, vineyards, and all that which was written above belong to the monastery of Santa Maria by the voice of Countess Ava, who is dead, and not Ató, as argued by claim (*per vocem*) of his son, Sunyer, or any other. So may God and the service of the saints help us.[86]

In response, Judge Joan himself ritually received the witness oaths (the defendants of course being absent). Thus, Joan had the witnesses ask God to guarantee the validity of their knowledge of Countess Ava's deathbed bequests. Yet, importantly, the document the party extended for saintly inspection and confirmation also contained the judge's citation of *LV* II.1.25. In this sense, the witnesses were also asking God to acknowledge and approve the legal argument—based on the Visigothic Code—that Judge Joan had made to support the court's authority.

This synthesized interaction between court authority, a legal citation, witness oaths, and the ritual use of a document at an altar, reveals a sophisticated use of the *condiciones* strategy in defense of an embattled court system. As an interaction with a source of legal authority, it constituted an appeal to a higher court, that of Heaven. This surely helped generate consensus around Ripoll's possession and Joan's ruling. It also meant that should Sunyer and Ató seek to proceed, they would have to show the witnesses' perfidy at a community church, likely resulting

[86] *JRCCM* 90: "Et sunt nomina testium qui oc testificant sicuti et iurant, id est, Senderedus et Sort et Durandus et Flodeveu et Ienitone, in domum Sancti Ioannis iusta castro Bisulduno, supra cuius sacrosancto altari ubi has condiciones manus nostras enemus vel iurando contangimus quod a plus debet essere suprascriptus alodes et istas terras et istas vineas et ista suprascripta omnia de iamdicto cenobio Sancte Marie per vocem de iamdicta Avane, comitissa, que fuit condam, quam de Atone per vocem de iamdicto filio suo Suniario aut de nullum alium ominem, sic nos adiuvet Deus et ista merita sanctorum."

in a similar ritual hearing before God's tribunal. It was a steep hill to climb, with spiritual and social pitfalls, but theoretically open to them. Displaying forethought and legal acumen, Joan had accounted for various contingencies, each resulting in Ripoll's steadfast ownership: should Sunyer and Ató persist in their recalcitrance, the monks would prevail and the system would be protected by divine authority. Conversely, were they to re-engage, they would face the arduous task of proving their defamation—Ripoll could be expected to prevail—and the system would be protected by their public submission to the code and the court. This case, underscores the power of hybridizing codified law and ritual action into a single flexible strategy. Though we may recognize the ingenuity of Joan's approach in this case, we cannot forget what the judge ignored: he failed to address the original cause of the problem. When the court adjourned, concerns over conflicts of interest, biased presidencies, and the system's vulnerability to political vicissitudes had gone unacknowledged.

As political insecurities loomed in late tenth-century Besalú, judges like Joan worked to keep the law operable and to compensate for the appearance of bias. Joan faced the fact that Sunyer and his father could point to Miró Bonfill's presidency as a reason to defend their non-appearance. The judge would have known that there was a relationship between the count-bishop and the disputed land.[87] It was in his interests to defend his mother's deathbed bequests to the family's most illustrious monastic establishment. It had been patronized by his grandfather, Guifré the Hairy, and stood as a landmark of paramount political import in the competition against Borrell II.[88] The case emerged at a time when Miró Bonfill and Oliba Cabreta were

[87] Ordeig, *El monestir de Ripoll*, 121.

[88] Salrach, *L'assassinat de l'arquebisbe Ató*, 6, explains the ideological and political significance of the monastery of Ripoll, and its inclusion early on in the negotiations between the branches of the family.

working to increase their influence in the contested lands of the Ripollès. Thus, here was a symbiotic relationship between an ecclesiastical house and one of the main two branches of the comital family. For Sunyer and his father, the dynamic was clearly to the detriment of more humble men like themselves. As shown in this chapter, ecclesiastical privilege in court was not new, though here we note a novel reaction (in terms of scale). As Salrach suggests, a sense of privilege was also the probable cause of the second episode of rejecting court authority.[89] While Salrach's argument for causation stands, further analysis shows how the judges' strategy resembled that employed by Joan in 980. The case signals a starker example of comital impotency, court bias, and legal complications engendered by political realities. A brief explication of the matter will position us to offer final thoughts about these two earliest withdrawals/non-appearances in tandem.

In this dispute, dated to 997, we return to a figure introduced in Chapter 1, Abbot-Bishop Oliba (971-1046).[90] At this time, his clerical career belonged to the future. On the eve of the millennium, he was a younger son of Oliba Cabreta and Ermengarda, and nephew of Count-Bishop Miró Bonfill. The record names him "*Oliba, Dei gratia, comes*." Though Oliba presided

[89] *JRCCM* 132. Salrach, *Justícia i poder*, 58-60, argues that this case is a strong indication that confidence in court structures was in decline by the close of the century and that courts were seen, by some, as biased in favor of ecclesiastical institutions.

[90] Upon Oliba Cabreta's abdication and retirement to Montecassino in 988, this Oliba assisted his mother and brothers in secular life. He eventually began a religious career in 1002-1003, becoming abbot of Ripoll and Cuixà (1008) and then bishop of Vic (1018). Oliba is well known for his significant political influence in eleventh century politics and his sponsorship of the peace councils in Catalonia. In studying his life prior to his clerical vocation, Josep Camprubí Sensada, "L'abat i bisbe Oliba, va professar per obligació o per vocació? El destí d'un comte sense comtat," *Ausa* 183 (2019), 147-49, identifies him as an important factor in Oliba Cabreta's strategic vision for stability in the region following his departure for Italy. Camprubí proposes the possibility that the decision for the young Oliba to specifically enter the monastery of Ripoll was because it constituted neutral ground between the two power blocks in Catalonia at this time, the Ripollès of northern Osona being a border region holding two important religious houses founded by Count Guifré the Hairy, the illustrious ancestor of the two branches of the comital family. If Camprubí's hypothesis is correct and that this détente occurred in 988 as a peace effort between Counts Oliba Cabreta and Borrell II, then it would constitute a substantial redefinition in the posturing of power on the frontier in the late tenth century. This was a shift brought on by external pressures from the Islamic south.

over the tribunal, the proceedings were run by a trio of judges. Despite the feud between the houses of Cerdanya-Besalú and Barcelona having eased by this date, just as the affair in 980, this dispute too arose amid political insecurities and a time of family reorganization. Oliba's mother, Countess Ermengarda (president in the dispute from Castellnou) had died the year before and he was left to act alone in lands they had once administered together. As Countess Ava had done before her, Ermengarda served as regent for her sons in the lands controlled by the house of Cerdanya-Besalú following the abdication of her husband, Oliba Cabreta, in 988.[91] Now with her death, and his brothers installed as his overlords, the younger Oliba's own status as count was an ambiguous one.[92]

That ambiguity could help explain his reduced role in this dispute and ineffective management of what emerged as indignation on the part of the defendant, an untitled man called Segari. The scribe recording the case does not provide Segari's rationale for his frustration with the proceedings, but given the composition of the court's leadership, we can hazard an educated guess. Segari likely believed the court favored an ecclesiastical institution: the see of Urgell. If this was indeed his thinking, he had good reason to believe so. One of the judges, a man called Guifré, also acted as the mandatory of the plaintiff in the case, Bishop Sal·la of Urgell (d. 1010).

[91] Camprubí, "L'abat i bisbe Oliba," 136-137.

[92] Oliba's early career as a secular lord and his title as count have been subjects of debate. By studying the documents recording Oliba's property alienations and by mapping the noted landholdings, Camprubí, "El patrimoni immoble conegut del comte Oliba," 23-26, questions his status as *count* of Berguedà and Ripoll, as well as those counties' independence from Cerdanya and Osona respectively. While Oliba's lands were indeed clustered in Berguedà and Ripoll (in the latter area they terminated within a few meters of the abbey of Ripoll), the content of the documents resemble that found in those of wealthy landholders of the period more generally. There is no evidence that Oliba ruled these areas autonomously. Camprubí shows that while Oliba held the title of count and appeared with his brothers for important actions, he was not likely an independent count of Berguedà and Ripoll. The former was considered indivisible from Cerdanya, while the latter was part of the holdings of the count of Barcelona. Camprubí, **"**L'abat i bisbe Oliba, va professar per obligació o per vocació?" 144-48, asserts that Oliba was expected to help his mother and brother until such a time as it was convenient to the family for him to begin a religious career.

The scribe defines him as: "Guifré, judge, who is the *assertor* or *mandatarius* of Bishop Sal·la of the see of Santa Maria of Urgell."[93] In other words, the attorney of the plaintiff also acted as a judge.

Present at the outset of the tribunal, Segari defended his ownership of tithes owed to the church of Sant Jaume de Frontanyà against Bishop Sal·la's accusations of usurpation. Yet, when faced with witnesses introduced by an opponent whose mandatory also helped adjudicate the dispute—and with Oliba largely inactive in the proceedings[94]—an outraged Segari took his leave in protest. He refused to acknowledge Sal·la's witnesses, with the scribe writing: "And the aforementioned Segari did not wish to receive those witnesses, but withdrew himself from that *placitum*."[95] Guifré and his colleagues quickly solidified the testimony of the witnesses with oaths at the church of Sant Quintí de Turre, near the monastery of Ripoll. Like Judge Joan in the previous case study, the judges also paired their use of the *condiciones* strategy with a citation to *LV* II.1.25. Noting the dual identity of Guifré as an example, Kosto showed that performance of multiple judicial roles by the same individual was rare.[96] Therefore, it is understandable that Guifré's participation would have sparked the resentment it seems to have in Segari. Yet, further questions remain.

With two other judges already participating, why would Count Oliba permit Guifré to act as a judge, compromising his court? With a third judge not absolutely necessary, and the

[93] *JRCCM* 132: "Wifredus, iudex, qui est assertor vel mandatarius de Sallane, Sedis Sancte Marie Urgillitensis presule."

[94] Camprubí, "El patrimoni immoble conegut del comte Oliba," 24, emphasized Oliba's inactivity during this tribunal.

[95] *JRCCM* 132: "Et nolit recipere ipsos predictus Segarius sed extraxi se de ipso plactio."

[96] Kosto, "Versatile Participants," 21-22.

established relationship between Guifré and the see of Urgell, it seems reasonable to conclude that Bishop Sal·la likely applied pressure on Oliba to do so. This prelate, a formidable adversary of Oliba's mother, was quite the consequential politician. He had excommunicated Ermengarda's close advisors in 991 as a response to alleged violations against his see's property.[97] In this context, we may be looking at another episode of comital power weakened by political machinations. A son of Oliba Cabreta—young, new to exercising power alone, and not long for the role of count (he would go on to renounce secular life in 1002-1003)—succumbed to pressure from a legally and politically experienced bishop with a successful history of working against his family's interests. Did Sal·la ensure that his mandatory would be in control of the affair, having two other judges inserted as a half-hearted attempt to mask the otherwise clear bias? An answer in the affirmative is not an unreasonable hypothesis. Under these circumstances, neither Segari's indignation nor Sal·la's finger on the scale of justice should come as a surprise. This 997 case, like that of 980, is another instance of comital impotence. It featured thinly veiled conflicts of interest, overt court favoritism for ecclesiastical interests, and ultimately a need for a solution like the *condiciones* strategy to counter an attack on court legitimacy.

Using this new context, a final reflection on the calculus factored by Sunyer and his father in the 980 dispute will help us determine how effective Judge Joan thought the *condiciones* strategy might be. We may consider two explanations for the pair's rejection of the

[97] Jonathan Jarrett, "Pathways of Power in Late-Carolingian Catalonia" (Ph.D. Diss., University of London, 2005), 290-308, discusses how after Oliba Cabreta's retirement to Montecassino, Countess Ermengard served as regent for her sons. She employed two counselors called Arnau and Radulf. When these two men jeopardized property holdings belonging to the see of Urgell, Sal·la recruited Bishops Vives of Barcelona and Aimeric of Roda to join him in excommunicating the men. The prelates also placed the counties of Cerdanya and Berguedà under interdict, though the family itself was not included. Sal·la then created and distributed an encyclical to justify his actions. No record of how the dispute ended has survived, but we can safely imagine that just six years later, the events had not been forgotten by Ermengard's sons. For the bull and encyclical respectively, see *JRCCM* 117 and 118.

court. The first is political: the case arose amidst protracted Bellonid competition, quite possibly during the 979-981 rebellion. Indeed, the conflict between the houses would not subside until after Al-Manṣūr's 985 sack of Barcelona and Oliba Cabreta's attempted détente with Borrell II on the eve of his retirement to Montecassino. In 980, however, if the uprising in Berguedà was indeed underway and Count Borrell II's proposed invasion imminent, the father and son may have thought Borrell II might support their claims should Oliba Cabreta and Miró Bonfill be seriously weakened by the uprising. Thus, their refusal to participate could amount to a "wait and see" strategy.

A second possibility allows us to see the situation through a lens of lay piety. Moreover, it reveals why Joan's tactic of saintly supervision and ritual action could have appealed to Sunyer and Ató, potentially incentivizing them to finally recognize the proceedings as legitimate. As Jarrett has shown for the early tenth-century cases connected to Sant Joan de les Abadesses and other scholars have demonstrated for institutions beyond the borders of the province, the desire for resolution and a return to equilibrium lay at the heart of quitclaims. For some, taking land from a religious house led a formal relationship with its patron saint through the act of resolution.[98] Ultimately, if they navigated with care, property-violators could walk away with spiritual benefits. While Ató's and Sunyer's exact motivations remain unclear, we might imagine they could have been enticed by this opportunity with the monks of Ripoll. A relationship with this house, even through a resolution of hostilities, could carry social, political, and spiritual

[98] Jarrett, *Rulers and Ruled*, 54; Barbara Rosenwein, *To Be the Neighbor of Saint Peter: The Social Meaning of Cluny's Property, 909-1049* (Ithaca, 1989), 56-61 n. 23; Patrick Geary, "Vivre en conflit dans une France sans état: typologie des mécanismes de règlement des conflits (1050-1200)," *Annales: ESC* 41 (1986), 1107-33; Stephen White, *Custom, Kinship, and Gifts to Saints: The laudatio parentum in Western France, 1050-1150* (Chapel Hill, 1988), 38-39, 51-53, all show the complex patterns of principal gift, future quitclaims by relatives, and even conflict in an effort to establish and define relationships.

benefits. If that were the case, the *condiciones* strategy would have had a powerful normative effect on the pair, as they were ushered into the presence of the very saint whose friendship they so desired.

These explanations are not mutually exclusive. Yet, in the absence of further documents detailing the aftermath of the 980 case, answers in any of these directions remain beyond our grasp. Nevertheless, we may comment on Joan's perspective: regardless of the exact cause in any given case, comital/episcopal authority was not longer always seen as a force contributing to the stability of legal proceedings. Ritual action had become an attractive alternative. It was a solution that could stymie those scoffing at the court system, but it did nothing, however, to address the underlying cause of the issue. This problem would escalate in the decades to come.

3.4. Conclusion

The tenth-century history of the *condiciones* strategy does not feature a redefinition of the Rite of the Guarantor or alteration in how courts executed its performance. The ritual steps remained remarkably stable, and while some treatments are terse or simply reference its enaction, the more detailed records show striking consistency with ninth-century uses. The chart below (Fig. 3.3) shows the *condiciones sacramentorum* oath statement decades apart, in 817, 913, and 997, alongside the text of the Ripoll formulary's formula.[99]

[99] Zimmermann, ed., "Un formulaire du Xème siècle conserve à Ripoll," 81-82.

Source	Text of the *condiciones sacramentorum* oath	Text of reception
JRCCM 2 (817) Sant Andreu de Borrassà, Besalú	*Qui iuraverunt: Dicimus per Deum Patrem omnipotentem et per Iesum Christum filium eius et per Spiritum Sanctum, qui est in Trinitate unus et verus, et ad locum venerationis Sancti Andree, que fundata est in villa Borraciano, in territorio Bisuldunense, super cuius sacrosanctum altare has conditiones manibus nostris continemus vel iurando contangiums, quia nos suprascripti testes scimus et bene in veritate notum habemus et presentialiter fuimus…*	Sig+num Godoaudi, qui hunc iuramentum recepi.
JRCCM 59 (913) Santa Maria de Vilamacolum	*Iuramus nos supradicti testes, in primis per Deum Patrem omnipotentem et per Ihesum Christum eius Sanctumque Spiritum, qui est in Trinitatem unus et verus Deus, sive per reliquias sancta Maria Virginis, in cuius honore basselica sita est in territorio Impuritano, in villa Mocoron fundata esse dinoscitur, supra cuius sacrosancto altario has conditiones manibus nostris continemus vel iurando contangimus, que nos iamdicti testes scimus et bene in veritatem notum habemus, occulis nostris vidimus et aures audivimus et presentes eramus...*	*Sig+num Fla-vius, qui hec omnia superius inserta testificavimus et iuravimus. Guibertus mandatarius, qui os sacramentos recepit, SSS.*
JRCCM 132 (997) Sant Quintí de Turre	*Iurati autem dicimus: In primis per Deum patrem omnipotentem et per Iesum Christum, filium eius, Sanctumque Spiritum, qui est in Trinitate unus et verus Deus, et per hunc locum veneracionis Sancti Quintini martiris cuius baselica sita est in comitatu Ausona, in valle Riopullo, in locum que vocant ipsa Turre, supra cuius sacrosancto altario has condiciones manibus nostris contingimus vel iurando contangimus quia nos suprascripti testes scimus et bene in veritate cognoscimus et oculis nostris vidimus…*	*SSS Wimara iudice, qui hunc sacramentum recepi.*
Ripoll formulary (mid-tenth century)	*Iurantes autem dicimus in primis per Deum Patrem omnipotentem et Ihesum Christum filium eius sanctumque Spiritum qui est in Trinitate unus et verus Deus, et per hunc locum venerationis sancti illius cuius basilica fundata est in comitatu illo, in loco illo. Supra cuius sacro sancto altario has condiciones minibus nostris tenemus et iurando contingimus quia nos suprascripti testes bene in veritate scimus quoniam presents eramus et occulis nostris vidimus et auribus audivimus…*	*None*

Figure 3.3. The *condiciones sacramentorum* oath over time

These representative cases—with dates marking a beginning, middle, and end of the time frames thus far discussed—emphasize the same authorities in each record: the Trinity, the saint, and the space. Importantly, the altar is granted special attention as a source of power. Unlike mention of relics, which do not even appear in the Ripoll formula, the phrase "*supra cuius sacrosancto altario has condiciones manibus nostris contingimus vel iurando contangimus"* appears in each

example.[100] It is the part in which the witnesses ritually engage with the theophany, hence the importance of the altar. High stakes, convoluted case histories, and the posturing endemic to contentious tribunals are among the factors that led to a greater documentary flexibility in the passages surrounding the *condiciones sacramentorum* statement (as we saw in the Esponellà case). That it withstood those vicissitudes communicates its importance in the minds of officials. This consistency over centuries matches the stability of the belief seen in both *dotalia* and records of documentary recovery (*reparatio scripturae*). Judges knew they could depend on that steadfast belief to garner consensus around their rulings and citations of the code. That the ritual core of the *condiciones* strategy remained constant does not mean, however, that the strategy was unchanged by the world of the tenth century.

This chapter has explored the ever-shifting circumstances that recommended the strategy's use. As judges adapted to a political environment that presented novel challenges caused by stark power imbalances between litigants, they looked to the static nature of belief in sacred space to establish an authority-generating anchor capable of resolving disputes. In the early tenth century, that authority could be used to empower smallholders if their numbers were sufficient. Indeed, we saw this at Vilamacolum. The marshaling of sacred power and the community-wide confidence it generated had impressive results. The count's mandatory even received the villagers' oath. However, the fact that this 913 case is unique remains telling. More common was the circumstance at Esponellà in 921. Judges used the power of the *condiciones*

[100] *JRCCM* 93, dated to 984, provides an example in which the relics are mentioned but not the altar: "Iurati autem dicimus in primis, per Deum patrem omnipotentem et per Ihesum Christum filium eius Sanctumque Spiritum, qui est in trinitatem unus et verus Deus, et per reliquias sancti Felicis, martiris Christi, cuius baselica fundata esse dignoscitur in villa Aquatepida, ubi as manus nostras continemus atque iurando contangimus." The structure of the sentence and the importance of *ubi* governing the verbal action of *contangimus* suggests that the altar is implied as the location where the oaths were to be sworn. The relics are introduced by *per*.

strategy to silence vulnerable litigants opposing the unified front presented by a bishop and his comital allies. The story of the *condiciones* strategy in this century is one in which this second circumstance grew ever more common as judges grew more comfortable with priority being given to comital and episcopal interests, allowing bias to be aired in the open. Removing obstacles and defending the system became central to the strategy. Cases like the 980 and 997 withdrawal/non-appearances show such objectives did not go without notice. Comital bias for religious institutions was evident in the very procedure of both cases, likely sparking the disengagement of the losing parties. Thus, in the decades beyond 950, the *condiciones* strategy allowed courts both to further presidential interests and to defend against the outrage that furtherance caused. This marked an important tonal shift in the strategy's use, one that carried into the next century.

Before moving to a discussion of the *condiciones* strategy during that time, however, I wish to put these conclusions into perspective. The *condiciones* strategy may serve as a lens through which to evaluate the court system, but should not lead us to consider the courts as wholly ineffectual. Individual instances of failure must be contextualized and the strategy's use ought not to be taken as an automatic sign of failure or success. This will be especially important in considering the legal world of the eleventh century. All cases require scholars to recognize the need to navigate complexities. The 980 case featuring Miró Bonfill is an excellent example with which to close.

While Miró Bonfill's letter and Sunyer and Ató's non-appearance reveals impotence, it would be going too far to argue that his general experience in power was defined by failure. Salrach depicted the count-bishop as an astute politician, bordering on the devious. As the first Bellonid to hold the positions of count and bishop simultaneously, he worked to create a novel

synthesis of comital and episcopal power stretching across Besalú and Girona.[101] Together with Oliba Cabreta, he schemed to forestall Borrell II's attempt to wrest the Catalan bishoprics from the archbishopric of Narbonne and establish Vic as an archdiocese under his own control. Salrach even implicated the two brothers in the 971 assassination of Bishop Ató of Vic.[102] On a less contentious scale, the count-bishop was also able to garner support from the major ecclesiastical powers of the province to consecrate a new church at the monastery of Cuixà in 974.[103] Yet, this estimation of Miró Bonfill's political acumen does not always match his performance in court. In cases like that heard in 980—regardless of whether broader circumstance or personal inability was to blame— Miró Bonfill drifted into the background.

In a tribunal record from 983, the year before Miró Bonfill's death, the scribe mentions him only in passing and his name does not even appear among the lengthy subscriptions.[104] In fact, later in that same year, rather than wait for the count-bishop's availability to preside, some judges in Besalú simply proceeded without him. They invoked the *condiciones* strategy at the

[101] Salrach, *L'assassinat de l'arquebisbe Ató,* 27.

[102] Salrach, *L'assassinat de l'arquebisbe Ató*, 20-27.

[103] Josep M. Salrach i Marès, "El comte-bisbe Miró Bonfill i l'acta de consagració de Cuixà de l'any 974," *Acta historica et archaeologica mediaevalia* 10 (1989), 114-15. Beyond the Cuixà *dotalium* of 974, further documents from the see of Girona show Miró Bonfill working with other members of his family to arrange for pious bequests and the establishment of religious communities. In Martí, ed., C*ol·lecció diplomatic de la Seu de Girona*, 112, dated to 977, Miró Bonfill collaborated with his sister-in-law, Countess Ermengarda, and one of her sons in 977 to allocate parish churches to Sant Miquel and Genís of Besalú. At his command, a community of canons was established in this house. Later in the year, Martí, ed., C*ol·lecció diplomatic de la Seu de Girona*, 113, dated to 977, he met with his brothers, Sunifred and Oliba Cabreta, to set up a Benedictine monastery in the church of Sant Pere, Sant Pau, and Sant Andreu, located before the castle of Besalú. Yet, these foundations show Miró Bonfill acting authoritatively when cooperating with allies and working in a relatively uncontroversial sphere of action: a bishop consecrating churches and founding religious institutions. He was less decisive in the few court cases in which he was recorded as participating.

[104] *JRCCM* 91.

parish church of Sant Pere de Darnius.[105] Rather than a degree of assumed ineptitude on the part of the judges, Miró Bonfill's absence could have been a result of infirmity in the months leading to his death. Yet, even this hints at an intriguing possibility: the lack of a traditional power-holder's availability was not an insurmountable impediment to proceeding with a tribunal; the *condiciones* strategy became a situational replacement for such authority. If the circumstances warranted, the potential benefit of presidencies was disregarded.

Regardless of what made it so, Count-Bishop Miró-Bonfill's lackluster judicial career should not be taken as an indication that all counts and bishops experienced difficulty at tribunals after 950. It was just that sometimes political competition created circumstances that swept presidents to the margins. At such times, litigants embittered by perceived bias were not dissuaded by threat of enforcement. As schemes and machinations came to fruition or ruin, these circumstances could improve or worsen quite beyond the control of the individual. As his future career as abbot-bishop reveals, Oliba, despite his performance in 997, was not weak. In time, he himself showed appreciation for the use of the *condiciones* strategy to deal with legal opponents. It was the dynamics at play in 997 that worked against him. Instances of the strategy are too rare and examples of adequately resolved disputes too common to indicate that Miró Bonfill's or Oliba's adjudicatory challenges in the 980s and 990s were a dominant trend. Historians should neither conclude that the legal system of the province was in a state of complete failure, nor functioned as a well oiled machine. Far more interestingly—as attention to the *condiciones* strategy's use underscores—this was an era of experimentation and creativity spearheaded by judges with an eye to churches. As demonstrated in the previous chapter, judges had been

[105] Martí, ed., C*ol·lecció diplomatic de la Seu de Girona*, doc. 123.

adapting to circumstances for two centuries. In the tenth century they continued to do so with novel applications of the *condiciones* strategy. Yet, now some litigants joined them in that experimentation: scoffing at established norms, withdrawing from court, and challenging the traditional powers to stop them. Whether it was judges, or those withdrawing, they would not be the last.

Chapter Four

The *condiciones* strategy in the eleventh century (I): biases and withdrawals

4.1. Introduction

The *condiciones* strategy was first developed as a means by which judges could ensure stability in disputes, guarantee procedural norms for involved parties, and compensate for uncertain political authority. Judges emphasized a synthesis of legal citation and ritual in sacred space to keep courts functional. Yet, after 950, competition between the descendants of Guifré the Hairy and the ascendancy of ambitious magnates presented challenges to court presidencies. In this environment, judges used the *condiciones* strategy to defend the system, all the while developing ever-closer ties to comital/episcopal powers and their interests.

This chapter, in addition to showing the expanding circumstances of the *condiciones* strategy's application, highlights how judges used the subroutine to protect comital relationships with important religious institutions during the first three decades of the eleventh century. I argue that this effort contributed to the impression of ecclesiastical privilege and procedural imbalance within the court system. Disaffected opponents of monasteries and episcopal sees increasingly responded by withdrawing from proceedings. Here too for judges, the *condiciones* strategy was an important means of mitigating the damage such withdrawals posed to court prestige. Yet, imbalanced use had an effect on the strategy itself as some litigants stood resolute under the threat of spiritual sanction. By the 1030s, these troubles led to the gradual fraying of the synthetic nature of law and liturgy at the heart of the *condiciones* strategy, and played a role in the overall decline of the judicial system. While the full explication of that fraying must wait for

Chapter 5, this chapter shows that such a development was not the product of a sudden change, but rather the end result of a long process of imbalance and growing litigant frustration.

4.1.1. Questionable efficacy

Of the 423 judicial actions dated to the eleventh century, sixty-one feature the *condiciones* strategy, which amounts to 14% (see Fig. 4.1). That percentage is not significantly different than the 17% average for all three centuries considered in this project. Breaking down numbers *within* the eleventh century, however, reveals a change. The first half of the century reveals the *condiciones* strategy was used in 23% of cases, the height of the subroutine's appearance. Yet, after 1050, that percentage decreases to 9%, a decline by over half. Moreover, as Chapter 5 will discuss, many of these later uses were non-standard. This imbalance between half-centuries makes greater sense when considering the strategy's efficacy in this period and how it connects to broader challenges judges faced.

Date Range	**1000-1049**	**1050-1100**	**Totals: Eleventh Century**	**Totals: Ninth through Eleventh Centuries**
Judicial cases (all types)	173 cases	250 cases	423 cases	562 total cases
Examples of the *condiciones* strategy (with percentages of above cell)	39 cases (23%)	22 cases (9%)	61 cases (14%)	97 total cases (17%)

Figure. 4.1 The frequency of the *condiciones* strategy between 1000-1100

The *condiciones* strategy was increasingly of questionable efficacy, along with other aspects of the system.[1] As discussed in Chapter 3, the late tenth-century practice of litigant

[1] Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: Croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76), I: 198-202, II: 560-66. Bonnassie provides the classic discussion of the decline of the public plea system, connecting it to the broader factors he saw at work in driving the socio-political transformations of the eleventh century. In describing the judicial decline, he points to cases in which ecclesiastical disputants were in positions of privilege.

withdrawal underscored challenges to the court system that would become more pronounced in the eleventh century.[2] Such flagrant rejection of court jurisdiction was unprecedented and likely resulted from rising distaste for bias in proceedings. After 1000, the number of rejections rose to a total of sixteen (including those of the late tenth century).[3] This increase points to the deepening repercussions of the appearance of bias. Officials responded with a deployment of ritual action and legal citation. Just before the court validated a witness oath rejected by the withdrawing disputant, scribes often relate that judges emphasized that the withdrawal was outside the bounds of the law by referencing *LV* II.1.25: "*absque iudice consultu substraxerit*."[4] There were, however, other means of resistance that were far less dramatic than a withdrawal. During this century, c*ondiciones* cases reveal an increasing number of appeals, disputants' insistence that judges consider additional evidence, and litigant demands that former rulings be respected. There were also questions from some concerning the scope of saintly agency and growing interest in the direct judgment of God (via the ordeal or trial by combat).[5] These less

[2] For the first two cases, see Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018), 89, 132. For a seminal discussion of the decline of the traditional legal system in the eleventh century, see Bonnassie, *La Catalogne*, II: 563-66. The number of withdrawals presented in this chapter help to nuance the general themes Bonnassie advanced.

[3] The eleventh-century cases are *JRCCM* 178, 185, 211, 213, 242, 244, 246 (this case, while counted as one example, features two instances of the same litigant withdrawing), 256, 272, 305, 308, 350, 501, 505.

[4] This is a measure first seen in *JRCCM* 89. The original phrasing in *LV* II.1.25 is "pars altera de iudicio se absque iudicis consultum subraxerit." For an example of a case borrowing parts of this line see *JRCCM* 305: "Quod facere noluerunt et non solum ab audiendo testimonio set etiam a suscipienda veritate nostri iudicii, absque nostro consulto, se abstraxerunt." For a case in which the judge sought to quote directly, see *JRCCM* 272.

[5] Adam Matthews, "Within Sacred Boundaries: The Limitations of Saintly Justice in the Province of Narbonne around the Year 1000," *Journal of Medieval History* 46 (2020), 1-22. The ordeal was proposed more often than it was executed. See Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), 26; and Stephen White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050-1110," in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas Bisson (Philadelphia, 1995), 92-94. For a specifically southern context, see Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 136. For graphic examples of its performance, see *JRCCM* 167, 422.

dramatic forms of recalcitrance appear alongside a growing impression of imbalance and unpredictability at assemblies. Judges compromised more often than they wished and cases became increasingly protracted. This chapter shows that time-tested tools such as the *condiciones* strategy were no longer as effective as they had once been.

4.1.2. The priorities of comital presidents and their judges

Historians have approached eleventh-century cases from the standpoint of litigants, often characterizing tribunal proceedings as episodes within a static system constrained by tradition. A disputant either operated within the bounds of that tradition or chose to act outside of them.[6] As we have seen, however, understanding the *condiciones* strategy using the judge-centered approach—also considering the associated interests of presidents—reveals the system's malleability in the hands of officials. By surveying tribunals through their eyes, we discover a force that exacerbated problems first emerging in the tenth century: ecclesiastical privilege, manifesting as a partnership between religious institutions and counts acting as court presidents. I argue that eleventh-century episodes show judges' flexible application of the strategy to advance the interests of those institutions with close ties to the comital family.[7]

[6] Treatments of Mir Geribert's legal battles and eventual revolt exemplify this trend. See Bonnassie, *La Catalogne*, II: 677-78; Adam Kosto, "The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert," *Viator* 47 (2016), 67-94; Bowman, *Shifting Landmarks*, 158-61; Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 226-30; and Rosa Lluch Bramon, "El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)," *Anuario de Estudios Medievales* 48 (2018), 793-820.

[7] Bowman, *Shifting Landmarks*, 102, shows the close relationship between judges and counts/countesses in the eleventh century. Judges claimed comital appointment as one of the factors vesting them with adjudicatory authority.

The relationship between ruler and religious houses was central to regional idealizations of the count's role in society.[8] Stefano Cingolani and Janice Mann both discuss aspects of Abbot-Bishop Oliba's characterization of counts: the prelate saw a special relationship between the counts of the line of Guifré (he was a member of the Cerdanya-Besalú branch) and ecclesiastical institutions. This position extended to rulers more broadly, as Oliba demonstrates in a letter to Sancho Garces III of Pamplona (d. 1035) urging him to look after the churches and institutions in his realm.[9] The Church was the agent of good in the world; it was the bride of Christ, vested with sacral power.[10] In addition to such moralizing and patronage, counts had pragmatic incentives to safeguard institutional interests. These houses, whether they were monasteries or episcopal sees, were influential political and economic partners. Counts and countesses eagerly sought to

[8] Paul Freedman, *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia* (New Brunswick, 1983), 18.

[9] Stefano Cingolani, "L'Abat Oliba, el poder i la paraula," *Acta historica et archaeologia mediaevalia* 31 (2013), 117-19, 135-48, explains that Oliba, as member of the line of Guifré the Hairy and abbot-bishop, held a conception of power that situated comital leadership and partnership with the church at the center of divinely-mandated world order. This mentality, instilled in Oliba by his uncle, Count-Bishop Miró III (see Chapter 3), was an extension of a Carolingian division of society into the *potentes* (counts, abbots, bishops: holders of traditional public and ecclesiastical power) and the *pauperes* (the powerless). Yet, Oliba also embraced the emerging tri-functional social model. This was one in which the clergy was separated from lay powers and made distinct. In tandem with this changing landscape of social classification, Oliba envisioned the *princeps patriae*, or ideal ruler. This articulation is evident in his encyclical eulogy for his brother, Count Bernat Tallaferro. See Eduard Junyent i Subirà, ed., *Diplomatari i escrits literaris de l'abat i bisbe Oliba* (Barcelona, 1992), "Textos literaris d'Oliba," 9. The count was a founder and guardian of churches. Cingolani shows that Oliba's fascination with this idealization can be seen in how he treats his family's place in the history of the church and of the region. This partnership between ecclesiastical communities and elite lay families vested with public power as counts is a strong Carolingian era theme that Oliba and his generation sought to invigorate in the early eleventh century. This effort was made both within and beyond the region. Indeed, Janice Mann, *Romanesque Architecture and its Sculptural Decoration in Christian Spain, 1000-1120: Exploring Frontiers and Defining Identities* (Toronto, 2009), 57-59, discusses how Oliba wrote a letter advising Sancho Garces III (d. 1035) to protect the monastic institutions and churches in his realm while also encouraging the nascent reform movement there. For the text of the letter, see *DOliba*, "Textos literaris d'Oliba" 16.

[10] This sentiment is clear from the consecration of Sant Miquel de Montoriol d'Amunt (in Vallespir). See *Dotalies* 129: "Volens nos paternitatis affectu filios censeri, nobis clamando talia: 'Patrem nolite vocare vobis super terram, est enim pater vester qui in celis est.' Matrem vero nobis ipse prius sacravit eligendo sibi soponsam, sanctam scilicet Eclesiam, non habentem maculam aut rugam aut aliquid hujusmodi."

appoint family members to influential abbacies or bishoprics.[11] As we saw in Chapter 3, Abbot-Bishop Oliba's comital father, Oliba Cabreta, had ensured a place for his young son at Ripoll before entering religious life himself.[12] Moreover, the conception of joint lay and ecclesiastical lordship communicated by Oliba's uncle—himself holding the ranks of bishop and count simultaneously—appears to have had a strong impression on him and his brothers who pursued lay careers; a family conception of rulership we will encounter in case studies below. Extensive comital endowment clauses in *dotalia* show that commitment to religious communities was supported by action: principally endowment, donation, upkeep, and decoration.[13] The interests of monasteries and cathedral chapters were comital family interests; religious welfare was family welfare.

Therefore, both ideological and pragmatic factors made it reasonable that abbots and bishops expected their positions to be afforded priority at the comital courts, which was seen as

[11] Nathaniel Taylor, "Inheritance of Power in the House of Guifred the Hairy: Contemporary Perspectives on the Formation of a Dynasty," in *The Experience of Power in Medieval Europe, 950-1350: Essays in Honor of Thomas N. Bisson*, ed. Robert Berkhofer III, Alan Cooper, and Adam Kosto, 129-51 (Farnham, 2005), 138-9; and Josep M. Salrach i Marés, *L'assassinat de l'arquebisbe Ató (971) i les lluites pel poder en els orígens de Catalunya: Discurs de recepció de Josep Maria Salrach i Marès com a member numerari de la Secció Històrico-Arqueològica, llegit el dia 30 de maig de 2018* (Barcelona, 2018), 5-6.

[12] Camprubí, "L'abat i bisbe Oliba, va professar per obligació o per vocació?" 147-49, argues that not only did Oliba Cabreta expect the monks of Ripoll to accept his son, but that in doing so they would become involved in the political dynamic between the count's particular branch of the comital family and that of his rival and cousin, Borrell II . This exemplifies a count's belief that a monastic house should be helpful in comital politics. It follows that such a relationship would be considered reciprocal by the monks of Ripoll and other institutions who interacted with the count. The expected assistance is in a similar vein to the relationship Miró II forged with his sister and abbess of Sant Joan de les Abadesses at the outset of the tenth century, in which the count ceded a degree of public authority to her in her efforts to consolidate Sant Joan's hold on the valleys around the monastery. See Jarrett, *Rulers and Ruled*, 35-42.

[13] Peter Klein, "The Romanesque in Catalonia," in *The Art of Medieval Spain, A.D. 500-1200*, ed. John O'Neill (New York, 1994), 193, shows that proceeds from military campaigns led by the counts of Pallars were funneled into church renovation and decoration. Klein argues it was comital efforts that triggered the fluorescence in Romanesque art throughout the region in the eleventh and twelfth centuries. Yet, it is important to note that supporting churches was not a uniquely comital act. It is the scale of their largesse toward these houses that distinguishes them.

an unfair advantage in the eyes of their lay opponents.[14] Small and large landholders alike watched as religious houses amassed swaths of property. Such moves, alongside spiritual and political relationships with comital presidents, ensured that once cases became contentious, houses like Sant Cugat and the cathedral of Barcelona emerged as legal juggernauts, sweeping aside opponent after opponent.[15] Judges' use of the *condiciones* strategy facilitated this. As these communities enjoyed the bent ear of their patrons and the resources to navigate protracted disputes, the appearance of bias must have been demoralizing for their lay opponents, small-holders and magnates alike.

Scholars may reasonably wonder if the appearance of ecclesiastical privilege is merely a distortion caused by documentary preservation bias. Issues of survival indeed make it impossible to know how often different interest groups won or lost cases. While those numbers would be welcome, we may proceed effectively without them. By contextualizing different cases in this chapter, I show that ecclesiastical privilege *is evident in the procedural course of tribunals*. Judges, despite demanding standard forms of proof and adherence to tribunal norms, proved inconsistent in how, when, and especially to whose advantage, they implemented rules outlined in the code. In many instances, judges did not attempt to hide their efforts on behalf of ecclesiastical litigants. Instead, they used the *condiciones* strategy to insulate the court from the losing side's objections. The most celebrated legal minds of the era—including Ervig Marc, Bonhom, and Ponç Bonfill Marc—were among those who used the strategy in such circumstances. It is therefore unsurprising that some records reveal the central antagonism

[14] Salrach, *Justícia i resolució*, 237, discusses the natural inclination of judges toward ecclesiastical positions. He carefully evaluates the scope of this favor in court and also advises consideration of source preservation bias.

[15] Bowman, *Shifting Landmarks*, 107, explains the particularly close ties between the comital family of Barcelona and Sant Cugat.

unfolding as a dialogue between the judge(s) and a lay opponent of a religious house, with that institution's representative taking a comparatively inactive role in proceedings. In the most tumultuous of examples such a use of the *condiciones* strategy could result in withdrawal. Eleven out of the fourteen records featuring a withdrawal/non-appearance involve at least one lay litigant losing to an ecclesiastical institution and sparring with officials; in each instance the lay litigant withdrew, often just before the call to receive witness oaths.[16]

This chapter addresses case studies from the first thirty years of the eleventh century. Section 1 explores five assemblies that showcase the range of the strategy's application, but growing procedural imbalance. Section 2 reviews disputes that show the entrenchment of ecclesiastical interests and rising frequency of withdrawal as a response. These sections together lay the groundwork for an important case at the heart of Chapter 5. That dispute, which I term the 1032-1033 case, displays the cumulative effect of the challenges gripping the legal system in the decades after the millennium: the fraying of the synthetic nature of the *condiciones* strategy. Chapter 4 shows the early stirrings of that process.

4.2. The *condiciones* strategy: uneven implementations around 1000

From across the lands of Old Catalonia, the century's opening years produced a cluster of five disputes that are markedly different from one another and ripe for comparison.[17] These cases, falling between 1000 and 1002, provide a snapshot of the circumstances, both traditional and novel, in which both judges and litigants found a use of the *condiciones* strategy advantageous. These studies also underscore the diverse reactions various parties had to the invocation of supernatural power in disputing. While some readily capitulated when facing oaths

[16] *JRCCM* 178, 185, 211, 213, 242, 244, 246, 256, 305, 308, 505.

[17] *JRCCM* 136, 137, 139, 141, 143.

exacted against them, there are also early examples of litigant outrage over procedural imbalances favoring ecclesiastical institutions. Where possible, I will stress the perspective of judges, presidents, and even scribes, with a special focus on how judicial uses of churches granted such individuals control over proceedings. Scrutiny of their procedural choices allows us to better understand litigant responses to legal uses of sacred space and to comment on its general efficacy. A joint look at these cases provides a baseline for deeper penetration into the century's sources up to and past 1030.

Map 8. Select sites discussed in cases at the turn of the millennium[18]

4.2.1. Defending public land at Sant Feliu de Codines, 1000

The first conflict, arising in the winter of 1000, is notable for the absence of a judge. Yet, the judge-centered approach remains useful. Examining the place of the *condiciones* strategy in this case allows us to see how disputants understood the strategy. Indeed, we stand to learn much about how judges' efforts were received by other parties within the system. Although the scribe mentioned no president, the affair featured a sizable collection of community personalities.

[18] Italicized place names are sites of the *condiciones* strategy.

These included two priests, two deacons, some named notables, and "other worthy men" (*aliorum idoneorum*) in supposed supervisory roles.[19] Perhaps their value was grounded in the potential pressure they might apply if the defeated party would not capitulate. The service they *did not* provide, however, was direction of the case. This led Josep Salrach to posit that this assembly was a clarification of an earlier agreement rather than a proper tribunal.[20] Nevertheless, many of the norms found in standard cases are evident in the record. The affair shows that some disputants were cognizant enough of the procedures officials used to shepherd them through tribunals to run one on their own. The tool the disputing parties settled on to provide a framework—seemingly at the plaintiff's initiative, but accepted by the defendant—was the *condiciones* strategy, based on witness oaths sworn in the church of Sant Feliu de Codines. This strategy formed a discursive register into which both parties slipped as they jostled for dominance. They displayed all this before the assembled community, ensuring that whatever was decided would be well publicized. This use of the strategy by the disputants themselves shows that the strategy was a component of basic legal literacy, alongside respect for documentary and witness proofs.[21]

The lively affair opened when a man and a woman, Quintilà and Honorada, appeared before their lord, Gombau de Besora (d. 1050), son of Ermemir, complaining that the magnate had wrongfully taken their land. The pair demanded to know, "Why, lord, did you order our

[19] The participation of these individuals is reflected only in their appearance in the subscription list. See Bowman, *Shifting Landmarks*, 168 n.13, for discussion of the code's interest in the participation of "worthy" individuals.The stipulation appears in *LV* II.4.6, II.4.7, II.5.12, III.2.3, VI.5.5.

[20] Salrach, *Justicía i poder*, 138.

[21] For a detailed overview of the three established forms of conventional proof in the Province of Narbonne, see Bowman, *Shifting Landmarks*, 119-82. These proofs include: witness testimony, written records, and the judicial ordeal. Of the three, the ordeal was the least frequently used.

vineyard to be seized and removed from our control?" Gombau was quick to answer, "I do this by reasons of the *fiscus*, because it was said to me, 'that the vineyard belongs to the *fiscus* and service (*servicium*) ought to be paid'."[22] It is uncertain whom Gombau quoted in this comment (quite likely the authority granting him the use of public land: almost certainly the count),[23] but his meaning in expressing the quotation is clear. He was arguing that the vineyard lay on land reserved for him as part of the *fiscus*. As Jonathan Jarrett explains, scribes sometimes conflated the term *fiscus* with *feodum* in this period. It could bear a similar definition to Bonnassie's explanation of the fief prior to 1020: public land allotted to an individual, a lord like Gombau. The lord then exacted service for its cultivation by humbler people, such as Quintilà and Honorada.[24] Here, this appears to be the meaning of *fiscus* that the magnate intended. Firmly

[22] *JRCCM* 136: "Venit homo nomine Chintela et femina nomine Onrada, steterunt ante presencia Gondeballo, filium condam Ermemiro, et querellaverunt se de illo, dicentes: 'Pro quid, domine, iussisti comparare ende vineam nostram et exvadere de potestatibus nostris?' At ille namque ut audivit, respondens dixit: 'Pro fisci vocibus oc facio, quia dictum michi adest "Quia fisci est et fisci servicium debet persolvere'."

[23] Salrach, *Justicía i poder*, 139; and Jaume Vilaginés Segura, *La transició al feudalisme, un cas original: El Vallès Oriental* (Granollers, 1987), 60-5, emphasizes that by the late tenth century, it was the counts that changed the status of public land in granting estates to supporters. As a member of one of the most prominent families in region, Gombau was a prime beneficiary of this practice.

[24]Marc Bloch, "Questions féodales," *Annales d'histoire économique et social* 10 (1938), 174; Bloch, "Histoire d'un mot," *Annales d'histoire sociale* 1 (1939), 187-90; Manuel Riu, "Hipòtesi entorn dels orígens del feudalisme a Catalunya," *Quaderns d'estudis medievals* 2 (Barcelona, 1981), 203-04; and Jarrett, *Rulers and Ruled*, 117-18. The meanings and implications of the terms *fiscus* and *feodum* are much contested. Debate has shown that broad definitions must be sacrificed in favor of defining terms in context each time encountered. Yet, keeping that caution in mind, we may yet distill connections between usages and identify synonyms. In the Catalan context, Riu and Jarrett note that the two terms were associated in some documents, "*fiscis sive feodis*." Gombau de Besora's use of *fiscus* here in 1000 is synonymous with how *feodum* was often used in contemporary documents. Gombau's expression of *fiscus* under these circumstances and his expectation that the working of the vineyard by others must generate *servicum* (itself a suggestive term, and one we saw used by Count Gausbert at Vilamacolum) hints that he considered the property to be public land placed under his control. For a discussion of the term *feodum*, see Bonnassie, *La Catalogne*, I: 209-14, II: 556-60; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 11, 60, explains that the holder of a *feodum* within a castle district (*castrum*) could expect to exact payments from both dependant tenants and alod-holders within the boundaries of the district. Such an arrangement as Kosto describes closely resembles the implications of Gombau's statements about the vineyard's place within his *fiscus*. In contrast to the *fiscus*, a land's status could fall under the designation of *in franchitatem*, i.e. non-fisc land held free of *servicum*. Segura, *La transició al feudalisme*, 15, explained how this free status had once applied to much of the land in the eastern Vallès region in the mid ninth

disagreeing with Gombau's explanation, the pair disputed his claim of the vineyard's status. They pressed him to legally prove his assertion. They stated,

> Just as custom supports the history of our tenure, oh lord, may it be done: either give us simple testimony (*simplam testimoniam*) that that land or vineyard had seen payment of that *fiscus* over the past thirty years, and is now fully in your power; or, if you do not prevail in doing this, we will offer you two or three worthy witnesses (*idoneare testimonia*). Just as is taught in the laws, whatever one may have maintained in franchise (*franchitatem*) and maintains in franchise for thirty years, no fiscal *servicium* shall be exacted; and as long as we have done this work thoroughly, do not refuse, oh lord, and disrupt our control.[25]

The statement's surface meaning is simple. Quintilà and Honorada did not agree that the land was part of Gombau's *fiscus*.[26] Rather, they argued it was theirs to hold in franchise (*in franchitatem*) and had been so for over thirty years, the legally requisite time to justify the pair's claim.[27] If this was untrue, Gombau should bring witnesses to swear to its *fiscus* status. Should the lord be unable to do so, the plaintiffs stated that they were prepared to bring witnesses themselves. Yet, beyond the mention of witnesses, how might this relate to the themes associated with the *condiciones* strategy? The pair referenced neither sacred space nor supernatural entities in calling for witnesses. Moreover, the word used to convey the request was *testimonia* rather

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century. Actions like Gombau's seizure and redefinition of Quintilà's and Honorada's vineyard as *fiscus* had long been at work reducing the amount of property in the area that could be classified as *in franchitatem*.

[25] *JRCCM* 136: "Ad quem predicto homine vel femina ut audierunt, ita dixerunt: 'Sic mos consuetudo regiminis nostris continet, domine: sic fiat; aut prebe nobis simplam testimoniam ut vidisset ad persolvendum fisci ipsa terram vel vineam per has triginta annos, et postea iam amplica, in potestati tue; aut si non prevalueris facere, prehibimus tibi bina vel trina idoneare testimonia: sic legibus docet quia in franchitatem obtinuit et francitatem obtinet per has triginta annos, nullo fischale servicium exigentem; et dum perfecerimus hoc opus noli, domine, dirumpere potestatis nostre'."

[26] Salrach, *Justicía i poder*, 137-38, adds an alternative interpretation of this speech by the pair. In his reading, Quintilà and Honorada argued that while the land may have been part of Gombau's *fiscus*, the *servicum* that he now demanded had not been exacted for the customary threshold of thirty years. The present status of the land as *in franchitatem* was not intrinsic, but rather owed to the fact that Gombau had failed to enforce the *servicum*. The implication was that he had a right to, but squandered that opportunity.

[27] For the legal significance of thirty-year tenure, see Michel Rouche, "Les survivances antiques dans trois cartulaires du Sud-Ouest de la France aux Xe et XIe siècles," *Cahiers de civilization médiévale* 23 (1980), 103.

than *sacramenta*. Much as in the mandates stipulated in *LV* II.4.3 itself, the scribe did not express the legal utility of sacred space when mentioning the desire for witness testimony.[28] On its face, therefore, this challenge focuses narrowly on the code's interest in testimony, rather than a synthesis of law and sacred space. Such an assumption, however, would be too hasty. Reading this call for *testimonia* within the framework of the case at large and considering that the dispute culminated in a traditionally styled *condiciones sacramentorum* oath in a church allows us to see this statement as a sophisticated deployment of the *condiciones* strategy by the litigants. The tool, while far more commonly used by judges, was more widely available as a legal strategy.

Quintilà and Honorada were guiding Gombau into a legal framework from which he would be unable to extricate himself. They reoriented the proceedings so that the case would have to conclude in sacred space and feature the validation of oaths, either in the lord's favor or theirs. There was real need for such a strategy; the pair understood that the tribunal lacked both judge and comital president. With such a stark power disparity between the two sides, considering that Gombau hailed from the powerful Besora family, the case's outcome would be vulnerable to future disruption without a source of mutually agreeable authority or the possibility of enforcement. By transitioning into the register of legally requisite testimony, oaths, and liturgical action within a church—even if not stressed overtly in the initial proposal—the plaintiffs found a source of power that they could synthesize with the mandates of the code. It was a reorientation that Gombau could not reasonably reject before a community assembly without jeopardizing his own status as a devoted Christian and local leader. Quintilà and

[28] Although Quintilà and Honorada did not cite *LV* II.4.3 directly in this case, this is the measure they likely had in mind when demanding witnesses from Gombau. Just as in the text of this mandate from the code, the pair did not stress how or where the requisite testimony ought to be exacted. It is their practice of the measure at the dispute's end that reveals the importance of formal oaths and sacred space to its fulfillment.

Honorada, being the ones to invoke the *condiciones* strategy, dared the lord to reject it publically as a solution. For Gombau to refuse witness testimony would be to imply to all those present that he harbored concerns that the local intercessor would reject his *fiscus* claims. His neighbors would see him striving to avoid divine authority; nothing good could come of that.

Moreover, as later events demonstrated, the plaintiffs knew *they* had reliable witnesses, and could reasonably bet that their opponent did not. If refusal was risky for Gombau, leaning into the plaintiff's strategic avenue presented only slightly less danger. If he could not find witnesses after accepting that manner of settling the dispute, he would lose. Caught in an unenviable position, the best the lord could hope for was some insufficiency on the part of Quintilà's and Honorada's witnesses. Perhaps, he thought, they also had no one willing to testify and were merely bluffing. This latter tactic—disconcerting though it was—is the avenue Gombau pursued. It failed.

During a recess, Gombau searched for anyone who would testify on his behalf. We can presume that the locals denied him, and he would next have had to travel empty-handed to the second assembly that was to gather at the church of Sant Feliu. The scribe described the situation: "He was unable to introduce any evidence to the *fiscus* claim."[29] The lord was left with his hope that the plaintiffs were bluffing. This was not supported with much optimism, as the lord did not travel to Codines in person, instead deputizing his mandatory, Godmar, to speak and act in his stead. Gombau's doubts were well founded, because the witnesses Quintilà and Honorada had in mind were real enough. When Godmar, speaking for Gombau, challenged the

[29] *JRCCM* 136: "Quia non potuit inveniere ullum indicium ad fisci."

pair to give testimony of their own, they readily brought forth two men: Godmar (not to be confused with Gombau's mandatory) and Feriolo.

With the court entering the church, the witnesses strode into the sanctuary and extended their hands over the altar of Santa Cecilia, swearing:

> Moreover, having sworn, we say, first through the omnipotent God the Father, and by the indivisible Trinity, and by this most holy (*sacratisimum*) altar of Santa Cecilia, virgin of Christ, whose *titulo* is established in the basilica of Sant Feliu, which as is noted above is in the county and at the place (called Codines), we the witnesses joining hands in order to swear, and speaking (*verba narrando*) do swear that we saw and know that for thirty years no fiscal *servicium* existed on that land, either cultivated land or waste land, and afterward improved, and that vineyard, with its frontages and boundaries, and the garric forests of their parents, obtained as franchise (*franchitatem obtinet*) and ought to become franchise (permanently), just as we swear in the Lord.[30]

With their oath finished, the two men stepped away. The scribe's iteration of the standard *condiciones sacramentorum* formula is somewhat unusual in that it stresses the earlier-mentioned testimony is here being sworn at the altar with verbal oaths. Indeed, the witnesses state three separate times in the passage that they are saying these things as an *oath*. The centrality of that gesture and the implications of the sort of authority it conveyed are unmistakable. With no president on hand to guarantee enforcement (even the prospect of it) and no judge to guide further action, should it arise, the future of the matter was uncertain. The witnesses' commitment to God, the community visibility of their oath, and Gombau's eventual acceptance of defeat became the forces that that would guarantee the settlement.

[30] *JRCCM* 136: "Iurati autem dicimus, in primis per Deum Patrem omnipotentem et per inviolabilem Trinitatem et per unc sacratisimum altario Sancte Cecilie Virginis Christi, cuius titulo fundatum est intus in baselica Sancti Felicis, qui supra notatum [est] in comitatum vel loco, nos testes manus iurando contangimus, et verba narrando iuramus, quia vidimus et scimus ipsam terram cultam vel eremam et postea ibidem edificata, ipsam vineam cum afrontacionibus suis et cum limitibus, garricis vel petrigenis suis, per has triginta annos nullo servicium fiscalem exigentem, et franchitatem obtinet et franchitatem debet adfieri, sicut iuramus in Domino."

Gombau, though he dared not reject the plaintiffs' invocation of divine power—at least for the sake of his reputation, if not his soul—was disinclined to receive the witnesses himself. Perhaps this was wounded pride, or perhaps Gombau was attempting to save face before the assembly. However, the lord accepted that the reception step was crucial to fulfilling his obligations before God. He instructed his mandatory to receive the oath and quitclaim the vineyard on his behalf. Immediately after the extended oath statement pronounced at the altar by the witnesses, the scribe continues with a second quotation by Godmar (in Gombau's voice). Although we cannot rule out the possibility that the scribe's seamless continuation of the line bearing the oath formula was a stylistic choice, its immediacy hints that it was a direct response to those words spoken at the altar. This practice is not uncommon in disputes. The mandatory's speech was also a ritual act. Speaking for the lord, Godmar says, "And I Gombau, send a man called Godmar, son of Seniori, as my mandatory (*adsertor*) to the assembly (to hear) that oath, and thence quitclaim for me all those things, so that from this day and time, neither I nor any man living presently or in the future may dare to disturb (that vineyard) in full."[31] The idea that this statement is a ritual reaction to the oath—formal reception—is further confirmed by Godmar's statement in the subscription list that he indeed 'received' the oath.[32] His reception was quite likely accompanied by the statement quoted above, incentivizing the scribe to include

[31] *JRCCM* 136: "Et ego Gondeballo ad audiendum ipsum sacramentum adsertorem meum, misi homo nomine Gaudemar, filium Seniori, et exinde de omnia me esvacuavi, ut ab odierno die et tempore nec ego nec nullus vivens homo modo vel postea amplius inquietare audeat." I take the phrase, *ad audiendum ipsum sacramentum*, as the classification of this type of assembly: a tribunal convened for the exaction of an oath and the subsequent ritual reception of that oath.

[32] *JRCCM* 136: "Godmarus, qui in vice seniori mee uno sacramentum audivi vel recepi, et literis nomini mei manu conscripsi." For an earlier example bearing a similar structure, see *JRCCM* 59 (the dispute held at Santa Maria de Vilamacolum), when Count Gausbert's mandatory quitclaimed *servicum* rights in the body of the document before receiving the oath in the subscription list: "Sig+num Flavius, qui hec omnia superius inserta testificavimus et iuravimus. Guibertus mandatarius, qui os sacramentos recepit, SSS."

it in his record. This is an intriguing indication, outside of the liturgy and associated services provided by the clergy on behalf of the community, that one could address God in place of another through an imitation of the principal's speech *if one was in the right place*. Positioned at the altar, Godmar spoke in the words of Gombau; the obligation Godmar assumed was then transferred to the magnate.

In addition to the transferable nature of supernatural responsibility, the case occasions three important observations about the *condiciones* strategy at 1000, as well as how individual litigants reacted to the judicial system's operation outside comital courts. First, the proceedings represented the continuation of using the strategy when reliable human authority was lacking (the circumstance most pronounced in ninth-century contentious cases). The authority-replacement function of the strategy had assumed a reduced role in the tenth century, as power concentrations shifted once the attention of the Frankish kings was invested elsewhere. The visibility of this circumstance in this present case shows that it continued to be an important circumstance for the strategy's use. Limiting their lord's range of response helped to compensate for the lack of an authoritative president or a judge to whom Gombau's potential violation of terms might be appealed.

Indeed, that restrictive effect on the lord's range of movement within the proceedings is the product of a second important takeaway, one that we will see in more dramatic detail in the 1032-1033 case in the next chapter: once a litigant entered into a strategy based on commitments made in sacred space, it was not possible to deviate from those commitments or pivot strategies. Obligations made before saints and God were non-negotiable and had to be pursued to their ends, whether they were beneficial or not. We see this play out with Gombau, helping to ensure his own defeat.

Related to this is a third observation. One factor contributing to the uncompromising nature of strategies based on supernatural power was the fact that belief in these forces held a normative effect in society, just as we see in *dotalia*. As Chapter One demonstrated, fear of one's fate in the afterlife was the prime motivator for communities to pool resources toward church construction, endowment, and request for consecration. Community zeal is evident in how scribes frame these buildings' value and the reasons for their construction. Complementing statements made in *dotalia*, these disputes show that the intensity of collective belief did not halt at consecration, but remained an important factor in how people interacted with sanctuaries. To violate church sanctity by going back on a commitment stood as an affront to one's neighbors who relied on the power imbued in those spaces, a power that was fragile enough that sin within could require re-consecration (see Chapter 1). Therefore, for individuals like Gombau—even if he did not experience personal conviction—there were community pressures to conform and protect collective spiritual interests. His reputation depended on it, if not his soul.

4.2.2. Recovering documents at Sant Miquel de Manresa, 1000

About a month after Quintilà's and Honorada's victory, another couple was relieved to find a solution to a longstanding problem of their own: in a fire, they had lost nine documents that recorded the extent of their property holdings.[33] Now the husband and wife, called Odsend and Saborosa, arrived at the church of Sant Miquel—just outside of the walls of the town of Manresa—to recover those documents. In contrast to Quintilà's and Honorada's navigation of the proceedings alone, waiting for the present couple was a judge called Guifré, two priests, some named notable men, and a group of *boni homines* who were prepared to hear the oaths of

[33] *JRCCM* 137.

the couple's three witnesses. The court's work for the day would unfold as an event that proceeded under a liturgical framework of interlocking speech, gesture, and supernatural supervision of human action. All this would occur at an altar in five stages, and Judge Guifré was intimately involved in guiding the proceedings. Each stage built upon the last and mirrored the multi-stage structure of "statement" and "response" found in more conventional liturgical rites. This hearing, a non-contentious example of the *condiciones* strategy, reveals the manner in which a judge took a mandate from the code (*LV* VII.5.2) and borrowed a package of actions and registers of expression typical to liturgical practices in order to enact the requirement.

Stage of the ritual	Action taken	Location of action	Participants
Stage 1	Witnesses swear using the *condiciones sacramentorum* formula at a church altar.	Altar	Three witnesses
Stage 2	Witnesses swear concerning the contents of the lost documents, listing each in detail.	Altar	Three witnesses
Stage 3	Judge states that the witness's oath meets the requirements of the law, citing *LV*, VII.5.2.	Altar	Judge Guifré
Stage 4	Witnesses confirm that their oath met the judge's legal expectation.	Altar	Three witnesses
Stage 5	Odsend—the beneficiary of the ritual—swears that all things said during the ritual are true.	Altar	Odsend

Figure. 4.2. The phases of ritual action in *JRCCM* 137

For the first phase, a priest called Arnulf commemorating the event as scribe explained how the three witnesses, named Ansulf, Adrovar, and Trasovario, were led into the church and took position around the altar. In the familiar words of the *condiciones sacramentorum* oath structure, they swore,

> Moreover having sworn, we say first by God the omnipotent Father, and by Jesus Christ, his son, and the Holy Spirit, who together are the one and true God, and by the relics of Sant Julià whose basilica is located before the walls of the city of

> Manresa, above whose sacrosanct altar we extend these publications (*has condiciones*) with our hands and each touch them in order to swear, we the aforementioned witnesses know well and understand truly. We saw with our eyes and heard with our ears, when it was well conveyed to us truly concerning those documents, which were burned in a fire, to him, the aforementioned Odsend and his wife Saborosa. We saw the documents in their possession and heard them being read and reread, and heard the names of those who signed them.[34]

This introductory statement was merely the opening action of their oath before God and Sant Julià (residing in the church of Sant Miquel). It made these men accountable to the divine authority centered at the saint's altar and set the stage for what they would share next, still speaking in the register of an oath (addressing God and a saint). Their speech continued in the second phase as the witnesses swore to the contents of each document in turn. In outlining the lost information, the men solemnly reified the details of the couple's property holdings and the transactions that initiated their ownership. Yet, that simple statement of contents did not end the affair; reconstituting the truth of a matter required more.

When the three men finished their review of the lost documents, the scribe immediately transitioned into the voice of Judge Guifré for what constituted a third stage. This stage requires a brief preface. We know, given that further ritual action in the church continued after the judge's statement, that Guifré stood at the altar when performing this present role in the event. His actions must be seen as an augmentation of and the expected response to the witness's speech act. With his own speech, the judge would explain that the witnesses' presentation of these documentary matters for the scrutiny of Sant Julià fulfilled the requirements of the law. For

[34] *JRCCM* 137: "Iurati autem dicimus in primis per Deum Patrem omnipotentem et per Iesum Christum, Filium eius, Sanctumque Spiritum, qui est in trinitate unus et verus Deus, sive per reliquias sancti Iuliani cuius baselica sita est foras muros de civitate Minorisa, supra cuius sacrosancto altario ubi has condicione manibus nostris continemus vel iurando contangimus, qui nos suprascripti testes scimus et bene in veritate sapemus, occulis nostris vidimus et aures audivimus nostras bene nobis est conditum in veritate de ipsas scripturas illorum, qui fuerunt ad ignem concrematas, ad isto supradicto Audesindo et uxori sue Sabrosa vidimus eas in illorum potestate et audivimus eas legentes et relegentes et audivimus eas plures vices qui erant firmatas de homines nomine."

the assembly crowded into the sanctuary, Guifré's completion of this task as a formal response fit into a recognizable framework, one which they associated with this ritual space. Much as in non-legal liturgical rites, different parties to the ritual held different speaking responsibilities which followed a particular order. They served as responses to one another. This document, composed by a priest, features layered stages of performance at the altar, one involving ordered action that made use of standardized language (such as the *condiciones sacramentorum* formula) and gestures (the joint extension of hands over the altar to display a document). This pairing of word and gesture likely drew on more common ritual spectacles—such as the mass—to provide models of correct behavior for human action within sacred space. The goal of this liturgical veneer to a documentary recovery was clear: to cultivate the divine authority invoked during worship, in the same space, in order to advance the legal reconstitution of lost information. This is evident in Guifré's speech, to which we now turn.

Just as in Judge Joan's hearing at Besalú in 980,[35] it is the connotation of Judge Guifré's role in these proceedings that marks the event as an especially pronounced example of the *condiciones* strategy and distinguishes it from other episodes of non-contentious *reparatio scripturae* (which, despite the fact that they exhibit supernatural action, I do not uniformly consider to be examples of the *condiciones* strategy; see the Introduction). Just like his fellow judge two decades prior, Guifré incorporated both a citation of the Visigothic Code and his case-specific legal argument based on that citation into the words he spoke alongside the witnesses and Odsend.[36] As with Joan's earlier hearing, this constituted an interweaving of legal reasoning

[35] *JRCCM* 90.

[36] The scribe directly mentions Odsend's participation in the rite; the man swears following Guifré's statement. His wife does not accompany him in this oath, however. It is unclear why she did not, as there was certainly no prohibition for women doing so.

and liturgical action in a sacred space. That synthesis was reinforced by ritual performance centered on an object: a single document termed *has condicione* (these publications)[37] by the scribe. This was the very parchment that provides us with the record of these events. We know from the witnesses' opening statement (stage one in this case) that they physically extended the document—likely drafted by the priest in consultation with the judge and couple before the ceremony—over the altar for divine inspection. If Guifré's spoken part was included in the document at the time the witnesses held it above the altar (and there is no reason to assume it was not), then the judge's citation of the code rested over the altar, on display for heavenly approval. Yet, a question remains. What was this reference presented to God; what did it say?

When the witnesses' description of the nine documents ended, Guifré spoke. He first briefly described his participation at the outset of the legal matter and how his first inclination was to check with the code: "And after I heard and saw their many testimonies, I the above-noted judge inquired in Gothic Law, in book seven, title five, it was the second." He then provided an extended excerpt—though slightly altered with references to burning—from the measure (*LV* VII.5.2.),

> Truly if any persons shall destroy in a fire (*ad ignem concremaverint*) a legitimate document that rightly belongs to another, either by removing or burning said document, they should admit their confessions before a judge, those confessions, being reinforced by witnesses, shall obtain the strength of the documents that were lost or altered. But if that (information) which the documents contain cannot be recorded with the utmost clarity, then they for whom the documents were made, may have license to prove through their (own) oath or through a witness that which those documents clearly contained; and thus the testimony truly given shall revive the truth (*repparent veritatem*) of the (original) documents.[38]

[37] Despite the document presenting the word *condicione*, this was likely a scribal error. The presence of the demonstrative pronoun *has*, suggests that the scribe intended *condiciones*, in the plural. It was common for scribes to reference documents such as this, *condiciones sacramentorum* at the head of the parchment.

[38] *JRCCM* 137: "'Si vero alicuo iuri debitam scripturam ad ignem concremaverint aut eamdem scripturam substraxisent vel concremasent coram iudicem suas professiones depronant quod professiones ad testibus roboratas,

After this, the scribe seamlessly returned to the voice of the witnesses for the fourth phase, which came as a targeted response to the judge's citation. In this short stage, the three men clarified how their participation (specifically their two-part oath) fulfilled the requirements of *LV* VII.5.2 and "restored and secured the truth" of the documents.[39] The quoted measure, however, presented one final opportunity for the court in legitimizing lost documents. Indeed, this would occasion the fifth and final phase of the court's action.

The code specified that the party for whom a lost document was made could call on witnesses to swear on his behalf—as had just occurred—but also enjoyed the right to submit an oath of his own.[40] This explains why the final stage of the legal rite was an oath from Odsend himself. Unsurprisingly, given the ritual overtones of the event, the scribe recorded his words in the first person. He also distinguished the fact that the man both testified and swore (*veraciter testifico adque iuro*—here suggesting a distinction between these two actions). For his part,

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perditas vel vinciatas scripturas robur obtineant, quod si evidentisime quod scripturas continebant recordare non potuerint, tunc illis quibus scripturas fuerint habeant licenciam comprobare per illorum sacramentum vel per testem,' quod ipsas scripturas continebant evidenter; 'et ita datum testimonium veridice scripturas repparent veritatem'." Either at Judge Guifré's request or at his own initiative, the scribe altered the excerpt from the code to more specifically meet the circumstances of the present hearing. In providing this quotation, he added references to the lost documents being burned, rather than just stolen or deceitfully altered. He also changed the number of documents mentioned in the law from a single document to multiple. For the unmodified text, see *LV* VII.5.2: "Si vero alieno iure debitam scripturam subraxerint aut vitiaverint, eandem scripturam subtraxisse vel viciasse coram iudice suam professionem depromant; que professio, testibus roborata, perdite vel viciate scripture robor obtineat. Quod si evidentissime, quid scriptura continuit, recordare non potuerit, tunc ille, cuius scriptura fuit, habeat licentiam conprobare per sacramentum suum adque per testem, quid ipsa scriptura continuit evidenter; et ita datum veredice testimonium scripture reparet veritatem." Also, it appears that the scribe placed the line "quod ipsas scripturas continebant evidenter" outside of his quotation, though it is clearly derived from the quoted passage in the law: "Quid ipsa scriptura continuit evidenter."

[39] *JRCCM* 137: "Et istas suprascriptas omnes scripturas nos suprascripti testes subprestes sumus et nos eas scripturas scripsimus qui fuerunt ad ignem concrematas et subscripsimus tunc legitimis et cognitiores reperti fuerint alii testes qui in eandem scripturas se dicunt vidisent omnem testuum vel firmitatem eiusdem scripturas plenissime nosse, similiter publica iudicum investigatione per eorum testimonium illis qui scripturas perdiderint poterint suas reparare et percipere veritatem."

[40] *JRCCM* 137: "Tunc ille, cuius scriptura fuit, habeat licentiam conprobare per sacramentum suum adque per testem."

Odsend explained how everything the witnesses said was accurate, that the documents had indeed been destroyed in a fire, and that no fraud was committed. With this final part of the proceedings completed, the hearing immediately ended and the scribe moved to the subscription list.

The combined effect of the stages outlined above centers on the relationship between the oaths being sworn and the requirements laid out in *LV* VII.5.2. Like *LV* II.4.3 discussed in the previous case, this measure stipulates that oaths be sworn, but the manner and place in which they were secured—here performed as an elaborate, multistage rite at an altar—was not taken from codified law.[41] It came from aggregated tradition that had been nurtured as a part of the legal system since at least the early ninth century. Even more so than Quintilà's and Honorada's steps to combat Gombau, this case is one of the clearest examples of how the *condiciones* strategy empowered the code by adding this synthetic tradition to the execution of the law's mandates. The testimony that the code required of the witnesses *became true* by means of three interdependent ritual actions: (1) divine entities hearing the witnesses' words; (2) those forces seeing the document (*has condicione*) that the humans jointly proffered over the altar; and (3) God's ultimate endorsement of the veracity of Odsend's and Saborosa's property claims through the authority of his observation of ritual action. Word, gesture, object, and divine supervision all mattered in creating legal truth. Of course these factors were also critical in forging truth and transformation in more conventional liturgical displays, such as the consecration of a church and the transformation occurring in Eucharistic celebration.[42]

[41] Bowman, *Shifting Landmarks*, 168, discusses uses of *LV* II.1.25 and II.4.3.

[42] The establishment of liturgical truth is a ritual transformation that, in one aspect, firmly redefined the mundane into something unquestioningly sacred. The rite for church consecration (*Ordo ad benedicandam ecclesiam*), for example, transformed a building into a true *porta caeli*. In a better known example, the Communion part of mass

The nature of the connection between law and liturgy merits closer attention in this context. Indeed, these proceedings raise important points about the close association of some legal actions, including the citation of codified law, and the use of broader ritual frameworks in worship spaces. They are frameworks that observers would have more commonly associated with the mass and divine office: a successive layering of statement and response from multiple participants. As in *preces* petitions (composed of *versicle* intoned by the officiant and the *response* sung by the congregation),[43] the witnesses and judge worked together at the altar, stating and responding, in order to lay out a property case before God and saint. Just as the mass elucidated the mystery of the Christian faith, the court proceedings that made use of the *condiciones* strategy revealed the truth of a legal matter. The byproducts of both the mass and a court session of this type (both modes of revelation—one theological and one legal) are divine authority and legitimacy for the action performed. The benefits of what was almost certainly an intentional association are not hard to imagine, given that liturgical action was not reversible. So too, judges like Guifre and Joan likely hoped people would believe documents, once recovered

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(*Canon missae*) featured the celebrant transforming bread and wine into Christ's true body and blood. While the exact nature and metaphysics of these processes would not be fully resolved until Lateran IV, the Eucharist had been seen as transformative since the early church. For one example, see Augustine's Sermon 234, *PL* 38:1116. The idea of the "real" presence was solidified by Abbot Paschasius Radbertus of Corbie (d. 865) in *De corpora et Sanguine Domini*, *PL* 120:1267-1350. This position was qualified in eleventh century by Berengar of Tours (d. 1088), but his ideas were hotly contested, leading to his renunciations in 1059 and 1079. For their discussion of the period from Paschasius' articulation of real presence up to Berenguer's confessions, see Paul Bradshaw and Maxwell Johnson, *The Eucharistic Liturgies: Their Evolution and Interpretation* (Collegeville, 2012), 135, 224-25. *Dotalies* 155 highlights the Eucharist in context of punishment, suggesting the priest would keep it from violators: "Et sacratisimo corpora et sanguine Domnini alienus fiat nisi prius condigne satisfecit." This record reveals that these ideas were established in the ecclesiastical Province of Narbonne. In the context of the community involved in the present case, for the non-clerical elite who would be attending mass at a church like Sant Miquel de Manresa, the metaphysics of the change would be less important than the fact that a change had occurred at all. Thus, we can safely posit the comparison the judge likely expected observers to draw between the reification of truth through an oath at an altar, and the reification of the Eucharist as the true body and blood of Christ at that very same altar.

[43] John Harper, *The Forms and Orders of Western Liturgy from the Tenth to the Eighteenth Century: A Historical Introduction and Guide for Students and Musicians* (Oxford, 1991), 84.

and authenticated in a ritual fashion, could not be subject to reversal. To try would be to act against God's will and incur his wrath. If communities could be convinced of a similarity between these two forms of performance enacted in the same space, then the power of the *condiciones* strategy would rival that of even the most efficient human enforcement measures. It is unsurprising, therefore, that as the reliability and objectivity of comital legal authority continued to fall into doubt after 1000, the episodes of the strategy's use during the eleventh century stressed the importance of community-based faith and of broadcasting legal actions in liturgical spaces.

4.2.3. Resisting monastic expansion at Sant Benet de Bages, 1000

The cases reviewed above, one contentious and the other not, together underscore the continued utility of the *condiciones* strategy in its two broad contexts. The novelty of the specifics within these cases, however, highlights the adaptability of judicial strategies involving sacred space. Yet, as a dispute from 28 September 1000 reveals, the challenges courts faced in the latter half of the tenth century had persisted and the consequences of judges favoring one party over another in proceedings were growing more pronounced.[44] This case shows that dynamic at work in a space with which we are well acquainted. The church used was the very monastic sanctuary on which the *dotalium*-scribe, Sunyer, so thoughtfully reflected at its dedication in 972.[45] This priest-scribe had believed that future ritual performances would be empowered from the sacrality engendered through the layered lustrations of the consecration rite and the mass. As this record from 1000 demonstrates, those performances had come to include the *condiciones* strategy. This was no surprise to the dispute's priest-judge, Ervig Marc. He had

[44] *JRCCM* 139.

[45] *Dotalies* 90.

composed his own reflection on the consecration as a *dotalium*-scribe for a church at Olèrdola, stressing themes similar to those discussed by Sunyer.[46] Now, he used such a space to maximal effect in protecting the interests of the monks.

The events had their origins a full year earlier on 23 September 999.[47] On that earlier day Count Ramon Borrell, Viscount Ramon I of Osona, and the judges Marc and Guifré were all present for a case between the widow Ajó, represented by her mandatory, Baldric, and the monastery of Sant Benet de Bages, which sent its mandatory, Bernat. Building up to accusations against the widow, Bernat detailed how a priest called Danla had bequeathed property to the monks at a placed called l'Angle (county of Manresa) as part of the endowment during the dedication celebration in 972. Moreover, that gift was supported by a *condiciones sacramentorum* oath, a standard feature of wills.[48] Thus, it was lawfully alienated to the monks and sealed with divine supervision through ritual action. Yet, all was not well. Count Borrell II (d. 993), who was lord to Ajó's late husband—one Judge Guifré[49]—granted the man l'Angle as part of what was either a gift or a sale. Of course, the mandatory, Bernat, asserted that Borrell

[46] *Dotalies* 108, featured Ervig Marc as scribe for the dedication of Sant Miquel d'Olèrdola in 992. As discussed in chapter one, Ervig used the opportunity to expound on the significance of the dedication and the space being created. Though not as detailed as Sunyer's 972 exposition, he also stressed the biblical precedent for the establishment of altars and the remission of sin *per aquam regenerationis*. More strongly than Sunyer, Ervig stressed the roles of Moses as *iudex* and Aaron as *sacer*. Perhaps he had on his mind the joint role of these officials from just such an experience as we see unfold here at Bages in 1000.

[47] *JRCCM* 135. For a discussion of the case, see Jarrett, *Rulers and Ruled*, 152-53.

[48] *JRCCM* 135: "Donavit Danla sacer ad diem dedicacionis aput semetipsum ad proprium, sicut in ipsa condicione resonat." For the initial donation at the dedication, see *Dotalies* 90, "Danlano presbitero casas, terras et vineas cum molinos in circulo." If Danla indeed confirmed this gift with a *condiciones sacramentorum* oath, as Bernat states, it was done at a later date.

[49] *JRCCM* 139: "Aio femine et prolis eius, filii condam Gifredi iudicis."

"gave that allod to him (Guifré) unjustly and against the law."[50] His argument was a powerful one which could be backed by the code if necessary.[51]

Despite Ramon Borrell's father having transferred the land to the late judge, the count and the judges were inclined toward the monks. The monks' position, backed by the law and comital support, appeared unassailable. Judges Marc and Guifré asked Ajó's mandatory, Baldric, if he could produce witnesses. The mandatory admitted he could not and quitclaimed, saying,

> I recognize this in all things and likewise quitclaim because I am not able to prove this through either witnesses or through any other indication of truth, neither today nor on any day in the time after. But I recognize that (Count Borrell) unjustly and against the law removed that alod from the power of the monastery of Sant Benet and its monks serving God there and sold it to the aforementioned Guifré.[52]

Thusly, the 999 tribunal ended, with the court awarding the land to the monastery. Ramon Borrell's role in this case, while not especially pronounced, is intriguing and bore political implications. The count's presidency and appearance in the document's subscription list suggest he officially acknowledged the unjust nature of his father's sale to Guifré and accepted the monastery's argument. This comital support is unsurprising given that Ajó offered no evidence to support her claims for lawful sale. Furthermore, it would have been unwise to reject the monks after they presented the more sound case and without concrete evidence to support the widow's narrative. Ajó, likely a daughter of Sant Benet's founders, became a political casualty in Ramon

[50] *JRCCM* 135: "Dedit ei ipsum alaudem iniuste et absque lege."

[51] *LV* V.1.1 explained that once a donor, regardless of his or her social station, gave property to a church, that property may not be recovered.

[52] *JRCCM* 135: "In omnibus me recognosco simulque exvacuo quia non possum probare hoc nec per testes nec per ullum indicium veritatis nec hodie nec post hodie nec ulloque tempore sed iniuste et absque lege invasit ipsum alaudem superius dictum de potestatem Sancti Benedicti cenobii vel ibi monachi Deo servientes et vendidit ad iamdicto Wifred iniuste."

Borrell's effort to maintain a positive relationship with Sant Benet de Bages.[53] Nevertheless, she persisted.

Now, a year later, Ajó returned. She appeared before the two "judges of the county of Manresa" (*utrique iudices in comitato Minorisa*), Guifré and Marc, at least three clerical assistants, community notables, and many *boni homines*. The court convened in Sant Benet's. The very choice for the proceedings' location—the spiritual heart of the monastery that was party to the case—sheds light on Guifré's and Marc's leanings.[54] There was no need for neutral ground; they openly favored the monks and planned to bring supernatural power to bear against the widow. Their rapid pace in the matter suggests they assumed that such force would sweep Ajó aside through spiritual intimidation and community pressure. Owing to these considerations, and the fact that Ramon Borrell already publically supported Sant Benet, they had not bothered to seek out a comital and viscomital presidency as the court had done the year prior.

We must rely on the description of events by the scribe, priest, and judge, Ervig Marc, who wrote the record of the dispute and likely was the same "Marc" who acted as judge.[55] The

[53] Moreover, Borrell II had been a high profile attendee at the consecration of Sant Benet de Bages' church, and had been present when Danla supposedly made his gift toward the endowment. See *Dotalies* 90.

[54] Though, as Jarrett, *Rulers and Ruled*, 152-53, notes, there is a distinct possibility that Ajó was the daughter of the founders of the monastery, Sal·la and his wife, Ricarda (see Chapter 1). If this should prove accurate, then Ajó was not on fully hostile ground, with her mother and father buried at the abbey. If the widow referenced that lineage, it was not recorded by the scribe or emphasized by the monastery in dispute with her. Despite any connection Ajó might have, ultimately the space was the ritual provenance of the monks and their allies.

[55] Ervig Marc's identity is curious in *JRCCM* 139. At the document's close, he describes himself as "*Ervigius presbiter, cognomento Marcho, qui et iudex*." This statement could mean Ervig Marc was in fact the same individual as the earlier-mentioned judge called Marc, the man co-organizing the case with Judge Guifré (the name Ervig being dropped outside the subscription list). It is also possible they were distinct individuals. Given his high status among the county judges at the time and considering how often individuals truncated their names in documents, we may be reasonably confident the two names both refer to Ervig Marc. For profiles of this judge-priest and patterns for his appearance in the record, see Adam Kosto, "Versatile Participants in Medieval Judicial Processes: Catalonia, 900-1100," in *Judicial Processes in Early Medieval Societies: Iberia and its European Context*, ed. Isabel Alfonso, José Andrade, and André Evangelista Marques (Leiden, forthcoming), 6-7; Jesús Alturo i Perucho, et al., eds., *Liber*

document's structure suggests impatience on the judges' part. They did not bother to collect arguments from both sides, hearing only the monastery's explanation of Danla's donation before moving to request the house's witnesses.[56] The careful request for evidence and responses from both parties before proceeding that we find from ninth-century judges in *condiciones* cases is gone.[57] For Ajó, the lack of a president, the exclusion of her perspective at the outset of the proceedings, and the immediate move to implement the strategy against her in a church controlled by her opponent did not bode well. Moreover, her mandatory, Baldric, was nowhere to be found.[58] Within the framework of this opening to the tribunal, we see the case not as a traditional dispute between two litigants, but rather as an instance of "judge versus litigant." Indeed, this marks an emerging pattern in tribunals. The lack of judicial-neutrality, much like the earlier abandonment of presidential-neutrality in the second half of the tenth century, may have contributed to the frustration with the courts we will see in cases to come.

The two judges' actions make it clear that they were attempting to protect the monastery's holdings as efficiently and quickly as possible. They saw the *condiciones* strategy as a useful tool with which to do so; only the "servants of God" would have their voices heard in his presence. By proceeding in this manner, the court aggressively built supernatural authority in

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iudicum popularis, ordenat pel jutge Bonsom de Barcelona (Barcelona, 2003), 82-87; and Bowman, *Shifting Landmarks*, 91.

[56] *JRCCM* 139: "Unde in istorum presentia iussi sunt supradicti monaci a prefatos [iudices] aprobare hanc conlatam munificentiam, sicuti et fecerunt."

[57] *JRCCM* 6, 7, from 842, together provide a contrasting example of judges checking with both sides to be aware of all testimony/proofs/defamations before confirming with the *condiciones* strategy. Of course we see such care fall aside later in tenth century. From that period, *JRCCM* 123 provides a good example of a rush to judgment in another circumstance.

[58] The year before, the judges had taken care to check with Baldric to see if he could contradict the monks' evidence before proceeding. With the former mandatory out of the picture they pushed the case along, denying Ajó herself the same right.

the monks' home sanctuary in order to crush Ajó and her children. Ervig Marc was explicit: Danla had donated the allod at l'Angle at a church dedication event. Therefore, it was a gift to the house's saint, the very entity now called upon to supervise the legal ritual and appeal to God on the monastery's behalf. An implication of the saint's support and intercession in favor the abbey was that he would convey the monks' displeasure to God concerning the widow. Thus, the strategy's power was that it would render Ajó unlikely to persist. To foster the best results, the judges would publicize the oath at a large assembly, prominently displaying God's approval of the monastery's claims before the notable community members gathered from around Manresa. As a result, Ajó would be socially isolated concerning l'Angle.

With this plan in mind, the judges heard the abbey's witnesses: "And they brought forth two priests, Badelevus and Durand, and a layman by the name of Gauldramir, who testified to these publications (*seriem conditionis*), and many others of either sex, who saw the aforementioned allod offered on the day of the dedication of the basilica of Sant Benet."[59] Despite Ervig Marc's omission of the *condiciones sacramentorum* formula and use of *testificaverunt* (an example of a conflation of "testifying" and "swearing" that would become more common in subsequent years), the judges did indeed deploy the strategy. Having cultivated both spiritual and community pressure in sacred space, the judges turned to Ajó with what must have been an accusatory tone. The scribe relates, "And then we the aforementioned judges requested from the woman and the children by what reason they retained that above-noted allod." Of course, in the wake of the strategy's recovery of *truth* supported by the entire observing community associated with the allod, the implication was that any answer would

[59] *JRCCM* 139: "Et adlati sunt presbiteri duo, id est Badelevus et Durandus, et laicum unum, nomine Gualdramir, qui testificaverunt hoc per seriem conditionis; et aliorum multorum hominum utrique sexus, qui viderunt supradictum alodem offerri diem dedicationis supradictae baselice Sancti Benedicti."

confirm wrongful possession had indeed been taken. Put simply, they demanded she admit guilt. Yet, the savvy widow surprised her adversaries.

Being the widow of a judge, and thus likely familiar with the strategy used against her, Ajó deftly pivoted to an alternative authority that—while its relative power next to legal action in sacred space is debatable—the court, at very least, would be forced to acknowledge. Answering the judges' demand for her justification of occupation, she explained, "by a document of sale made by the late Count Borrell to my late husband Guifré, who is father of the aforementioned children."[60] She had found the bill of sale. Presenting the document marked a turning point in the case, and the political implications of the matter suddenly resurfaced. Her old mandatory had been forced to quitclaim without the bill. Indeed, the missing document had been one of the factors compelling Ramon Borrell to side with the Bages. Ajó's record, now brought the reality of the old comital authority underwriting her position to the fore. If the judges continued on this path and awarded the land to Sant Benet in full, would Ajó appeal to Ramon Borrell, whom they had not bothered to involve? How would he react now that concrete evidence of his father's involvement was available? Perhaps the count's support in the case was less secure than the judges had assumed. There was risk here for the abbey. Therefore, Sant Benet and the judges may have concluded that an uncertain appeals process (despite comital sympathy for institutional interests such as theirs) would not be worth the trouble the house could incur. But this, of course, did not mean that Ajó had won; monastic privilege was real and the unbalanced dynamics of the court could not be overcome with such ease. Her counter-strategy meant they were willing to

[60] *JRCCM* 139: "Per scripturam emptionis quem fecit condam Borrellus comes viro meo condam Gifredo, qui et patri supradictis infantibus."

work with her; nothing more. What the widow had truly accomplished was the avoidance of total exclusion from l'Angle.

Ervig Marc recorded the judges' response to the widow in the first person, demonstrating their newfound recognition of balance between the arguments. They explained that neither side's argument fully met the requirements of the law, but neither case could be fully dismissed,

> Therefore we the judges are aware of the alod bequeathed to the aforementioned monastery and (also) recognize the sale by the count through the purchase in the name of Judge Guifré written above. And we find neither that which completes the satisfaction of the law for the woman and her children, nor how (Danla) forcefully demonstrated that which was given thence. (Thus) we dare not adjudge either the property of the church lost nor likewise the appropriate satisfaction of the woman and her children to be lost unjustly. We confirm and assign the alod to the monastery and the monks serving God in that place. Thus, clearly Ajó and her children may hold (the alod) for all the days of their lives. They may possess and enjoy by our ordination and the blessing of Sant Benet, and give thence every year a rent (*tasca*) to the house of Sant Benet, and one measure of remarkable wine and one of grain which thus is put forth to be set in order. Truly after their deaths the aforementioned alod ought to revert in full and in good condition to the above-noted monastery.[61]

This statement shows that the judges believed the court had reached an impasse. The widow's document and ability to appeal to the count merited their acknowledgment. Yet, the justness of a legitimate deathbed bequest to a religious house could also not be ignored. What had saved Ajó was her ability to couch her claims in different registers of legitimacy. Indeed, three supplementary factors helped her navigate the peril: her possession of the bill of sale, a plausible

[61] *JRCCM* 139: "Id circo nos prefati iudices, ut cognovimus oblatum iamdictum alodem supradicto coenobio et agnovimus illum venundatum a pretexto comite per scripturam emptionis in nomine Gifredi iudicis editam et non invenimus qui satisfationem legis compleret ad supradictam mulierem vel filiis eius neque ad supradictum coenobium quare ablatum exinde extitit violenter, non ausi sumus iudicare supradictae ecclesiae proprietatem suam perdere neque predicte femine et filiis eius satisfacionem illis debitam similiter iniuste perdere, firmamus et adsignamus supradictum alodem ad supradictum coenobium vel ibidem Deo famulantibus monacis, ita videlicet ut supradicta Aio et filiis eius teneant cunctis diebus vite illorum, possideant et fruantur per nostram ordinationem et beneficium Sancti Benedicti et donent exinde per unumquemquem annum ipsa tasca ad domum Sancti Benedicti, et modiata I de vinea singulariter et unum molinum qui adhuc extat ad condirigendum. Post obitum vero illorum integrum et intemeratum redundet predictum alodem ad supradictum coenobium."

avenue to appeal, and her implacability when faced with potential sanction by a supernatural authority. Yet, what does this last factor, the supernatural element, tell us about the state of the *condiciones* strategy at this time?

Ritual performance and the invocation of divine forces at a *porta celi* had not daunted Ajó, as it had lord Gombau prior to the oath exaction at Sant Feliu de Codines. As the widow of a judge, Ajó likely understood what the court officials were attempting. She would not be intimidated, and remained strong under pressure. We are unable to enter into the widow's thought processes, but can imagine some possibilities that contributed to her perseverance. As noted above, the success of the *condiciones* strategy depended on both individual and community piety. In the first instance, we must ask how convinced or fearful individuals were that breaking norms in sacred space could harm them? Answers of course likely varied from person to person. Some were surely quite susceptible to supernatural pressures. Others were probably more resistant, or at least demonstrated a degree of self-discipline when contending with ritual action against them. In this case, we can assume that Ajó was either unmoved or able to control her fears.

The second factor, community piety, was less likely to vary significantly from case to case. It was a product of the broader consensus about the power of sacred space (*community belief*). As chapter one demonstrated, the consistency of that consensus is more evident in the sources than any degree of stability in individual conviction. Thus, collective piety likely factored into judges' effort to cultivate as much community participation as possible; pressure from one's neighbors could compensate for the unpredictability of individual conviction. While Ajó was somewhat successful, the judges' use of these spaces to appeal to community belief helped maintain the abbey's ultimate ownership. As we will see in extended cases below,

community pressure could play a dramatic role, with local notables drawn into the ritual action itself.

This case shows the judicial impact of monastic privilege and close associations with the comital family. It was not merely that institutions won, it was that officials used tools like the *condiciones* strategy to push procedural imbalances in their favor. We saw the beginnings of this usage in the tenth century. However, here for the first time, we note an earth-bound strategy (documentary proof) used *following* the invocation of sacred space. With Ajó undeterred, compromise and an insistence on the legal weight of documentation accomplished what the awe of sacred space had not. Why was the *condiciones* strategy suddenly not enough in such contexts? The present case—especially when compared to others from this early eleventh-century grouping—suggests an answer. The tool's efficacy depended on the personality of litigants, individual piety, community visibility, and broad variation in the degree to which people feared saintly sanction. If the threshold for success is to be set at complete victory for the party on whose behalf sacred space was brought to bear, we must recognize that the strategy could fail.

The *condiciones* strategy appears more successful, however, if we settle on a looser definition of victory. The judges' sought to secure Bages' property and have that ownership recognized by attendees. In building community consensus and empowering the court, the strategy helped. What is undeniable, however, is that this was an atypical case. It presents a rare instance of the strategy resisted. The judges' oath exaction had not gone according to plan and the judges lost a degree of control during the proceedings. It was a sign of things to come. However, the *condiciones* strategy continued to function normally for decades still, and many cases—such as the next—find courts performing the subroutine effectively according to

convention. For judges, troublemakers like Ajó were not the norm at the turn of the millennium, but, as we shall see, her determination in the face of such use of divine pressure would grow more common.

4.2.4. Capitulation and reception of oaths at Santa Maria de Cornellà, 1001

In the spring of 1001, a wealthy landholder called Pere found himself having lost at a tribunal; one that had pitted him, and his associate, Enric, against the inhabitants of Cornellà de Llobregat, a village located just west of Barcelona.[62] With a mixture of frustration and fear for his soul, he stood before the altar and prepared to admit defeat before Santa Maria. Facing him across the altar stood the three men whose testimony had ensured this outcome. Here, under Maria's gaze, he was prepared to ritually receive their oaths.

The whole affair had begun when Pere and Enric had grown indignant that the people of Cornellà were leading their animals across paths on their lands. They blocked these routes in response. Not long after, Judge Oruç, working with the guard, Queruç (*palatii custus*)[63] at Santa Maria de Cornellà, summoned the two men to appear to answer charges that they had tampered with important droving routes. To challenge him, Cornellà's inhabitants sent a delegation of ten men and their priest. There, they laid out a damning story in which Pere and Enric had kept the community from using trails long known to run across public land.

[62] *JRCCM* 141.

[63] The term *palatii custos* (literally 'guardian of the palace') is somewhat ambiguous. Jarrett, *Rulers and Ruled*, 158, shows that this title was used to refer to a comital guard of the same name in the household of Ramon Borrell. It is likely, that this Queruç present at Cornellà was the same man. Julia Barrow, *The Clergy in the Medieval World: Secular Clerics, their Families and Careers in North-western Europe, c. 800-1200* (Cambridge, 2015), 238, however, shows that this title could refer to the officer in charge of a sanctuary, a sacristan. In the context of this case, we are probably dealing with a comital representative of sorts. It remains, possible, however, that Queruç was a clerical officials supervising legal action conducted in his church.

Judge Oruç, determined to follow established procedure and to comply with the code's strictures, demanded witnesses. If these trails indeed lay on public land, then the villagers would have to prove it. Three men from the delegation came forward to testify. They recounted how for over thirty years local peoples had been leading their animals along these paths, all the way to the Llobregat River. Not once had Pere, Enric, or any of their relatives protested or complained that this land was held by any form of private tenure. Yet, this was mere testimony, the feeble words of men. It settled nothing. Pere knew, in keeping with longstanding custom in the region, there was more to come.

If the witnesses were prepared to repeat their words before Santa Maria, then it would be something more: testimony rendered valid by solemn oath and guaranteed by Santa Maria at her altar. Pere and Enric might be willing to anger the villagers, but the mother of God was another matter entirely. Judge Oruç led the court into the church and toward the altar. He positioned the opposing parties around the altar and asked the witnesses to repeat their testimony before the saint and swear to its validity. While the scribe truncates this performance, later context reveals that the court followed standard procedure. The *condiciones* strategy, of course using the *condiciones sacramentorum* formula, dictated that the three men extend the written version of their present oath over the center of the altar for saintly supervision. With great care, the witnesses swore their oath. Then, all eyes turned to Pere and Enric. They had lost, but were not excused. The judge required them to play their part and complete the ritual. The pair stated that they heard the witnesses' testimony, "received" it at the altar, and quitclaimed control over the

paths. Fixating on this moment, the scribe of the *placitum* wrote, "And we the aforementioned men, Pere and Enric, received that oath before the stated altar (*sub altario*). And we quitclaim."[64]

To his relief, the matter came to a close: Pere had lost and stood humbled before the Virgin. The judge went on to threaten an outrageous penalty of 100 *solidi*, should anyone act against the ruling.[65] Perhaps that might be required to forestall some, but Pere's worry was for his salvation. It is why he had been willing to hear the testimony against him and participated in the ritual oath exaction. As hundreds of documents recording church dedications (*dotalia*) reveal, Pere and his peers took care to secure their salvation. In addition to personal devotion, and attending mass, so many well-to-do people of the region gave piously to religious establishments, left bequests to the poor in their wills, and some even paid for a church to be built and endowed. For these people, the prospect of opposing one such as Santa Maria was unthinkable. The weight placed on the ritual reception is particularly striking in this case. This case is a clear example of a judge successfully capitalizing on the community belief in sacred space and using the *condiciones* strategy to great effect.

[64] *JRCCM* 141: "De hos exios testimonia larga dederunt X laicos et unum presbiterum et protulerunt eos ante Auritio iudice et Aerutio, palacii custus, et alii plurimi viri. Et elegerunt ex ipsis XI testes tres, id est, Ferreolus, Vital et Solarius, qui per ordinatione iudicis prefato intraverunt in ecclesia Sancta Maria, sita in prefato Corneliano, et iuraverunt prefatos exios possessos ab abitoribus pretaxatis per XXX annis et amplius sine blandimento et impedimento de cuiusque viventis hominis, et exierunt eorum omnia bruta animalia, minima et maxima, prefatos exios et vias prenotatas ubique pascua solita petentia et tutentia usque in flumine Lupricato et usque in ipsas undas maris. Et nos prefati viri, id est, Petrus et Aenricus, recepimus ipsum sacramentum sub altario prenotato. Et evacuamus nos ex ipsas vias et ipso exio de omnia et de omnibus et nullam vocem ibidem ad opus nostrum non reservamus."

[65] *JRCCM* 141: "Ad futuram talem vinculum innodanus super nos ut, si nos aut aliquis homo qui contra has vias et exios prenominatos in contraria venerit, componat vel componamus in vinculo auri C solidos paceque comitis iungendos. Et in antea easdem vias et exios prefatos prenotati habitatores eos habeant, prossideant quiete et secure." For a discussion of the advent of monetary penalties (rather than a mere stipulation of a multiple of the relevant property's value), see Kosto, *Making Agreements*, 52.

This contrasts strongly with an earlier "class-action lawsuit" we examined in the previous chapter, that of the villagers of Vilamacolum against the count of Empúries in May of 913.[66] In that affair, Count Gausbert had posed a far graver threat to the autonomy of the village, and it was only the sheer scope of numbers the villagers mustered that afforded the judges the community-based tools necessary to make the *condiciones* mechanism effective. Here at Cornellà de Llobregat, almost a century later, there was rough balance between the litigants. The ritual action in the church of Santa Maria was treated with the utmost solemnity by all parties, including the vanquished defendants. In language that highlights the physical position of the various players to the ritual activity, the scribe notes how the losing side listened to the witnesses testimony, ritually received the oaths that had led to their defeat, and quitclaimed exclusive use of the paths in question. The judges had deployed authority at a saint's altar, and it had been respected by all those involved. The power of the commitment assumed by Pere and Enric at the altar as a reaction to the commitment of swearing undertaken by the witnesses ensured that the case would not reopen in the future. Indeed, these men's reaction had far more in common with that of Gombau than it did with that of the sterner widow, Ajó. The threat of supernatural sanction at the hands of otherworldly entities relieved pressure on Judge Oruç. He could leave Cornellà with reasonable confidence that he would not have to adjudicate this matter further. The relative ease of this case for the judge and parties involved likely owed to its humble scope and confinement to a single village. This context, however, was not the norm. The final example in this opening series stretched over multiple counties and drew in some of the most prominent power players in the Province of Narbonne.

[66] *JRCCM* 59.

4.2.5. Fighting for the castle of Queralt, 1002

In 1002, a high-profile dispute over the frontier castle of Queralt (north of Tarragona) pitted Bishop Sal·la of Urgell (d. 1010) against the potent magnate, Sendred de Gurb-Queralt (d. 1015).[67] At first glance, the dispute (one which we saw in the Introduction) challenges the idea that the *condiciones* strategy was most valuable when there was not sufficient earthly authority available to courts.[68] Unlike two of the cases mentioned above, one at Sant Feliu de Codines and the other at Santa Maria de Llobregat, temporal powers here were prominent at *all* phases of the tribunal: initially presiding over the two-stage affair were Count Ramon Borrell, Countess Ermessenda, the bishops of both Barcelona and Vic, and the notable men in attendance. Moreover, the proceedings began under the guidance of five judges, including the jurist and comital advisor, Bonhom (d. ca. 1025). This judge also served as scribe of the court's oath document, the only record of the case to survive.[69] By the tribunal's close, the number of judges had swollen to nine. With such power and legal expertise assembled, it is curious why oaths in a sanctuary were necessary. Addressing this and other peculiarities concerning the record (surviving only as a thirteenth-century copy), we will find that not all was as it seemed. The *condiciones* strategy was not implemented to source missing temporal power. It was used to

[67] On the Gurb-Queralt family and its connection to Queralt, see Albert Benet i Clarà, *La Família Gurb-Queralt 956-1276. Senyors de Sallent, Olò, Avinyó, Manlleu, Voltregà, Queralt i Santa Coloma de Queralt* (Sallent, 1993), 45-49; and Kosto, *Making Agreements*, 60-61.

[68] *JRCCM* 143.

[69] Unlike many other judges, Bonhom is known to have compiled a collection of legal texts, which survives as Alturo et al., eds., *Liber iudicum popularis*. For discussion, see: Ferran Valls i Taberner, "El 'Liber Iudicium Popularis' de Homobonus de Barcelona," *AHDE* 2 (1925), 200-12; Anscari Mundó, "El jutge Bonsom de Barcelona, cal·lígraf i copista del 979 al 1024," in *Scribi e Colofoni: Le sottoscrizioni di copisti dale origini all'avvento dell stampa*, ed. Emma Condello and Giuseppe de Gregorio (Spoleto, 1995), 269-88; and Bowman, *Shifting Landmarks*, 84-90. For the number of documents and in what capacity Bonhom (and other prominent judges) appears in the surviving sources, see Kosto, "Versatile Participants," 23; and Alturo et al., eds., *Liber iudicum popularis*, 103-117.

garner a higher sense of authority to help the supposedly neutral temporal powers pursue their desired outcome and interests. Appreciation of this role the strategy played will help us to navigate additional issues of authorship.

Appearing before the comital court in Barcelona's cathedral, Bishop Sal·la claimed Sendred had seized the fortress, which "by right and power" (*iuris ac potestatis*) belonged to his see. The prelate asserted that a man called Guadall had donated Queralt to his bishopric.[70] These allegations led the judges to demand that Sendred explain his seizure. The man had readied his response, saying, "In general, I bought that castle about which you ask from (a man called) Domnuç and I have a document from that purchase and pledge for it. Behold, Domnuç is here, ask him."[71] In addition to having produced a bill of sale, Sendred was suggesting the judges take testimony from the seller who had joined the baron for the tribunal. Bonhom and his colleagues did just that. Domunç told how he sold Queralt according to custom and tradition (*iuxta morem et consuetudinem*). The lord of Gurb-Queralt was carefully fortifying his case with the interrelated proofs of documentation and testimony. Domnuç's speech could be taken further, as it had not been fully validated by an oath. Yet, before taking such a step, the judges wanted to know the bishop's account in greater detail. Unlike the treatment of Ajó in her struggle against Sant Benet de Bages, where the *condiciones* strategy was deployed before she could even speak, the court here appeared to be giving the bishop—the head of an important see—all the tools he

[70] *JRCCM* 143: "In horum namque presentia apetivit prelibatus Sanla, Sinderedo, Ansulfi prolis, pro castro Cheralto dicens esse predicto castro iuris ac potestatis seu ecclesie Sancte Marie Sedis Horgillitense pro conlacione Guadalli."

[71] *JRCCM* 143: "Castrum unde me interrogatis ego generaliter emi illum de Domnucio et karta exinde habeo et auctorem. Ecce adest Domnucius interrogate eum."

needed to succeed. Nevertheless, with the seller in attendance and supporting Sendred, the bishop faced an uphill battle.

The judges asked Sal·la to state by "which authorities he held" the fortress; specifically, they inquired whether Sal·la possessed a donation record from Guadall. In lieu of a document, the bishop detailed how the donor had transferred the castle according to custom, somewhat mirroring Domunç's justification of his own actions. When Sal·la took control of the fortress, he had dismissed the old garrison before inviting them to redirect their loyalty to the see of Urgell and himself as bishop.[72] This account was well and good, but the judges asked if he could prove any of it with legally valid evidence.[73] One's word was not enough. Yet, instead of an answer, the bishop adroitly requested a recess to seek the desired evidence. The court granted this pause.

The tribunal reconvened on 3 July in the church of Santa Maria la Rodona—located before the western portal of the cathedral of Vic—so that Sal·la could introduce witnesses "who would legitimately testify on his behalf to that which he was asserting."[74] The number of people overseeing the proceedings had grown. Joining Ramon Borrell was his brother, Count Ermengol I of Urgell, the archbishop of Narbonne, numerous notables, and the previously named judges. Joining the original five judges were four newcomers "who were not in the first *placitum*."[75] Sal·la produced three men to stand as witnesses. In the oath record, the judge-scribe immediately provides their testimony before the court, explaining they were those "who in one voice

[72] *JRCCM* 143: "Nequaquam emmi illum vel abeo exinde aliquam scribturam, sed Guadallus per tradicionem ac donacionem sicut mos est transfudit illum ac donavit iuri prefate ecclesie vel meo. Et ego statim aprehendi illum et tenui et eieci homines illos exinde qui custodiebant illum et per meum beneficium iteratim introduxi illos ibidem, ut custodissent predictum kastrum mihi fideliter sub munificencie prelibate ecclesie."

[73] *JRCCM* 143: "Potest hoc ad probare ita esse ut asseris?"

[74] *JRCCM* 143: "Qui legitime testificassent illi hoc quod asserebat."

[75] *JRCCM* 143: "Qui non fuerunt in primo placito."

professed to have seen the tradition of the ring transferred and the aforementioned castle given into the power of Bishop Sal·la and justly into the possession of the see of Urgell."[76] Mention of the ring here stands as an elaboration of the customary transfer Sal·la himself had featured in his account of Guadall's actions. The ring signified lordship over the fortress and was passed to a new owner along with control over the castle.

The court accepted these witnesses, and then (as reviewed in the Introduction) the judges commanded them to perform the Rite of the Guarantor (*ritum fideiussoris*). Indeed, Bonhom's description of the ritual act at the center of the *condiciones* strategy is among the most detailed in the corpus, suggesting the jurist wished to stress its especial importance to the proceedings. Following the oath, Bonhom immediately turned to the extensive subscription list, without declaring an outright winner. Given that the oath structure was most commonly in service of the victor, perhaps Bonhom wished to convey that Sal·la's was the winning side. The record is unclear. The witnesses subscribed, explaining they swore as one. Bonhom added three additional collections of names: those who "saw this oath sworn," "those who were hearers of this oath," and the judges.[77] Sal·la's opponent, Sendred de Gurb-Queralt, however, is absent from the list. In fact, we have no record of his reaction to his "loss" in this case. Yet, we do know that his family remained in good standing with Ramon Borrell and Ermessenda.[78] The magnate's ties to comital

[76] *JRCCM* 143: "Qui uno ore professi sunt vidisse per tradicionem anuli tradere vel donare prenotatum kastrum in potestate supra meminiti episcopi Sallani ad proprio iure supradicte Sedis Orgellitane."

[77] *JRCCM* 143: "Qui hunc sacramentum iurare vidimus," and "Isti auditores fuerunt de hunc sacramentum." The most notable difference between the *viditores* and the *auditores* is that the latter group were counts, prelates, and magnates, while the former were men of more humble rank. Perhaps this indicates that the lords were positioned closest to the swearing witnesses and most capable of hearing their oath; it is also possible that this is merely a way to distinguish these great lords in their own group, despite performing an identical role to the *viditores*.

[78] Sendred's relationship was such that he—in conjunction with Gombau de Besora—assisted the comital couple in a tribunal in 1011. See *JRCCM* 154. Salrach, *Justicía i poder*, 223, dates this case to 1011.

power were not severed. For that matter, neither were those of the bishop. Along with the other regional elites, Sal·la participated in the comital-led campaign against Córdoba in 1010, during which he lost his life. Thus, we can see the record, on the the broadest level, communicating the comital court's success in navigating a disagreement between two essential allies to the house of Barcelona. There is just one problem with this narrative: the continued Gurb-Queralt possession of castle suggests that Sendred in fact won the dispute, not the bishop as the record implies. In light of this reality, questions abound. The lens of the judge-centered approach and consideration of the *condiciones* strategy offer useful tools in seeking answers.

Despite Sendred clearly retaining control of the castle, Bonhom's record, surviving as a later copy, does portray the court accepting the bishop's evidence over that of his opponent, at least implicitly. Both Cebrià Baraut and Adam Kosto agree with this interpretation. Jonathan Jarrett, however, explains that the appearance of Sal·la's "victory" is misleading. He notes that the extant record is likely just the oath document for the case, one of the three documents classically made for a dispute.[79] The other two records, the judgment and the quitclaim, have not survived.[80] Yet, if we scrutinize the oath document itself, curiosities emerge concerning this case and the relationship between officials and the ecclesiastical party.

In proceeding, we must also account for Judge Bonhom's ties to his comital supervisors and what was at stake for them. The record's depiction of the presidents as neutral arbiters in a

[79] Roger Collins, "*Sicut Lex Gothorum continet*: Law and Charters in Ninth- and Tenth-Century León and Catalonia," *English Historical Review* 100 (1985), 492-94.

[80] Cebria Baraut, ed., "Els documents, dels anys 981-1010, de l'Arxiu Capitular de la Seu d'Urgell," *Urgellia* 3 (Montserrat, 1980), doc. 278 (at 107-09); and Kosto, *Making Agreements*, 187, describe the case as a victory for the see of Urgell. Jonathan Jarrett, "Winner's Preservation," *A Corner of Tenth-Century Europe: Early Medievalist's Thoughts and Ponderings*, accessed Aug. 2020. https://tenthmedieval.wordpress.com/tag/sendred-de-gurb/#i5, however, shows that this impression results from the fact that the other traditional records which would have been created have been lost.

politically sensitive tribunal belies an agenda. During this period of active warfare (1000-1003) with Al-Manṣūr (d. 1002) and his successor, Queralt was an invaluable border fortress with an important role to play in their aggressive stance against Córdoba. From there, raids could be launched against Lleida and incoming incursions deflected.[81] The importance of the castle's stable management was equalled only by the comital need for a good military relationship with both Sal·la and Sendred. The latter controlled numerous fortifications that constituted a formidable presence on the border.[82] He also held ties with the see of Vic, with his brother serving as a cathedral canon.[83] And for his part, Sal·la headed his bishopric's growing network of strongholds extending ever-southward into the frontier.[84] There was also Ramon Borrell's alliance with his brother, Ermongol I of Urgell, and that man's own relationship with Sal·la to consider. This complextity ensured that any decision the count and countess supported could alienate one or both disputants. Beyond this, the couple, as officials with legal responsibilities, needed to showcase the accessibility of justice and the irrefutable nature of rulings handed down

[81] This dispute occurred during a period, 1000-1003 in which the counties faced a number of attacks from Islamic forces under Al-Manṣūr's command. The warlord's death in 1002 afforded Ramon Borrell the opportunity to counter-attack, moving against Lleida in 1003. The period of active hostility culminated in the Battle of Torà, at which a pan-Catalan alliance halted a raid launched by Abd al-Malik al-Muzaffar, son of Al-Manṣūr. For these details, see Bonnassie, *La Catalogne*, I: 343-47; Carl Erdmann, *The Origin of the Idea of Crusade* (Princeton, 1997), 99-100; and Dolors Bramon, *De quan érem o no musulmans, textos del 713 al 1010: Continuació de l'obra de J.M. Millàs i Vallicrosa* (Barcelona, 2000), 343-51.

[82]Thomas Barton, *Victory's Shadow: Conquest and Governance in Medieval Catalonia* (Ithaca, 2019), 24-29, emphasizes the importance of the militarized frontier and the implications its management had for how traditional comital powers interacted with magnates. Both in this generation, but especially in the decades following the death of Ramon Borrell, counts had to work cooperatively with frontier lords. We certainly see an early example of that balancing act in this case over Queralt, even before the period of concerted crisis after 1017. For a map showing the density of fortification along the border of Old Catalonia, see Jordi Camps, ed., *Catalunya a l'epoca carolíngia: Art i cultura abans del romànic, segles IX i X* (Barcelona, 2000), 280.

[83] Benet, *La Família Gurb-Queralt*, 73-5; and Jarrett, *Rulers and Ruled*, 120.

[84] Kosto, *Making Agreements*, 187. For a discussion of bishops and their canons' part in defending the frontier, see Freedman, *The Diocese of Vic*, 20-25.

in their court. While Ramon Borrell and Ermessenda likely wished to convey such impartial leadership, that impression weakens when considering the procedural course of the case alongside previous examples. Such comparisons—particularly with the tribunal involving Ajó—instead reveal a judicial agent of their court potentially collaborating with the ecclesiastical party.

The oath document implies that Sal·la won. However, it provides not just the oath sworn by the episcopal witnesses, but first offers the detail of Sendred's proofs. His evidence—composed of interrelated documents and oral testimony—was strong in comparison with Sal·la's simple narrative of ring reception commemorating a donation. Why was Sendred never afforded the opportunity to authenticate Domnuç's testimony as an oath? His argument was the one fully prepared when the tribunal opened. Sal·la, by comparison, had to request a recess. The shift of focus to Sal·la's need for witnesses strongly implies that the judges ignored Sendred's evidence. As far as this record is concerned, the procedural step of oath authentication was offered only to the ecclesiastical litigant. This raises a fundamental issue of why access to an altar was not afforded to both parties, especially considering Sendred's strong evidentiary position at the outset of the case (at least as the oath record conveys). We have no easy answer.

Given the Gurb-Queralt family's continued tenure of Queralt, it seems most likely that Sendred was the case's true victor. If we had the judgment and quitclaim records, we may in fact find this outcome explictly stated with an explanation as to why. But, that outcome would be quite odd if this oath record were fully accurate. Under normal reports of the *condiciones* strategy's use, the party that was emerging as the likely victor was the side brought to the altar. As we saw in the 1018 case over the *dominicatura* at Santa Maria in the village of Vilanant in (see Introduction)—a rare example providing additional detail—it was only after the stronger proofs were determined that the judge permitted the emerging victor to authenticate testimony by

witness oath.[85] This was often the final step before (sometimes just after) the declaration of the victor. The oath document concerning Queralt castle is an odd example of the opposite, suggesting Sal·la prevailed. I advance a hypothesis: this oath document amounts to either tampering by a later scribe/copyist or potential collusion between Urgell and the court offiicers following the dispute. A look at these possibilities reveals the latter to be the more plausible interpretation.

It is possible that incongruities owe to thirteenth-century scribal agumentations, masquerading as an exact copy. The copyist of that time could have omitted description of an oath opportunity granted to Sendred. But, in that case, why leave his other proofs intact; and why not depict Sal·la's own position as stronger? Alternatively, perhaps it was based on a doctored record made soon after the tribunal and attributed to Bonhom in order to amplify the oath document's prestige. If this were the case, however, such a move would have been a brazen step for episcopal scribes writing during the jurist's lifetime (before ca. 1025). It is likely that a court hearing an appeal would uncover such subterfuge and Sal·la's designs on Queralt would be doomed.[86]

In light of these doubts, we should not discount the possibility that Bonhom himself cooperated with the bishop, helping him to compose this generous remembrance after the court had handed Queralt to Sendred. Let us not forget that Bonhom's record ignored Sendred after laying out his evidence, focusing instead on strengthening Sal·la's position vis-à-vis the opposing proofs. He also conveniently omitted mention of an outright victor, allowing the

[85] *JRCCM* 175.

[86] It is also noteworthy that parties to this dispute lived well into the century. Countess Ermessenda died in 1058, and would therefore have been available for decades to confirm or deny the authenticity of the record.

document structure to imply that the see won.[87] If Bonhom was indeed cooperating with the bishop in this fashion, he may not have seen this as an altered document. Implication is not the same as untruth. Instead, he helped to create a comparison of proofs taking the form of an oath document. He portrayed Sal·la's position as authenticated before God (notably Sendred's was not) and subscribed by community notables. From the historian's perspective, however, it appears as deception through omission, a selective memory of the case to advance ecclesiastical aims.

Although a lack of substantiating evidence relegates this possibility to the realm of hypothesis, if accurate, it exemplifies a judge—supported by comital power—affording special accomodations to an ecclesiastical partner who had lost, but could not be alienated in a time of war. This oath document was an olive branch. Bonhom would have equipped the see with a tool to one day challenge Sendred's tenure, once the military situation that so preoccupied comital attention became less volatile. It is likely, given Sal·la's untimely death and the turmoil following Ramon Borrell's, the see chose not to pursue its claim. At least we have no record of such litigation. This interpretation reflects a strong level of complicity between a court official with comital backing and a litigant, constituting judicial bias toward an ecclesiastical house. Even were the copyist to have transcribed the record with perfect accuracy, and the original were to have been a true report, we would have a document that clearly shows an unequal offering of a procedural opportunity. Whatever the exact circumstances surrounding the creation of this document, collusion of some form seems apparent. As we shall see in other cases, that cooperation would not be an outlier in the eleventh century. It marked a joint idealization, shared

[87] The document transitions from the quoted oath immediately to the subscription list. Bonhom does not provide an explicit ruling.

by officials and religious institutions, for how tribunals ought to unfold and to what sort of accomodations Bonhom and Sal·la believed ecclesiastical interests were entitled.

4.2.6. Summarizing the *condiciones* strategy around 1000

Yet, the presence of bias does not wholly depend on such issues of authenticity or authorship. We may contextualize this record with others here and in the coming pages to show growing privilege in the proceedings themselves: ecclesiastical institutions could lose while still enjoying an overall advantage within the system. In this century, the *condiciones* strategy was increasingly involved in entrenching this phenomenon, becoming one of the subroutine's main circumstances of use. The first instance is Ajó's struggle against Sant Benet de Bages. The judges heard the monks' witnesses and authenticated the testimony in a sacred space before even hearing what the widow had to say. When the court finally addressed her, the judges' request for an explanation bore accusatory subtext. She faced the weight of the rite that had transformed the witnesses' testimony against her into truth, a process we saw Judge Guifré guide in detail at Sant Miquel de Manresa (our second case study). It seems likely that any feeling of intimidation Ajó experienced, derived from ritual action against her in the monks' chief sanctuary, was built into the course of proceedings. The judges had used the *condiciones* strategy to imbalance the court in favor of a religious institution for which they held sympathies, one with close relations with the comital house. The validating force of sacred space and resultant community pressure it cultivated insulated the officers from consequences. The factor the judges had not considered, however, was the widow herself. She had been the wife of a member of the judiciary. Ajó's partial hold on the property was ensured only by her skillful use of a document and the implication that the count could become involved if an appeal should press forward. Believing that document lost, her opponents—who were in reality the judges—had not planned for its

appearance once Ajó was addressed. They likely expected a quitclaim as Gombau's mandatory provided at Codines and Pere and Enric had offered at Cornellà de Llobregat.

In comparison, the case over Queralt reveals how access to oath authentication at an altar had become a privilege. Even if we take the oath document at face value, the subroutine of the *condiciones* strategy was a choice that the judges invoked to meet the needs of a powerful house, the see of Urgell. At Barcelona, the lay party spoke first with interrelated proofs. Sendred asked the judges to accept Domnuç's testimony. Yet, the judges chose not to validate that testimony with an oath as had been done straight away for Sant Benet's monks. If these officials had been following a strict norm, Bonhom and his associates would have acted just as the court had at Bages: they would have performed the Rite of the Guarantor with alacrity. This is not what happened. The judges turned immediately to the bishop. Bonhom helped him secure God's approval of his witnesses, perhaps helping to lay the groundwork for an appeal.

This case cluster provides an overview of how the *condiciones* strategy fit into the judicial system and the procedural decisions of judges vis-à-vis comital political interests just after 1000. The preceding comparison of the order of operations in cases suggests judges did not always adhere to rigid norms, acting only after prerequistes were met. The *condiciones* strategy allowed them to build evidentiary momentum for one party that proved insurmountable for the opposing side. They ensconced ecclesiastical arguments in the trappings of authority, legitimacy, and forged truth. The outcome would then become a foregone conclusion. As we turn to the next grouping of cases, we will see this solidify as a trend. Recognition of bias and procedural flexibility, however, does not suggest we should view judges' understanding of churches as inherently cynical. This grouping highlights an additional conclusion: each case underscores the solemnity with which judges—and in the matter involving Quintilà and Honorada, the litigants—

drew on sanctuary power. Many of these men were also clerics; we have no reason to doubt their convictions. As Bonhom's description of the Rite of the Guarantee suggests, demarcations of space, the theology underwriting the power of churches, and respect for liturgical time were handled with care. Judge Guifré's documentary recovery at Sant Miquel de Manresa mirrors that sense of gravity. Understanding and showing that respect for the forces summoned to supervise legal action at altars was critical to galvinzing community support and thereby making the strategy operable. While that respect for ritual was fixed, the issue of when and to whose benefit the strategy was deployed was malleable. Judges had complex tools of different epistemological provenances at their disposal, but used their personal discretion when drawing on one, rather than adhering to objective standards. Turning to the next grouping of cases, after a gap of over a decade, we will see how the strategy was used during a period of mounting political uncertainty and comital weakness.[88] Under the threat of withdrawals, judges faced new obstacles and increasingly saw the *condiciones* strategy as a means of securing stability within the system.

4.3. The *condiciones* strategy: a time of accelerating transition, 1015-1030

In the three decades after the millennium, as political circumstances in the region grew uncertain, lay disputants increasingly expressed displeasure with the legal favor afforded to religious institutions. They revealed their frustration by withdrawing from courts more often. This section chiefly explores two representative cases from the years leading up to the 1030s (the decade when the synthetic nature of the *condiciones* strategy began to noticeably fray).[89] These two cases, both featuring instances of withdrawal, guide us to that point. I show that the sort of procedural imbalance we saw in the previous grouping was an impetus for such action by

[88] A gap of sixteen years separates these five cases from the next example, *JRCCM* 175, dated to 1018.

[89] *JRCCM* 185, 213, 214.

dissaffected litigants. The *condiciones* strategy had a role as both entrenching that imbalance and in mitigating the danger to courts that litigant departures posed. In discussing examples, however, it is important to stress that balanced uses of the strategy—more closely resembling the affair at Cornellà de Llobregat—are also evident and sometimes even involved the same judges.

Map 9. Important sites discussed in cases from the long 1020s[90]

[90] Italicized place names are sites of the *condiciones* strategy.

4.3.1. Withdrawing at Bàscara, 1019

In addressing the first example—a tribunal occurring in 1019—we return to the branch of the Bellonid line that descended from Oliba Cabreta (d. 990).[91] Heading the family at this time was the late count's eldest son and count of Besalú, Bernat I Tallaferro (d. 1020). This dispute in many ways resembles the 1018 Ullastret affair between Ermessenda and Hug d'Empúries. Like that dispute, Bernat Tallaferro's court struggled to placate a disaffected litigant. Unlike the countess, however, Bernat was not himself a disputant; he left the proceedings in the hands of a judge called Sunifred. Nevertheless, the tribunal drew on the count's authority as president, along with that of his son, Guillem (d. 1052).[92] We may see Judge Sunifred in this case as a representative of the count's interests, with the two sharing a close relationship. Indeed, Sunifred was likely the very judge who presided over the count's testamentary execution a short time later.[93] We may venture that Sunifred fulfilled a function for the count of Besalú similar to that peformed by Ponç Bonfill Marc for the house of Barcelona: a trusted advisor and jurist.[94]

Sunifred would have been acquainted with the house of Cerdanya-Besalú's priorities. One interest was a desire to fulfill an expected role for counts: that of a pious patron of religious

[91] By 1020, the branch held sway over Berga, the Ripollès, Cerdaya, Conflent, Vallespir, Empúries, Peralada, Alt Rosselló, Fenouillèdes, and Peyrepertuse as well as enjoying a degree influence in elsewhere.

[92] For a discussion of the expression of comital responsibilities in matters of justice, see Bowman, *Shifting Landmarks*, 102.

[93] *LFM* II.497. To place his will in Sunifred's hands displays Bernat Tallaferro's confidence in the judge's advocay for his family interests.

[94] Bowman, *Shifting Landmarks*, 91-2, 94, 102: "Many judges were also closely tied not only to comital and episcopal courts, but to counts and bishops themselves. Some spent much of their time in the entourage of counts or bishops. Judges not only advised lay and secular magnates on questions of law, they were also intimate advisors and business partners." (quotation at 94). For this particular dynamic between Ponç Bonfill Marc and Ermessenda, see Bonnassie, *La Catalogne*, I: 190-91; and Humphrey, "Ermessenda of Barcelona," 25-26.

establishments.[95] Yet, Nathaniel Taylor showed that practical necessity also directed the family's poltical choices as it struggled to secure episcopal sees for younger sons.[96] For these reasons, the house proved sensitive to the needs of the bishoprics in the Province of Narbonne. We will see that this stance toward the neighboring diocese influenced the course of affairs in these two cases. The priest-scribe, Eroigio, reveals in his record that the assembly comprised multiple officials from the chapter of Girona, the plaintiff in the dispute. Thus, those persons named as standing in support of the count's judicial presidency were leaders from the very institution leveling charges. As we will see, Sunifred's efforts on behalf of the bishopric's position during the proceedings stand as further evidence of a symbiotic relationship between counts, judges, and politically influential eccleisastical institutions.

Before the court, the cathedral's archdeacon accused the magnate, Bernat de Calabuig, of appropriating a collection of lands in the villages of Bàscara and Abderama along the Fluvià

[95] Bernat Tallaferro's actions communicate that, like his brother Abbot-Bishop Oliba, he saw a sense of duty in continuing legacies of patronage for religious houses established by earlier generations of the family. Yet, respect for family/comital obligations went hand-in-hand with political gain. In 1002, Bernat strove to complete the monastic church of Sant Pere de Besalú. He was joined in this effort by his brother, Guifré of Cerdanya. See *Dotalies* 121. The brothers' uncle, Count-Bishop Miró, had started work prior to his death in 984. Establishing a prestigious monastic house at Besalú and inaugurating a history for the building that would be tied to comital initiative strengthened Bernat's own position at a time when the house did not directly control one of the region's sees. Count Bernat might have invited Bishop Ot of Girona to consecrate the church simply because his uncle had been bishop of Girona himself. Yet, we find the bishops of Girona, Vic, and Barcelona working in concert at the dedication. In lieu of indirect control over a bishopric, the brother-counts likely saw this as a gesture of goodwill toward the prelates. This reveals the great care and expense that went into cultivating positive relations with ecclesiastical institutions. Dedications, endowments, and legal support were likely cornerstones of that effort.

[96] Taylor, "Inheritance of Power," 138-39, shows that the Bellonid's partible inheritance system "began to reach its logical limits" after generations of splitting holdings between heirs. Church careers became essential, and may be seen as one of the chief reasons family leaders strove to foster close relationships between abbots, bishops, and the pope. The effort—including an appeal to the pope in person (1016-1017)—proved fruitful. Pope Benedict VIII (d. 1024) created a bishopric at Besalú, investing one of Bernat Tallaferro's sons as bishop. For this act, see Josep Pons i Guri and Hug Palou i Miquel, eds., *Un cartoral de la conònica agustiniana de Santa Maria del Castell de Besalú, segles X-XV* (Barcelona, 2002), doc. 3 (at 26-29). The family next purchased the office of archbishop of Narbonne for the son of Guifré of Cerdanya. For a discussion of the trip to Rome, see Miquel Sants Gros i Pujol, "Sant Pere de Camprodon, un monestir de Besalú," in *Art i cultura als monestirs del Ripollès*, ed. l'Abadia de Montserrat (Barcelona, 1995), 80.

River. The man defended his tenure with a royal precept and other documents outlining the bounds of the alod and explained how it had been given to his father-in-law, Accio. At Accio's death, the estate had passed to him.[97] After the court heard these details, the see introduced two initial witnesses: one Abbot Adalbert and a man called Sunifred (not to be confused with Judge Sunifred). The pair further outlined the boundaries using a document that the archdeacon had brought (*sicut in scriptura Sancte Marie*), explaining how they had themselves walked the property borders (*piduaverunt*).[98] Notably, this was simply the pair's testimony; they did not swear oaths, nor did the judge ask them to do so. After defining the boundaries, they announced they "were prepared to swear" that the see of Girona had held all this property in the time of Accio, save an islet in the Fluvià; this was a plot mentioned in Bernet de Calabuig's document.[99] Because the canons understood they could not permit their opponent to have grounds for appeal, they refused to leave a gap in the testimony. So in an unconventional move, Judge Sunifred allowed the archdeacon's mandatory to exchange these deposed witnesses for ones who would testify to the see's tenure of the *entire* alod. These new witnesses, called Miró and Segino, stated that they had seen the little island worked by one Radulf, with the laborer paying rents to the cathedral's agent (*ministrale Sancte Marie*).

With his precept and documents disregarded in the face of the see's witnesses, Bernat de Calabuig was given no opportunity to respond before Judge Sunifred turned to the Rite of the

[97] *JRCCM* 185: "Suprascriptus Bernardus respondit quod per donitum socero suo Accione et per terminum de villa Calepodii tenebat iam dictum alodem in ipso loco fuit ostensa auctoritas magna precepta regalia et aliis scripturis ubi resonabant ipsi termines."

[98] *JRCCM* 185: "Et piduaverunt et hostenderunt testes de prefata sede, idest Adalbertus abba et Soniofredus istos termines sicut in scriptura Sancte Marie resonat per ipsa cacumina, sicut aqua vergit a parte orientis a territorio Calopodii, et sicut vergit aqua a parte occidentis, a territorio Baschara sive in flumen Fluviano."

[99] *JRCCM* 185: "Isti testes parati iurare." Also in the list, the scribe differentiates between the testimony and oaths.

Guarantor. The new witnesses validated their testimony by swearing at the altar (*supra altare*) of Sant Aciscle de Bàscara declaring that they attest to this narrative by both testimony and an oath. Only now, with the see of Girona safely ascendant, was Bernat permited to respond. He had to navigate the situation carefully. Following the text of the oath, Eroigio relates,

> The litigant Bernat agreed concerning the boundaries written above, excepting that island, and declared that he had walked those bounds just as the said Abbot Adalbert and Sunifred had. And he wished to affirm them by an oath, just as is true and (as) the law instructs for every man who is charged with some deed through the law. And he received an answer (that) it is not necessary to give proof. The judge then passed judgment in the matter, and he (Bernat) was asked to sign by his own hand, lest by chance a contention arise in the future.[100]

Unfortunately, the scribe-priest omitted the details of the judge's ruling. Based on Bernat de Calabuig's later reaction, however, we can assume that the cathedral won and the judge either invalidated or reduced Bernat's claim to impotency. We can compare Sunifred's tactics to those used by judges in the opening disputes of the millennium, including Judge Bonhom. Taken together, these examples reveal that deploying the *condiciones* strategy ensconced the favored litigant's evidence in virtually unassailable authority, with the intended effect of narrowing an opponent's range of argumentation. This was something even non-judges understood, as we saw with Quintilà and Honorada against Gombau de Besora. Indeed, only in exceptional circumstances could the use of sacred space be resisted, as we saw with Ajó. Yet, that resistance was effective only to a degree and may have been a rare product of the widow's background knowledge of this particular use of the strategy (given her marriage to a judge).

[100] *JRCCM* 185: "De istos alios suprascriptos terminos, exceptus ista insula concordat et est professus suprascriptus petitor Bernardus sicut suprascriptus Adalbertus abba cum Seniofredo istos terminos habet piduatos et voluit eos affirmare per sacramentum sicut est veritas et lex precipit quod omnis homo qui est petitus per legem de aliquam rem, et ille exinde est professus, non est necesse dare probationem, sed iudex exinde faciat iuditium de re discussa, idest scriptura sua manu roborata ne forte ad futurum contentio oriatur."

Yet, Judge Sunifred's actions hint that circumstances were changing in the face of such procedural bias. He may well have feared that the kind of stubborn resistance Ajó presented was growing more plausible as perceptions of courts shifted in a time of growing political uncertainty. The judge was deeply concerned with preventing the re-emergence of the case in the future; he even tells us directly. He did not act as if the *condiciones* mechanism just deployed had solved all of the see's problems. Quite unlike Judge Bonhom's attitude in the proceedings of 1002, Sunifred considered neither the empowerment of an oath in a church nor the clout of the comital president enough to deter the lord of Calabuig. He could not ignore the man's interests as Bonhom had those of Sendred de Gurb-Queralt. Therefore, showing a rising sense of insecurity on the part of court officials, the judge wanted all tools exhausted in limiting Bernat's range of action. Thus, in a rare move, Eroigio tells us that Judge Sunifred expressly asked the lord to sign in the subscription list, admitting that he believed this was necessary to prevent a resumption of the case. Given the context of the tribunal proceedings—with the Rite of the Guarantor having just been performed, and what happened in the eventual outcome of this tribunal—subscription almost certainly implied ritually receiving the witness oaths at the altar prior to signing the document. Of course, subscription was a common component of cases featuring the *condiciones* strategy, but its *explicit* demand in the document and direct association with the threat of resumption underscores Sunifred's sense of urgency and vulnerability. He needed this man's investment in the process.

Perhaps he had misjudged Bernat de Calabuig's resolve, with the lord subtly indicating he might not receive the oaths. This possibility aside, the request itself likely resulted from the apprehension caused by a desire that Bernat voiced immediately before the judge asked for his subscription. The lord, surely aware of the supernatural power being marshalled against him,

wanted access to the altar in order to balance out the see's authoritative oath with one of his own. His word choice demonstrates a sophisticated knowledge of how oaths and God's authority operated in law. Bernat recognized that God could not support two contradictory claims; two opposing ideas could not both be true by merit of ritual validation. Bernat, therefore, would not swear to his claim of ownership via his father-in-law. The see's second witness party had just sworn to the cathedral's ownership, establishing *that* position as true. Instead, the lord would swear to the boundaries of the main alod that everyone already agreed upon, but which Sunifred had neglected to fully validate with an oath. Because the judge had been preoccupied with the canons' missing evidence for the islet, he had not secured the testimony of the see's first witnesses, Adalbert and Sunifred.[101] Cleverly, Bernat planned to swear to those bounds for them. There was value in this. For the lord, the point was to strengthen his side of the dispute with the same otherworldly legitimacy that his opponents enjoyed. He could fortify his case without even addressing the issue of the conflicting claims. Perhaps this would afford him enough traction to force a mediated resolution; the kind of half-victory Ajó had won.

For Bernat, this was only fair. If the court was to be considered balanced, all tools and strategies ought be granted to both sides. From Judge Sunifred's perspective, however, this move—fair though it may be—would ruin everything. All he could muster was to reply that "it was not necessary to give proof." For Bernat to swear an independent oath of any sort would

[101] *JRCCM* 185. The oath is sworn solely by Miró and Segino. The initial witness pair (Adalbert and Sunifred) swore no oaths. After introducing the men who came forward to swear with the line: "Nomina testium qui hoc testificant et iurant hec sunt, Miró et Segino," the priest-scribe Eroigio gives the oath as a quotation: "Nos suprascripti testes per trinum et unum et verum Deum sive supra altare Sancti Aciscli Martiris qui est fundatus in villa Baschara quia vidimus de iam dicta insula sicut superius resonat ipsum censum prendere per vocem Sancte Marie. Et ea que dicimus, recte et veraciter testificamus et iuramus per supra maximum sacramentum in Domino." Here, they stress the "insula sicut superius" as the subject of their oath. This corresponds to their testimony Eroigio paraphrased prior to addressing the action at the altar. It was not Miró or Segino who mentioned the testimony of Adalbert and Sunifred and the main alod; rather, it was Bernat de Calabuig.

potentially reinvigorate his case with a rival claim to God's authority and could result in harm to the relationship between the count and the see of Girona. For these reasons, if the judge permitted Bernat de Calabuig to approach the altar, it would be only to submit before the court as the defeated party in the rite. Regardless of whether the law supported it or not (*et lex precipit quod omnis homo qui est petitus per legem de aliquam rem*), Bernat could not be allowed to turn the *condiciones* strategy on its head, bringing it to bear against the court itself. However, Sunifred's prioritization of the ruling's stability over the apperance of equity proved to be a mistake. In seeking to protect the integrity of the tribunal, Judge Sunifred in fact undermined it. We find evidence for Bernat's response only in the list, requiring close attention to what the structure of the document reveals about Sunifred's management of the case and the timing of certain actions.

When Sunifred insisted on Bernat's subscription, the lord refused, publicly withdrew from the tribunal, and likely threw the proceedings into chaos.[102] The document's structure indicates that this caught the judge and scribe off guard, with neither realizing that Bernat was really at risk of leaving. We would expect this information in the text's body, but find it only after the *datum* protocol. Some measured imagination helps order events. Perhaps hinting that he planned to subscribe and receive the oaths, Bernat de Calabuig delayed his outburst until the opportune moment (a key consideration for withdrawing litigants, as we will see in Chapter 5). After Sunifred moved to close the proceedings and Eriogio finished with the body of the document, people would have come foreward to subscribe and the reception of the witnesses

[102] *JRCCM* 185: "Facta ista deffinitione XII kalendas augusti anno XXIIII regnante Robberto rege. Et de ista omnia, sicut superius resonat me evacuavi et postquam habui suprascriptus Bernardus istos sacramentos receptos noluit isto suo nomine et suo signo firmare et extraxit se de ipso placito et habiit, noluit hoc suo digito signo impressione roborare."

would have occurred. As people approached, Bernat suddenly stormed out. For this to have the desired effect, the lord would certainly have ensured a spectacle. Doing so made a mockery of Sunifred's move to close the case, underscoring that the matter was by no means settled. Perhaps Bernat communicated his specific grievances to the assembly. He might have highlighted for all that Sunifred had guided the proceedings toward a victory for the canons, allowing them to switch out witnesses, while denying him access to the same ritual authority afforded to his opponent. Could justice really be obtained from such a judge when the count's political interests were at stake? The lord of Calabuig's departure answered the question with a forceful negative. Sunifred was left to deal with the optics of the withdrawal. Beyond that, the judge could only cringe at what the lord might do next.

The court had assembled at the church of Sant Aciscle de Bàscara, about a kilometer from Lord Bernat's principal fortress at Calabuig. The assembly departed under the shadow of the castle that stood to become the basis of an extra-judicial escalation by this lord. Judge Sunifred had but one choice, embarassing though it must have been: he would have to go after Bernat and to entreat him back to the church. We have no mention of specific negotiations, though they must have taken place, given Bernat's eventual return with his son. While concessions from Sunifred or the see were surely part of any talks, a partial victory for the canons was more palatable than the appearance of the court's collapse and encouragement of such outbursts. Most importantly, a compromise would mean that the judge would not need to ask Bernat Tallaferro to compel Bernat de Calabuig to cooperate by force. While the count's relationship with the see of Girona may have taken priority in the court's search for a resolution, an open conflict with forces at Calabuig was unlikely to be a more welcoming proposition. Although we do not know how it was achieved, it is clear that Bernat was coaxed back to Sant

Aciscle's church where he formally received the oaths of the see's witnesses and subscribed (*Sig+num Bernardus, qui istos sacramentos recepit et auscultavit cum filio suo Petrone*).

This case marks a rare example of a withdrawing disputant returning to resolve the affair within the bounds of the legal system. Ultimately, Bernat did submit to the court structure, but only after his actions weakened it. We cannot forget that the proccedings unfolded before a sizable assembly. Seeing the authority of the comital court drawn into question would have had a powerful impression on Bernat's lordly peer group. Yet, should blame really be placed at Bernat's feet? I argue that approaching this case with an emphasis on the judge's decisions reveals that Sunifred forced Bernat's hand; he did not act as a neutral arbiter. Instead, he was a proponent for the canons' interests. If this lord recognized that, so did others present.

The importance of sacred space and oaths to the procedural strategy determined how the various parties navigated the dispute. As we saw with Gombau de Besora in 1000, once the court shifted into the register of the *condiciones* strategy, there was significant spiritual and community pressure for all parties to proceed within that framework. While the narrowing of the case certainly benefited Honoranda and Quintilà, Gombau still possessed a degree of agency. He had the opportunity to introduce witnesses and empower their testimony with oaths. That his opponents guessed he could not find such individuals does not mean they never gave him the opportuntity to do so. As the cases involving Ajó and Sendred de Gurb-Queralt suggest, this opportunity was becoming rarer around the turn of the millennium. Working with particular goals in mind, judges sometimes chose to organize proceedings so that only one side would benefit from an appeal to supernatural forces. Two decades later, litigants like Bernat de Calabuig suffered the effects of this feature of comital courts. The conclusion is stark: the *condiciones* strategy was something to which only one side had access in some disputes. Though

this change was far from universal—indeed, it never would be—it marks an important evolution in the perspective of judges. These officials felt that imbalanced procedure was acceptable legal practice. Unlike Ajó or Sendred, however, shifts in the broader political and military circumstances emerging around this time meant there was a response: disaffected litigants like Bernat could storm out.

Judge Sunifred's unequal use of sacred space directly triggered Bernat's extrajudicial actions. Although examples from previous centuries do not always show perfect equity, the *condiciones* strategy had not been consistently weaponized so brazenly to advance the interests of one party before the closing decades of the tenth century. A contrast is helpful: the tribunal at Bàscara differed from the 913 Vilamacolum case between a party of villagers and the count of Empúries.[103] In that earlier dispute, sacred space allowed judges to roughly balance the two sides, affording the villagers a fighting chance against the count's power. From Count Gausbert's perspective, this may have given his opponents an unwelcome edge against him. However, if it did, the primary consequence was that doing so reinforced the appearance of the accessibility of justice for all through the court system. This would engender confidence in the court system. It fostered balance, rather than hindered it. Judge Sunifred could not make such a claim about the Bàscara proceedings. The strategy in the Vilamacolum affair had also been collaborative; nine judges provided structure that signaled fairness and an unanimous judicial agreement in the case. As I argued in Chapter 3, use of the *condiciones* strategy to ensure an even playing field in tribunals became less common after 950 as competition between power-holders in the province mounted. A little over a century after the people of Vilamacolum won their case, the strategic use

[103] *JRCCM* 59.

of sacred space was now being used to entrench *imbalance* and forestall extra-judicial action that resulted as consequence of that imbalance. For judges, unqualified submission to the process became more important than ensuring tribunals were fair and attractive arenas in which to advance one's interests. In this sense, they prioritized short-term victories over the broader health of the courts.

The obvious visibility of these priorities likely affected perceptions of judges and drew their relationship to sacred spaces into question. Comital judges had become gatekeepers of theophanies, jealously guarding access to the power of altars. While such restriction could prove effective—such as during the previous summer, when the same count's court used sacred space to crush a class-action suit against a viscount and ally of the house of Cerdanya-Besalú[104]—at Bàscara in 1019, it backfired. This weakness before the lord of Calabuig had everything to do with Bernat's understanding of the strategy and how to turn it against the judge. Disallowing him access to the altar for an oath of his own signaled a breach in the equity of the dispute. In this context, Bernat's extrajudicial inclinations may have appeared less norm-effacing in the eyes of attending community members than would been have a withdrawal by Gombau de Besora almost twenty years earlier.

Lluís To Figueras argues that the Bàscara episode points to a crumbling relationship between Bernat Tallaferro and the aristocracy subject to his legal authority, concluding that the count had weaponized the tribunal system against his magnates.[105] While Bernat de Calabuig and

[104] *JRCCM* 179. In this 1018 dispute heard in a church at a place called Llupià (southwest of Perpignan), a group of twenty-six people from the nearby village of Santa Coloma de Tuïr attempted to maintain control over church tithes that were claimed by Viscount Sunifred I of Cerdanya. Under the presidency of Bernat I Tallaferro and his brother, Count Guifré II of Cerdanya, a judge Sendred authenticated oaths dispelling the villager's claims.

[105] Figueras, "El comte Bernat I de Besalú i el seu testament sacramental," 123.

lordly observers almost certainly came away with jaded views of the comital court, we must be mindful not to mischaracterize the count's intent. Any weaponization of sacred space was likely not the product of active hostility toward the lay aristocracy. There was not much value in such a stance. What we see instead is that, in the effort for Bernat Tallaferro to benefit politically from fulfilling one of his prescribed roles as count—that of patron and defender of the church—he undermined another function, that of a fair-dealing judicial president. If we view Sunifred's use of the *condiciones* strategy as a weapon, then it was one that inflicted damage to the count-magnate relationship through neglect. Growing tensions with the magnates constituted collateral damage from the count's push to foster closer ties to religious houses and gain influence over bishoprics in the Province of Narbonne. Whatever the lord of Calabuig's frustrations may have been, he soon overcame them. Bernat was among those close confidants approving of the count's testament, directed by Sunifred, just a few months later.[106] This rapprochement suggests there was not a sudden collapse of the count's ability to act as an authoritative leader, nor a single moment of political crisis. As we will see in the next chapter, irreparable breaks after a tribunal and the end of traditional-style relationships between comital authority and some magnates lay in the future. At the turn of the third decade of the century, however, reconciliation and reinvestment in the old order remained possible.

4.3.2. Withdrawing at Alp, 1025

The preceding analysis of Bernat Tallaferro's court just before his death, taken into account alongside that of Ermessenda's struggle against Count Hug of Empúries in 1018, reveals that the evolving nature of the use of sacred space in law was not isolated to a single comital

[106] *LFM* II.497.

jurisdiction. This point can be accentuated. A second example illustrates the complexity of cases featuring withdrawals and draws attention to those circumstances that governed how counts and judges reacted. Moreover, the case shows that not all withdrawals sparked the kind of reaction Judge Sunifred elicited at Bàscara. In 1025, at the Cerdanyan village of Alp, Count Bernat's brother and political ally, Count Guifré II of Cerdanya, Conflent, and Berguedà, faced a similar challenge to the integrity of his court.[107] Although this dispute was less involved than the proceedings at Bàscara, we may readily compare the two and underscore important social factors that helped Count Guifré's court more easily overcome the problem. Similar to events at Bàscara, a lay woman on the cusp of defeat withdrew from proceedings after the judge validated witnesses for a religious institution at a church altar. Just as Bernat de Calabuig had done, she departed at the moment when the judge instructed her to participate in the ritual reception of oaths. Yet, as we will see, the judge in this case reacted differently than Sunifred had.

The dispute unfolded in early August and drew in power holders from across the northern expanse of the Catalan counties. While the tribunal occurred south of the Pyrenees, the property in question—called Aiguatèbia—lay to the north in the county of Conflent. This case, therefore, was broad in its geographic impact. In addition to Viscount Bernat II of Cerdanya supporting the count's presidency, the tribunal also involved as disputants Bishop Ermengol of Urgell (d. 1035) and, from further east, the daughter of Viscount Arnau I of Conflent (d. 1024), Bonadona. The matter was complicated by the fact that Bishop Ermengol was Bonadona's paternal uncle. Their family connection affords us a rare opportunity to see how the *condiciones* strategy was used when institutional interests and bonds of aristocratic kinship were put at loggerheads.

[107] *JRCCM* 213, 214. The priest-scribe Isarn composed this document, dated to 1025, in two sections. The first, 213, provides the narrative of the tribunal. The second, 214, repeats the oath sworn by the witnesses for Bishop Ermengol.

Count Guifré placed the proceedings under the control of Judge Sendred. This official's actions in the case reveal a perspective on justice at the comital court that matches that seen from Judges Sunifred, Ervig Marc, Ponç Bonfill Marc, and Bonhom—among others—in previous disputes. He was there to accomplish a task: pursuing a stable victory for the bishop. Our window into the affair comes from a priest-scribe called Isarn. Careful attention to how this man composed the document and the timing of Judge Sendred's procedural decisions reveals bias in favor of Bishop Ermengol. At the outset, Isarn hastily summarizes Bonadona's charges against her uncle, before detailing the bishop's response in the first person. With the scribe paraphrasing, we find that she asserted that her uncle was in unlawful possession of a portion of her inheritance at Aiguatèbia. Her claim on the land had passed to her from her late father, who had bought it from her aunt, Guisla. In support of her case, Bonadona produced a bill of sale. The bishop was dismissive, explaining: "Indeed, I do know and recognize that document. But my brother, Arnau dissolved the agreement with my sister, Guisla, concerning that inheritance, and recouped the purchase price. In support of all this, the judge asked me if I can prove it or not. I have truthful witnesses, namely Ermemiró, Bonfill, and Honofred."[108]

The tone Isarn established in this document recommends suspicion. Normally, one expects the judge's voice to guide the proceedings, with him being the subject of verbs that trigger procedural actions. Here, however, we learn of Sendred's leadership only through the voice of the bishop. The priest-scribe affords Bonadona no first-person speech. While Ermengol does highlight Sendred's request for witnesses, the judge's own voice is not evident until after the outcome of the dispute had become obvious to all. Ermengol's primacy in the text bore ritual

[108] *JRCCM* 213: "Scio et recognosco quia vera est ipsa carta set frater meus Arnallus iam dictus disnegociavit cum sorore mea Gisla de ipsa hereditate, et recuperavit precium. Unde predictus iudex me interrogavit si possum probare aut non, et ego abeo testes veridicos, id est Ermemiro et Bonefilio et Honofredo."

advantages for the bishop as well. We know that drafts of tribunal records were frequently used in the Rite of the Guarantor, when witnesses jointly held documents—often labeled as publications (*condiciones*)—over the altar for divine inspection. Isarn's irregular treatment of the *condiciones sacramentorum* formula in this document obscures whether that inspection happened at Alp. However, if this normal part of the rite was in fact performed, it would constitute the witnesses relaying the bishop's verbatim account of the affair to God. Without noting any response from Bonadona, the scribe immediately provides the quoted text of the three men's oath. It was a truncated version of the normal words spoken. At the altar of Sant Joan de Alp, they explained that they had been present when the siblings invalidated their sale and took note that Guisla had returned her brother's money.[109]

Not unlike Ajó in 1000, or Bernat de Calabuig in 1019, the bishop's niece was given no opportunity to respond or produce counter witnesses prior to the performance of the rite. Instead, Isarn explained that, "while Bonadona ought to accept these proofs, she withdrew and did not wish to receive them."[110] The word *ought* weighs heavily in this statement. Why exactly was Bonadona obligated to accept these oaths? Was reception necessitated simply by merit of them being sworn? Could she not, in a court where the truth of a matter was valued, be permitted the chance to advance counter-testimony before the judge took the dramatic step of oath authentication? She might have believed it improper that oaths were collected before both parties

[109] *JRCCM* 213: "Nos omnes simul in unum damus testimonium, iuramus per trinum et unum Deum super altari Sancti Ihoanni, qui est situs infra baselica Sancti Petri de Albo. Nos vidimus et audivimus et de presente fuimus in villa Caputstagno quando desnegociavit Arnallus vices comes cum sorore sua Gisla de ipsa sua hereditate de Aquatepida, que ei abebat vendita per carta, et recuperavit precium per sua propria voluntate, id est cupa una argentea et quocleares septem argenteas et espada una hobtima et solidos XV de dinarios."

[110] *JRCCM* 213: "Et dum debuit iam dicta Bonadonna accipere ipsas provas, estraxit de iam dicta Bonadonna et noluit recipere ipsas provas."

had such an opportunity. A comparison to a case at Vilanant from February of 1018 is instructive.[111]

The Vilanant case was heard before Bernat Tallaferro. The comital judge was Sunifred, almost certainly the same official who faced Bernat de Calabuig in the Bàscara case the following year. In this dispute, Judge Sunifred allowed both sides to introduce witnesses and worked hard to determine which pool was more trustworthy. He took his time to get the facts right and to afford roughly even opportunities to both sides. After a postponement for evidence to be gathered, Sunifred interviewed both side's witnesses separately. Cautiously, he made sure neither group was within earshot of the other as he deposed each. Only then did he authenticate the trustworthy witnesses' testimony with oaths. Such concern for balance and allowance for delay is wholly absent in both the case at Bàscara (under this same man's administration) and the one at Alp. Another difference is also apparent. At Vilanant, the losing side did not withdraw. Instead, the defeated party solemnly received the oaths, quitclaimed, and subscribed. It was a stable outcome that was unlikely to require future litigation. In contrast, dramatic withdrawals mar the proceedings of the tribunals at Bàscara and Alp.

Notably, the 1018 Vilanant case was not a dispute from the distant past, but had occurred a mere eight years prior to Bonadona's pursuit of her inheritance. More intriguing is that the Vilanant tribunal, a model for the balanced use of the *condiciones* strategy, unfolded under the authority of the very count and judge involved in the Bàscara affair. We can conclude that the house of Cerdanya-Besalú and its judges were fully capable of proceeding in accordance with legal norms when they so chose. Yet, they were choosing not to do so under circumstances that

[111] *JRCCM* 175.

involved comital political ambitions. Looking at the Vilanant proceedings in conjunction with those at Bàscara and Alp, we see that norms were followed until there was political incentive to abandon them. No prestigious religious house had been caught up in the tribunal at Vilanant. At Bàscara and Alp, however, the incentive for deviation was clear: the relationships the count held with the sees of Girona and Urgell were far more important than the interests of lay aristocrats. Taken together, these cases reveal that procedural changes to suit one side over another were situational, rather than totalizing.

In Bonadona's eyes, the appearance of foul play was stark and—like the lord of Calabuig—she withdrew from the assembly. Subsequent events, however, mark how the Bàscara and Alp cases differ substantially in their resolutions despite other similarities. Unlike Sunifred's reaction to lord Bernat's withdrawal, Judge Sendred decided not to coax Bonadona back. Instead he emphasized the illegality of her actions with a citation from the code. The standard measure used was *LV* II.1.25. Paraphrasing the law, Judge Sendred explained,

> Now if one party should bring forth witnesses, and provided that it should be necessary, the other party to the judgment ought to receive their testimony, and should that party withdraw itself from the counsel of the judge, it is permitted for the judge to accept the proffered witnesses, and that by their testimony, they shall confirm that which he who brought them forth in earnest desired to authenticate. Now, for he who fraudulently left the judgment, it shall be entirely illegal to bring forth any witness.[112]

This measure is clear: if a litigant produces witnesses and the judge determines that the opposing party needed to receive them, that reception should go forward. Should that party instead withdraw, then the court must accept the witnesses. Most consequentially, the departing litigant

[112] *JRCCM* 175: "Nam si una pars testes adduxerit et dum oportuerit eorum testimonium deberi recipi altera pars de iudicio, absque iudici consilio se substraxerit, liceat ad iudici prolatos testes accipere et quod ipsi testimonio illorum firmaverint ille qui eos protulit sua instancia consignare; nam ille qui fraudulenter se de iudicio sustulit producere testem alium homnino erit inlicitum."

cannot later introduce counter-witnesses. In practice, of course, the court's refusal to hear future witnesses amounted to the elimination of any realistic appeal at a later tribunal. That eventuality was almost certainly Sendred's impetus to cite this measure.

Yet, whether Judge Sendred acted fully within the bounds of the law is debatable. Instead of structuring his actions in order to follow the mandate of *LV* II.1.25, he may have been using this measure to facilitate the outcome he desired. The reality that Sendred hastily progressed to the Rite of the Guarantor after learning of Ermengol's witnesses makes this hard to determine, and we do not know Bonadona's response to her opponent's evidence. Isarn's document gives the impression that Sendred was orchestrating events to limit Bonadona's range of response, perhaps even goading the lady toward her eventual withdrawal as a means to forestall future litigation. He never offered her the opportunity to strengthen her documentary claim to Aiguatèbia with her own witnesses. As his colleague at the Vilanant case demonstrated, there was precedent for scrutinizing various witness pools. If we look back even earlier to the documentary recovery involving Boso in 890, we find previous generations of judges who fretted over the opposite problem Sendred faced: they wanted as much evidence as possible before they would feel confident. The 913 Vilamacolum case shows that that philosophy persisted into the tenth century. Serving as a contrast, the tribunals at Bàscara and Alp, along with others, reveal how that era of law in the Province of Narbonne was coming to an end. Rather than the troubled cases of this age, perhaps it was the 1018 tribunal at Vilanant that was the outlier.

At Alp, Sendred could have chosen a more equitable examination of each side's evidence. Yet, in so doing, he likely conflicted with his goal of advancing Ermengol's interests (and thereby the interests of Count Guifré). The judge simply wanted to be rid of Bonadona. This interpretation is further recommended by what Sendred *left out* of his citation. Isarn's quotation

of *LV* II.1.25 is merely an excerpt from a lengthy measure. As we saw in Chapter 3, Judge Joan used the measure in 980, when Sunyer and Ató refused to attend court. The scribe provided a fuller summary of the *causa*, including a passage from *LV* II.1.25 that came just after the passage that Sendred cited at Alp. This line (omitted in 1025) reads, "and should [the withdrawing party] have cause to reasonably challenge those [witnesses] accusing him, he should be fully heard by the judge; and [the judge] ought to receive further and better witnesses from him (being the one who brought the claim)."[113] This was a key provision that Sendred conveniently omitted in his selective reading, with the judge instead halting at the prohibition of future witnesses. Placed in the context of the Alp dispute in 1025, it constituted Bonadona's right to challenge the witnesses who spoke against her at her uncle's request. It is one of the measures in the code that allows for the defamation of witnesses.[114] This omission illustrates Sendred's interest in dismissing Bonadona's claim as quickly as possible. I argue that the judge's haste can be reasonably attributed to pressure from Ermengol to settle the matter decisively. It would certainly not be the first time a bishop of Urgell had strong-armed a court presided over by a member of the Cerdanya-Besalú line, as we saw in 997 with Bishop Sal·la's performance in 'Count' Oliba's court.[115] A joint use of legal action in sacred space and a citation from the code gave Sendred the compound tool he needed to placate the bishop.

A question remains: why did Judge Sendred deploy *LV* II.1.25 in this case at Alp, when Sunifred had not at Bàscara? The answer is threefold. First, while Bernat de Calabuig was a

[113] *JRCCM* 90: "Et si abuerit quod racionabiliter in eis acusant, potenter audiatur a iudice;et ei testimonium recipere debat pluriores vel meliores."

[114] Bowman, *Shifting Landmarks*, 166. For a measure in the code addressing infamy, see *LV* II.4.7

[115] *JRCCM* 132.

partisan of Bernat Tallaferro, the castle of Calabuig's location within the county of Girona (an area under Countess Ermessenda's control) signaled a more complicated equation, especially if Bernat settled on recourse to arms. For Bernat Tallaferro, a military operation in the neighboring county was bound to trigger an unwelcome response from the countess. Second, the sort of armed resistance that Bernat de Calabuig might muster was a less plausible prospect coming from Bonadona. As the daughter of the viscount of Conflent, her lands likely centered largely within that county, under Guifré II's firm control. Moreover, mustering and sending forces against her uncle would perhaps have constituted a disproportionate escalation by Bonadona against a family member and respected prelate. The public image of that action would not be in the lady's interests. Finally, and most importantly, Bernat de Calabuig's attack on the court's integrity was far more severe than that levied by Bonadona. With Bonadona withdrawn, Sendred could plausibly cast the lady as a sore loser, garnering the assembly's scorn for her stubborn refusal to acknowledge the count's justice. The selective application of *LV* II.1.25 aided the judge in building consensus for this interpretation of Bonadona's actions. Bernat de Calabuig, on the other hand, had underscored the hypocrisy of Sunifred's management of the proceedings, emphasizing how the judge had unfairly restricted his chance of appealing to God's authentication of a claim already accepted by the court: the agreed boundaries of the alod. By slipping into the discursive register of the *condiciones* strategy, Bernat had adroitly demonstrated Judge Sunifred's deviation from justice. Under these circumstances, the citation of *LV* II.1.25 would have been ineffectual; the focus was on his misdeed, not that of the lord of Calabuig. While Bonadona, too, challenged the court's authority, she had not customized her protest to meet Sendred's use of the *condiciones* strategy. Therefore, Sendred's control over the affair was never placed in doubt. This gave Sendred the opportunity to draw on the stricture. With the lady

absent, the judge confidently pronounced in favor of the bishop and received the witnesses himself.

4.4. Conclusion

These representative episodes reveal that the legal phenomena evident in the courts of Barcelona and Osona at the millennium were also features of proceedings subject to the Cerdanya-Besalú branch of the Bellonid line by the 1020s. The millennial trends reviewed earlier followed a similar trajectory in the southern counties under the control of Countess Ermessenda and Count Berenguer Ramon I during that decade.[116] Thus, the legal norms of the different political spheres comprising the Province of Narbonne were evolving in stride. While space does not permit a full exploration of every tribunal record belonging to this grouping—and not every episode of the *condiciones* strategy use offers the same degree of detail—general points of comparison about the utility of the strategy during this decade are possible.

Of course, many deployments of the *condiciones* strategy continued to be effective and had no detrimental effects on court prestige. Moreover, outside this grouping, the majority of legal actions had no need for the authority-sourcing value of the strategy, and therefore most records include no mention of the legal use of sacred space. In some cases where it was necessary, such as proceedings for documentary recovery, courts encountered little trouble. In 1023, a judge called Guifré collected witness oaths in the cathedral of Vic to protect the property of a man called Isarn who had inherited from his uncle, Madeix.[117] There is no evidence of discord. In a similar case three years later, in 1026, the same judge helped a castellan to recover a

[116] *JRCCM* 193, 203, 204, 207, 211, 213, 216, 222, 223, 225, 228, 231; *Lézat* 409, 410.

[117] *JRCCM* 204.

lost document at Castellví de la Marca.[118] Other cases, however, were more contentious, though they still posed little threat to court legitimacy. In 1028, Judge Ponç used the strategy to navigate conflicting proofs of rightful inheritance in a dispute between a man and his mother at Sant Sadurní de Palau d'Al-manla.[119] While a degree of antagonism is clear at this tribunal, the dueling sides ultimately recognized the court's right to adjudicate and declare a winner in the case; no withdrawal occurred. In many ways, the case resembles that at Vilanant in 1018. One element shared by this grouping of successful *condiciones* episodes was the absence of powerful ecclesiastical litigants. When examined in conjunction with earlier examples discussed at length in this chapter, we get the sense that lay disputants were prepared to participate and accept the victory or defeat within the bounds of the court system when they believed there was no risk of bias, when they stood a fair chance. They could not argue with the traditional hierarchy of proofs stressed by figures like Ponç Bonfill Marc in many of these cases. The efficacy of the *condiciones* strategy's invocation is also evident when courts featured two religious parties squaring off, such as seen in a tribunal pitting the bishop of Urgell against Santa Cecília d'Elins in 1024.[120] The relative stability of these tribunals owes to a sense of equilibrium in the system when the powers that oversaw the courts were not motivated by political ambitions.

Thus, as we have seen in examples throughout this chapter, tribunals in which lay litigants faced ecclesiastical adversaries were more likely (though not certain) to result in

[118] *JRCCM* 216.

[119] *JRCCM* 223.

[120] *JRCCM* 207. For this case in context with the see of Urgell's judicial defenses under the leadership of Bishop Ermengol (d. 1035) during this period, see Prim Bertran i Roigé, "Ermengol d'Urgell: L'obra d'un bisbe del segle XI," in *La transformació de la frontera al segle XI: Reflexions des de Guissona arran del IX centenari de la consagració de l'església de Santa Maria*, ed. Flocel Sabaté (Lleida, 2000), 116-17.

withdrawals. This phenomenon was not limited by place. For example, a dispute heard in the comital palace of Barcelona in 1024 conforms closely to events at Alp in 1025, far to the north.[121] That tribunal, presided over by Ermessenda and her son, also pitted a lay lord against an ecclesiastical institution with close ties to the comital house, Sant Cugat del Vallès. The lead judge was Ponç Bonfill Marc. When the judges accepted the witnesses of Abbot Guitard over the inheritance claims of Viscount Adalbert de Rosselló—dismissing the latter's documentary evidence and testimony—the losing viscount angrily withdrew. Without Adalbert crafting his withdrawal into a more nuanced strategy as Bernat de Calabuig had, it is unsurprising that Judge Ponç paired a citation of the same truncated text of *LV* II.1.25 that we saw in the Alp case with the authentication of witness oaths in favor of a religious house in a church. Considering such cases together—from opposite corners of the region—reveals much about the posture of comital courts at this moment and how challenges originating in the tenth century had grown into more serious problems. Yet, these cases also show how the *condiciones* strategy itself was warping to meet the shifting concerns of tribunal presidents and judges.

A comparison of actions taken by many of the eleventh-century judges discussed in this chapter with those of earlier centuries illustrates that the *condiciones* strategy had evolved from a tool that (1) helped foster balance between litigants through an infusion of divine authority, (2) protected the weak in court, (3) and empowered comital presidents who struggled against rivals

[121] *JRCCM* 211. This record comes from the cartulary of Sant Cugat del Vallès and was first edited in José Rius Serra, ed. *Cartulario de Sant Cugat del Vallès*, 3 vols. (Barcelona, 1945-47), II: 496 (at 146-48). Rius dated this case to 16 June 1025. Others have dated it to 1024. See Antoni Pladevall, *Ermessenda de Carcassona, comtessa de Barcelona, Girona i d'Osona: Esbós biogràfic en el mil·lenari del seu naixement* (Barcelona, 1975), 51-52; and Martin Aurell, *Les noces du comte: Mariage et pouvoir en Catalogne, 785-1213* (Paris, 1995), 238. *JRCCM* adheres to Rius' date of 1025. Based on the contextualization of the case with contemporary documents, provided by Pladevall, I support the date of 1024. For a full narration of this case, see Matthews, "Within Sacred Boundaries," 7-13.

in the second half of the tenth century, (4) to one that also entrenched procedural imbalance in the legal system during politically charged tribunals. This fourth application never became the most frequent reason to use the *condiciones* strategy, but was featured in high-profile cases heard before well-attended assemblies. While the judicial use of churches could advance comital interests by playing to the advantage of a count's favorites, it did so while simultaneously undermining confidence in the court system itself. Across the counties of the province between the late tenth century and the 1030s, this proved consequential at a time that also saw the beginnings of socio-political change. This new, fourth use of the strategy—largely at the initiative of judges and their comital masters—hastened what had previously been a gradual pace of decline in the efficacy and regularity of the region's dispute practices. In considering the forces that drove the social and political changes that are associated with eleventh-century Catalonia, scholars should recognize how the *condiciones* strategy served as a contributing factor. This analysis will continue in the next chapter, while expanding to consider the fraying of the synthetic nature underwriting the strategy. It is not that 1030 or any one case during the subsequent decade marks a watershed; rather, it is that we cannot discuss the fall of the old order after this point without noting early impulses by litigants to move in new directions.

Chapter Five

The *condiciones* strategy in the eleventh century (II): the loss of synthesis

5.1. Introduction

In 1036, a year after the death of Count Berenguer Ramon I, a lay lord called Bernat Otger appeared before Countess Ermessenda, Count Ramon Berenguer I, and Bishop Guislabert of Barcelona (d. 1062) for a judicial assembly.[1] Before the gathering, attended by over thirty named lords, he demanded the court grant him a grouping of coastal properties, at three sites called Santa Oliva, Calders, and Castellet. Each holding was then in the possession of the powerful monastery, Sant Cugat del Vallès. Working with a judge, Bishop Guislabert orchestrated the proceedings. He asked both Bernat Otger and Abbot Guitard of Sant Cugat to recognize the authority of the law and promise that they would present their arguments according to the rules established in the Visigothic Code.[2] While the abbot readily complied, Bernat refused.

The record's scribe explains, "Bernat did not wish to submit himself to the law as he was ordered, nor lay out his case, instead he spoke in his own words, saying: 'I shall make no sort of *directum* nor receive one, but if you are willing, we ought to put two youths in cold water for the

[1] Josep M. Salrach i Marès et al., eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomàtica, segles IX-XI* (Barcelona, 2018), 256, provides the date of the tribunal as 19 Jul 1036. José Rius Serra, ed. *Cartulario de Sant Cugat del Vallès*, 3 vols. (Barcelona, 1945-47), II: 545 (at 203-06), provides the date as 1037. For an introduction to the case, see Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76), II: 562; Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 231-33.

[2] *JRCCM* 256: "De hoc alterca]ntes atque inter se contendentes iudicavit Gislibertus, suprascriptus episcopus, et donno Bernardus [Sendredus, et Fulco Geri]bertus, ut ex ambobus partibus misissent se] sub lege, et [dedissent fideiussores ut secum] dum sanccionem legis Libri Iudicum fecissent sibi inter se directum."

judgment of omnipotent God, so that thence it might be his *directum*'."[3] The account reveals that the county's power-holders resigned themselves to Bernat's refusal and counter-proposal. When the results of the ordeal proved inconclusive, however, the court resorted to a mediated settlement in which the property was divided.[4] Sant Cugat received the smaller share. The monastery's full tenure was salvaged only later, when Abbot Guitard beseeched Bernat Otger to return the property to the saint.[5]

In contrast to previous disputes studied, the case shows a collapse of traditional legal norms. Bernat's intransigence permitted neither a review of documents nor introduction of witnesses. He simply refused to acknowledge the legitimacy of the code and court system. The only authority Bernat recognized was the direct judgment of God. Two factors drove these events. The first was political opportunism. Ermessenda's son had just died, and she was presiding as regent for her minor grandsons at a time of growing fragmentation between the comital/episcopal establishment and an upstart castellan class. The land in question, located in the littoral Penedès area south of Barcelona, was outside of the direct control of the new count,

[3] *JRCCM* 256: "Supradictus vero Bernardus noluit se mittere sub iugo supradicte legis, nec ullumque alium dire[ctum facere, nisi tantum modo] verbis suis affatus est dicens: 'Ego [nullum alium directum] faciam neque recipiam, sed si [vultis mittamus,] singulos puerulos ad iudicium Dei Omnipotentis in aqua frigida, ut inde appareat cuius di[rectum sit.' "

[4] *JRCCM* 256: "Unde hoc firmatum et pigne[ratum inter] illos fecerunt suprascriptum iudicium ad statutum diem in quo apparuit ita: puerulum Sancti Chucuphatis co[operuit] aqua, sed non retinuit; puerum autem supradictum Bernardi nichil omni[no suscepti aqua, sed vanum d]e superstetit. Deinde nos suprascripti voluimus dividere per medium suprascriptam contencionem. Et propter amorem Dei omnipotentis et precibus Bernardi [suprascripti] eo quod [umquam nulla alterkacio] aut contencio fieret inter illos, fecimus amodium inter illos ut abeat pars minima Sancti Cucuphatem et pars maior Bernardi, sicut piduavit Gisla[bertus] episcopus et Bernardus Sendredi [extremum] diem quando hunc amodium fecimus."

[5] *JRCCM* 256: "Bernard, qui hanc definicionem feci et firmavi et firmare rogavi, et nunc confirmo hec omnia sicut superius scriptum est, et relinquo hec omnia quod iniuste detinebam, et evacuo me de omnibus vocibus quas ibi apetebam vel apetiturus eram quocumque modo in potestate Sancti Cucuphatis, et supra sacro sanctum eius altare manibus meis hoc scriptum pono et relinquo hec omnia, sicut hic scriptum est, ad suum plenissimum proprium, sine engan, et sine ullo malo ingenio, aut ulla decepcione."

Ramon Berenguer I. It fell under the authority of his brother, Sanç.[6] With comital attention pulled in too many directions, Bernat Otger made his stand without fear of reprisal. The second factor results from the cumulative effect of long-evident partnerships between comital presidents, their judges, and ecclesiastical institutions. Bernat's resistance was the product of the troubles studied in the previous chapter. The most interesting observation, however, is that the longstanding utility of the *condiciones* strategy to judges spurred Bernat to take this *specific* form of resistance. As we shall see below, through experience with the strategy's deployment, Bernat had learned to counter it.

When courts could not muster adequate authority, community pressure galvanized by a display of the *condiciones* strategy became an alternative mode of enforcement. It took participation within that synthetic register for one's legal claims to survive the strategy's deployment, as we saw in the unusual 1019 case involving Bernat de Calabuig. In 1036, Bernat Otger availed himself of a moment of comital weakness and took that lord's course of action further: he destroyed the synthesis underwriting the strategy by rejecting one part (codified law), and elevating the importance of the other (the authority of God). What we see is the collapse of the union that underwrote the *condiciones* strategy. This effectively stymied its utility as a means of propping up the traditional court system when it faced litigant resistance. As we see in this case, the court could still draw on the power of God, but not in a way that would ensure Bernat's respect for the probative value of documents and witness testimony that formed the foundation of so many property claims in the region. Under this new legal epistemology, a monastic institution like Sant Cugat, armed with myriad royal precepts and papal privileges, would find its

[6] Bonnassie, *La Catalogne*, II: 636, explains how Ramon Berenguer's brother, Sanç was granted lordship over the Penedès. Under the young Sanç's weak rule, magnates in this area were able to carve out a degree of autonomy from comital authority.

documents worthless.[7] For upstart lords living in the shadow of such rapidly expanding monastic houses, there was tremendous opportunity.

Bernat Otger's assault on the synthesis of the *condiciones* strategy may be seen as an early example of a broader process of fragmentation that becomes clearer when studying the records of the latter half of the century. By these decades, we may plot cases of the strategy on a spectrum defined by both dramatic change and surprising persistence in the conceptualization and use of sacred space in disputing. At the more tradition-based pole, we find the synthesis relatively intact; disputes more or less conform to tradition apart from withdrawals and documentary irregularities. At the other extreme, however, the hybridization is absent and courts sought novel solutions, often grounded in supernatural power and community mediation. What is most noticeable about these episodes is lack of confidence in the code to help resolve disputes or successful efforts to undermine its authority. The raw power of spiritual authority took center stage. It is important to stress that such judicial extremes coexisted throughout the later decades of the century. Indeed, those on the eve of the twelfth century present remarkable novelty as well as respect for tradition.

In exploring these themes, the present chapter seeks to accomplish three tasks. (1) The first is to continue highlighting the impact of procedural bias in favor of ecclesiastical houses. The case studies reviewed in Chapter 4 will provide useful points for comparison. (2) The second is to study how judges' implementation of the *condiciones* strategy was growing less effective. Litigants were more likely to make brazen challenges to the system itself. I will argue that those origins do not lie with Bernat Otger's rejection of the code. In fact, earlier stirrings against the

[7] *JRCCM* 137, 213, 185.

comital courts are evident in a multi-stage dispute I term the *1032-1033 case*; Bernat's 1036 efforts constitute an epilogue to this far more complex struggle over the same properties. A disaffected litigant, Mir Geribert, used a string of strategic withdrawals to present a counternarrative to assembly-goers that could undermine the judges' attempts to galvanize support for a ruling with the *condiciones* strategy. The dispute and its competing messaging campaigns unfolded over the course of six assemblies. What is most intriguing, however, is that Bernat Otger was almost certainly present at the crucial stage of the 1032-1033 case (Stage 2). There, he witnessed just how potent a tool the *condiciones* strategy could be under the direction of an adept judge, and how he might neutralize such power in his own bid to acquire the property. His success in 1036 may not have been possible without this earlier observation. To fully understand this moment in the history of the strategy, it is necessary to study the 1032-1033 case and its background context in considerable detail. While many parts of the dispute are well known to specialists, the judge-centered approach reveals fresh insight into the stances of the various parties and the overall significance of the dispute in this changing legal world. (3) Following this, we turn to the third and final task. With the lessons acquired through analysis of the 1032-1033 case in mind, the chapter concludes with an exploration of representative points along the spectrum addressed above. As part of that discussion we will examine the end of the strategy, as an important factor in the region's dispute culture. Without the Visigothic Code and with altered norms of disputing, it could not survive.

5.2. The *condiciones* strategy and the 1032-1033 case

Map 10. Locations connected to the 1032-1033 case[8]

5.2.1. Competition in the Penedès

The steps leading to Bernat Otger's 1036 victory—in many ways the epilogue of a multi-generational struggle with roots in the tenth century—began on 28 June 1032. On that day, Judge Ponç Bonfill Marc arrived at the church of Sant Pere d'Octavià, near Sant Cugat del Vallès.[9] He had come to guide a documentary recovery involving the abbey's possessions at Santa Oliva and its associated property in the Penedès area. At first glance, this was a straightforward and non-contentious judicial action conducted in a sanctuary. It conformed to the basic pattern of

[8] The numbers following the names of some sites denote the stage of the 1032-1033 case that occurred there. Other locales mark places of relevance to the dispute and disputants.

[9] *JRCCM* 241. The document explains that the action took place at the church of Sant Pere, not far from the monastery of Sant Cugat: "Et per istud altare consecratum sancti Pauli Apostoli quod situm est in aecclesia Beati Petri Apostoli, que non longe constructa est ab aecclesia Sanctissimi ac Beatissimi Cucufatis Martiris Octaviensis." Yet, there were two churches dedicated to Sant Pere located in the environs of the monastic church at this time. One is in the immediate vicinity of the monastery, Sant Pere d'Octavià, and the other is several miles away in the village of Rubí, Sant Pere de Rubí. In the summary of the case, *JRCCM* describes Sant Pere d'Octavià as the likely location. For Sant Cugat's control of a church at Rubí in the tenth century, see Jordi Bolòs and Víctor Hurtado, *Atles del comtat de Barcelona, 801-993* (Barcelona, 2018), 160-61.

reconstituting lost documents.[10] Judge Ponç validated witness testimony at an altar within Sant Pere's sanctuary, confirmed the monastery's ownership of the property, and drew up a record commemorating the oath. The events that followed, however, reveal the place of the 28 June act as the revivification of an old dispute. Within days, a struggle for Sant Oliva and nearby land at Calders emerged at the instigation of Mir Geribert, a baron set on cementing a powerbase in the Penedès. The contest unfolded in four stages. Each stage corresponds to an entry in Sant Cugat's cartulary, ranging from June 1032 to March 1033.[11] The struggle drew in the key power players in the county of Barcelona and required at least six assemblies before Judge Ponç could close the matter. Even then, many of the central issues remained unsettled, setting the stage for Bernat Otger's subsequent effort. Throughout, much was at stake. Not only had these properties long been contested, but because of their strategic position on the frontier, its outcome also bore political ramifications for the control of economic and military resources in the county. Each party, including the judge, prioritized victory at all costs.

Unsurprisingly, the 1032-1033 case has garnered attention from scholars, given the involvement of the period's notable personalities. Jeffrey Bowman, focusing primarily on the final two stages, stressed what the affair can tell us about judicial procedure, evidentiary standards, how different proofs were advanced in court, and use of the code to construct trial strategies (particularly the process of defaming opposing witnesses). Adam Kosto touched on aspects of this case when examining how monasteries administered castles and cultivated relationships with the holder of a fortification, the *castlà*. His work shows the value Sant Cugat

[10] Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 155-64.

[11] *JRCCM* 241, 242, 244, 246. For a discussion of these cases and issues of order see Appendix C.

placed on the contested Penedès properties. While the monks strove to build a fortification at Calders, the income from the land was their primary interest and they actively opposed the use of the planned tower as a base for raiding. Josep Salrach examined the dispute in relation to what it can illustrate about the close partnership between the comital family and the monks of this privileged house. In stressing this favoritism, Salrach echoed Bonnassie's thesis for how ecclesiastical bias helped contribute to the practice of withdrawing from court. Jose Ruiz-Domènec explored the significance of the dispute to the position of the viscomital family in the county of Barcelona. Thus, this case has served as an important footnote in narratives of dispute culture in the province, the emergence of the *convenientiae*, the power dynamics between politically important families, and the decline of public authority between 1020 and 1060.[12]

Additionally, it is easy to see how the case foreshadowed Mir Geribert's oft-discussed rebellion in the 1050s.[13] But that later drama must not overshadow what we stand to learn from this legal battle. Drawing on our familiar judge-centered approach, I will stress the perspective of Ponç Bonfill Marc. As interesting as Mir's choices are, appreciating their full significance requires equal reflection on the strategies devised by the judge. Ponç looms large in the struggle as lead judge and author of three of the four entries. Although Mir's official opponent was Abbot

[12] José Balari y Jovany, *Orígenes históricos de Cataluña* (Sant Cugat del Vallès, 1964), 471-480; Bowman, *Shifting Landmarks*, 158-64; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 215-17; Jeffrey Bowman, "Infamy and Proof in Medieval Spain," in *Fama: The Politics of Talk and Reputation in Medieval Europe*, ed. Thelma Fenster and Dan Smail (Ithaca, 2003), 111-15; Salrach, *Justícia i poder*, 228-3; and José Enrique Ruiz-Domènec, *Quan els vescomtes de Barcelona eren: Història, crònica i documents d'una família catalane dels segles X, XI i XII* (Barcelona, 2006), 95-96.

[13] For political implications of these events, see Bonnassie, *La Catalogne*, II: 625-46; Bowman, *Shifting Landmarks*, 158-59; Adam Kosto, "The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert," *Viator* 47 (2016), 67-94; Thomas Barton, *Victory's Shadow: Conquest and Governance in Medieval Catalonia* (Ithaca, 2019), 23-29; Ruiz-Domènec, *Quan els vescomtes*, 93-101; Rosa Lluch Bramon, "El conflict de Mir Geribert: en el Marc de la feudalització del Penedès, 1041-1058," *Anuario de studios medievales*, 48 (2018), 793-820.

Guitard of Sant Cugat, study of Ponç's and Mir's exchanges reveals a subtle, but consequential, ideological debate between them over the role of bias in the court system. The judge's effort on behalf of Sant Cugat well exemplifies his inclination toward the house's interests, serving as the basis of Mir's frustration.

Judge Ponç insisted that a litigant's only path to victory was submission to the established legal process. For his part, the baron sought to publicize the hopelessness of proceeding by established rules. The two men broadcasted their positions with performative actions, such as a deployment of the *condiciones* strategy by the judge and repeated withdrawals from court by Mir. The normative influence of sacred space on the broader community was critical to this debate. The 1032-1033 case reveals the prolonged effects of bias on the system and how figures like Judge Ponç now sometimes struggled to use sacred space effectively in order to overcome its most damaging consequences. While Sant Cugat appears to have retained the land in question, on the broadest level, the judge failed in this case. I argue that Judge Ponç's use of the *condiciones* strategy—designed to force Mir to pursue his case within the courts—ultimately worked to undermine the reputation of the very system he sought to preserve and set the stage for Bernat Otger's destruction of the strategy's synthetic nature.

My examination advances four conclusions for how the faltering utility of the *condiciones* strategy affected legal processes this case: (1) Tribunals had grown more raucous and less predictable. Tellingly, merely implicit accusations of misdealing by court officials had metastasized into explicit grievances aired openly in court. This required judges to assume a more adversarial role against litigants. (2) Second, appreciation for the power of churches varied by person, with some litigants less fazed by ritual action than others. Yet, as this case

underscores, because tribunals were well attended public assemblies,[14] it was the aggregate view of the broader society that judges noted when considering use of the strategy. When officials doubted an individual litigant's sensitivity to the power of churches, they relied on community investment in sanctuaries to mount social pressure that could move implacable disputants. (3) Third, litigants imperiled their positions if they altered a court strategy established in sacred space. Once they made a commitment through publicized ritual—such as receiving witnesses—it could not be reversed. Attempting to do so aided judges in their efforts to build community consensus against a stubborn litigant. (4) Finally, despite some successes for judges, the political vicissitudes of the era and resultant disruptions in the very social order undergirding the force of community pressure reveal the growing limitations of sacred space as a judicial strategy. Rogue litigants, commenting on the biased nature of courts through performative withdrawals, could undermine the benefit of the *condiciones* strategy as a means to cultivate community support for rulings.

Previous analyses of the 1032-1033 case have focused on the contest's final two stages. Given that these unfolded as dramatic tribunals, their centrality in the literature is understandable. However, the first two stages reveal how Ponç and Mir established their dueling strategies, affording valuable context to better interpret the messages these men attempted to convey in the later tribunals. Indeed, these initial hearings were the points at which the affair became rooted in the legal implications of ritual action in sacred space. The consequences of that spiritual influence lasted through the final act of the case, and into the tribunal involving Bernat Otger. There is one final preparatory remark to be made. Josep Salrach's recent edition of these

[14] Adam Kosto, "Reasons for Assembly in Catalonia and Aragón, 900-1200," in *Political Assemblies in the Earlier Middle Ages*, ed. Paul Barnwell and Marco Mostert (Turnhout, 2003), 139-143.

sources, entries in the cartulary of Sant Cugat del Vallès, as reordered stages three and four. I adhere to Salrach's revised dating scheme for these entries in my analysis (see Appendix C.1).

5.2.2. Historical background for the 1032-1033 case

Before returning to the events of 28 June (stage 1), we must establish the case background: a series of litigations from the second decade of the eleventh century (see Appendix C.2).[15] A command of these events is essential to understanding how and why Judge Ponç and Mir Geribert deployed their strategies the way that they did during the 1032-1033 case. In particular, by comparing evidence of Ponç's legal philosophy at the time of these preceding episodes with that displayed in the early 1030s, we find a considerable shift in this judge's legal philosophy as he reacted to the political uncertainties emerging after Ramon Borrell's death in 1017.

The church of Santa Oliva and the associated lands of Calders stood in the Penedès area: a productive littoral zone extending between Barcelona and Tarragona (see Fig. 5.1).[16] For the Christian counties of Catalonia, the Penedès formed the eastern-most section of the frontier with Islamic Iberia, was densely fortified, and straddled an important trade route to Tortosa.[17] The fortress-town of Olèrdola dominated the area. Sometime after the death of Count Berenguer Ramon I in 1035, this castle eventually served as Mir Geribert's center of power, with the baron stylizing himself as *princeps Olerdolae* by the early 1040s.[18] In the opening decades of the

[15] Salrach, *Justícia i poder*, 219-27, provides a brief summary of these events.

[16] Bolòs and Hurtado, eds., *Atles del comtat de Barcelona*, 144-45. Despite both being located close to one another, it does not appear the lands were contiguous.

[17] Bonnassie, *La Catalogne*, I: 543-44; and Bowman, *Shifting Landmarks*, 159.

[18] Bonnassie, *La Catalogne*, II: 627-28; Kosto, "The Elements of Practical Rulership," 73; and Lluch Bramon, "El conflicte de Mir Geribert," 796-97, described Olèrdola as a site with an urban character and wall, giving it the feel of a town and affording Mir Geribert a capital of sorts. By 1041x1043, Olèrdola was described with the term *civitate* in

century, however, two prominent families in the Penedès were those of the viscounts of Barcelona (an ambitious branch of Barcelona's comital family) and the vicars of Sant Martí. Mir was a scion of the former, and married into the latter (see Fig. 5.2). These lineages established castle networks in the Penedès, strengthening their holds on the area alongside the comital house and the cathedral of Barcelona. Indeed, these families became central players in the contest over Santa Oliva and Calders. Also, at one time or another, both worked to resist a relative newcomer in the area: the growing monastery of Sant Cugat del Vallès, a house that had turned its attention to expanding its holdings along the frontier.[19]

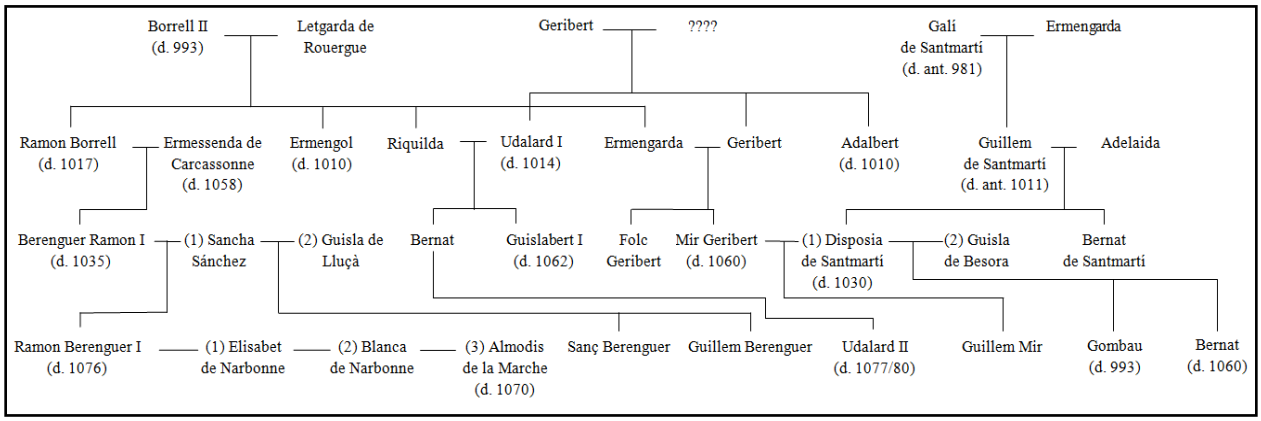

Figure. 5.1 Key relations in the dispute over Santa Oliva and Calders (simplified)

The origins of the contention between the monks of Sant Cugat and these families date to just after Ramon Borrell's expedition against Córdoba. The youngest son of the viscomital family, Adalbert, had died on the expedition.[20] At the end of November 1010, when the jurist Bonhom recovered his testament at the church of Sant Pere de *Palacium Moranta* (near

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Gaspar Feliu i Montfort, Josep Salrach i Marés, et al., eds., *El pergamins de l'arxiu comtal de Barcelona de Ramon Borrell a Ramon Berenguer I* (Barcelona, 1999), 307. For Mir's use of the title: *princeps Olerdulae*, see Ruiz-Domènec, *Quan els vescomtes*, doc. 53 (at 293-95), dated to 4 Jul. 1041.

[19] Kosto, *Making Agreements*, 215-17.

[20] Bonnassie, *La Catalogne*, I: 347-51; Salrach, *Justícia i poder*, 220; Bowman, *Shifting Landmarks*, 40-41; and Ruiz-Domènec, *Quan els vescomtes*, 68-70.

Olèrdola), his siblings discovered he had left one of the family's towers, called Moja, to Sant Cugat. This was a bequest he had made before joining the expeditionary host.[21] The following summer, unwilling to lose Moja, Adalbert's elder brother, Vicar Geribert I of Olèrdola (brother of Viscount Udalard I of Barcelona and Mir Geribert's father), took Abbot Guitard of Sant Cugat to court.[22] Geribert asserted that the family had never authorized Adalbert to alienate the land, to which he and his siblings also held claim. The abbot retorted that Geribert had withheld that property from Adalbert unjustly and the youngest brother was within his rights to donate it. Citing *LV* IV.2.20, the judges ruled in favor of the monks.[23] Notably, one of the case's subscribers was Ponç Bonfill Marc. Thus, by the 1032-1033 case, the lead judge had been party to Sant Cugat's Penedès judgments for two decades and saw Mir Geribert's father lose to Abbot Guitard.

The monks were active in the Penedès beyond Moja at this time, investing on multiple fronts. The abbey particularly sought to improve its hold on diverse lands at Santa Oliva and Calders. Eventually, this would bring them once more into conflict with the area's notable families. Just prior to that discord, a record from 26 July 1011 reveals that the monastery contracted a man called Isembert to erect a tower at Calders.[24] The record, surviving as a

[21] For Adalbert's testament, see *CSCV* 431. Three men acted as executors, bringing forth four witnesses to swear to the contents of the dead man's will. The principal possession in question was the tower of Moja, in the Penedès.

[22] *CSCV* 439.

[23] *LV* IV.2.20. This measure, titled "Ut, qui filios non reliquerit, faciendi de rebus suis quod voluerit habeat potestatem," permitted the judges to argue that, because Adalbert died without children, there were no legitimate claimants to Moja and the deceased had been free to alienate his tower.

[24] *CSCV* 449: Referencing this act in the discussion of *JRCCM* 169, Salrach dates the commission to Isembert to 1011 rather than the date of 1012, proposed by Rius Serra. The tower was to be constructed at Calders. The military condition of the land at Santa Oliva and whether it was a closely associated with Calders in 1011 as it would later be is less clear.

cartulary entry, assumes a lofty tone, opening with a brief narration of how Louis the Pious, "when he liberated the city of Barcelona from the nefarious Saracens, out of companionship, gave and also issued a precept to the monastery" concerning these lands.[25] The land thereafter went unused because of its proximity to the precarious frontier. To help make Calders profitable, the monks desired Isembert to construct a fortification and likely act as *castlà*.[26] In this effort, Sant Cugat had the support of Ramon Borrell, Countess Ermessenda, and the bishops of Barcelona, Osona, Girona, and Urgell. Not much came of the arrangement, however. As a later document suggests, by March of 1016, Isembert's work at Calders had ceased and the land lay undefended.[27]

In conjunction with Sant Cugat's campaign to improve the holdings, Abbot Guitard moved to strengthen the monks' document-based claim to the estates. The monks held both royal precepts and a papal privilege, but Guitard wished for the current count's recognition of these documents. On 29 March 1013 he presented a privilege from Pope Sylvester II (d. 1003) to Count Ramon Borrell and Countess Ermessenda, entreating them to endorse its contents. Working as scribe, Ponç Bonfill Marc wrote a confirmation of the monks' claim to Santa Oliva and Calders into the bull itself.[28] Seeing as the privilege highlighted the role of Ramon Borrell's father as a benefactor of the monastery, it makes sense that Abbot Guitard wished the document to convey the continuity of that patronage, emphasizing a source of regional approval for the

[25] *CSCV* 449: "Ludovicus rex, filius qd. Karoli imperatoris, quando liberavit Barchinona civitate ad nefanda sarracenorum contubernia prelegavit atque precepit in suum preceptum ad cenobium prelibatum."

[26] Kosto, *Making Agreements*, 89, explains that the *castlà* (Lat. *castellanus*) was "the individual with direct operational control over the castle, charged with providing for its defense by commanding a group of *caballarii*."

[27] Isembert's failure was noted by Ramon Borrell in *JRCCM* 169. For discussion, see Salrach, *Justícia i poder*, 226.

[28] For an edition of the bull see, *CSCV* 382. For the comital confirmation appearing toward its end, see *CSCV* 451.

papacy's legitimating of his house's possessions.[29] Interestingly, Ponç's text concentrates on Santa Oliva. It is only in a statement accompanying his signature that he notes a correction: the interjection of "*et ipso Caldario*," placed in the text's opening lines in such a way that the reader might interpret all statements relating to Santa Oliva to also pertain to Calders. Ponç's association of the two estates constitutes the coupling of the properties that established a pattern. In subsequent proceedings, the courts treated the two non-contiguous lands as a single possession. Sometimes one is mentioned without naming the other, implying that ownership of one implied a control of both. The exact day in 1013 that Ponç added the comital confirmation to the privilege remains unclear. Was it that very day, on 29 March? Some suspicion is warranted here, as a dispute over Calders—the property added with Ponç's signature—became a point of contention just two days later. There may have been a degree of *creative* remembering on Ponç's part when adding mention of Calders.

On 31 March, a woman called Adelaida, widow of Vicar Guillem de Santmartí and representing the interests of her son, Bernat, arrived in Barcelona to dispute the monks' possession.[30] She was to prove a determined challenger to the monks' Penedès interests, with her focus centered on Calders.[31] Abbot Guitard outlined his position first, citing Sant Cugat's royal

[29] *CSCV* 451. There is good reason to believe Sylvester II (previously Gerbert d'Orlhac) would have been sympathetic to the property rights of a monastery in the Province of Narbonne. Prior to becoming pope, he had spent numerous years studying in the ecclesiastical institutions south of the Pyrenees, including at the cathedral of Vic and the monastery of Ripoll. He was acquainted with the counts as well. Borrell II had invited him to the region. For more on his time in the region, see Antoni Pladevall i Font, *Silvestre II, Gerbert d'Orlhac* (Barcelona, 1998).

[30] *JRCCM* 161. This case corresponds to *CSCV* 452. The proceedings were well attended, with the bishops of Barcelona, Urgell, Vic, and Elna present alongside numerous named magnates. For discussion of Adelaida's role in this case and her place in regional politics, see Ruiz-Domènec, *Quan els vescomtes*, 75-80.

[31] This document was drawn up by Judge Bonhom. He appears to have rendered Calders in Latin as *Kallerio*, differing from Ponç Bonfill Marc's spelling of *Caldario*. Bonhom references Santa Oliva, but only toward the end, when listing other properties in the environs of Calders. Given how her son's claim stretched into the later 1032-

precepts. He also emphasized the newly amended papal privilege. Unfortunately, many of the royal documents were destroyed during the 985 raid of Barcelona. The collection, therefore, lacked the impact the abbot desired. Mitigating the loss, however, Guitard claimed that in 986 the late Abbot Odo had secured a replacement confirmation from King Lothair (d. 986) and approval from Count Borrell II. Yet, Lothair's confirmation was missing important details concerning the properties in question, namely mention of at least Calders.[32] In her response, Adelaida sidestepped mention of the documents, instead narrating how her father-in-law, a man known as Galí de Santmartí (d. ante 981), had brought the land at Santa Oliva and Calders into cultivation and clearly publicized his possession by marking the property clusters.[33] Thus, Galí

1033 case and involved Santa Oliva at that time, it is likely that here Adelaida referred to both properties when mentioning one; in this instance, the one mentioned being Calders.

[32] *JRCCM* 161: "Unde hostendit prefatus abba causam narracionis veritatem habentis qualiter erat eadem omnia prescripta in iure et possessione Sancti Cucuphati cenobii confirmata per preceptum domni Karoli Magni imperatoris oblacio, filioque suo Hulidolco principe, cuius muneris oblacio primis temporibus extat facta, quando sevicia sarracenorum confregerunt. Et quoniam prefatum preceptum in exterminacionem prefate urbis fuit perditum, surrexit quondam Odoni, cenobii prelibati abba, Franciam petens, in comitatu domno Borrello, quondam comite, et in conspectu Leutharii, regis, auctorizante domno Borrello comite, testificantes illustros et honorabiles viros qui in eius obsequium fuerant, et fuit renovatum in regis presentia prefatum perditum preceptum et in robore firmatum, ubi prefatos stagnos ac terras prefixas resonant esse munificatas ad cenobio sepe nominato Sancti Cucuphati." In the next episode of the dispute, *JRCCM* 169, it appears that this Lothair's precept may not have carried weight because it did not detail the properties in question. Ramon d'Abadal i Vinyals, ed., *Catalunya Carolíngia II: el domini carolingi a Catalunya* (Barcelona, 1926-1952, repr. 2007), "Sant Cugat" III, (at 194-200), provides a synthetic reconstruction of this record from twelfth-century cartulary copies. Neither the "B" nor "C" copies mention Calders. Santa Oliva does appear, but is the result of a later interpolation. It is not clear whether this interpolation would have been present on the record Guitard produced during this tribunal. For Sant Cugat's use of these documents, see Salrach, *Justícia i poder*, 225-26.

[33] *JRCCM* 161: "Et e contra Adalaicis prefata asserebat se prefixa omnia iuste habere per vocem cuiusdam pater viri sui quondam Galindoni, qui per vomerum aracionis cultro, circumquaque obduxerat signo, et ibi priscam introduccionem fecerat per nomen per prisionis et karacterum designacionis. Ex cuius cause accionis et ipsum stagnum et locum possederat, filioque suo Gilelmo ad habendum dimiserat proprialiter." Galí de Santmartí was a comital vicar who held considerable property holdings around Barcelona and Vic. His testamentary acts, *CSCV* 136 and 137, reveal that his estate at death comprised lands he inherited, properties granted to him by the count, and purchases he had made jointly with his wife, Ermengarda. Galí's ambition was to establish the monastery of Santa Maria d'Eramprunyà. However, the foundation was later absorbed by Sant Cugat. Indeed, Sant Cugat was a considerable beneficiary of Galí's will. The acts mention neither Calders nor Santa Oliva. For a discussion and map of the locales and beneficiaries mentioned in the testament, see Bolòs and Hurtado, *Atles del comtat de Barcelona*, 152-53; and Montserrat Pagès i Paretas, *Art romànic i feudalisme al baix Llobregat* (Barcelona, 1992), 302-305.

held these lands by right of *perprisio* (directed assartment) and passed ownership on to his successors. Despite the presence of the count, bishops, magnates, and judges the court struggled to navigate the conflicting claims and the proceedings stalled. Ramon Borrell considered the military situation on the frontier and his attention narrowed to the fortification that the monks were constructing. He did not want to disrupt Isembert's building activity at Calders, so he simply divided the property into two "equal portions," giving half to each party and mandating they jointly encourage continued improvement on the land's defenses.[34] This compromise was not long-lived.

We lack detail concerning exactly how the widow got on with the monks in their joint administration, or whether she contributed to the construction effort. Adelaida, however, returned to the comital palace three years later, on 9 March 1016. Unsatisfied with the arrangement, she raised the matter once more. Judge Ponç Bonfill Marc now served as lead judge, under the comital presidency. Two additional judges, called Vives and Guifré assisted him, and would also feature in the 1032-1033 case. Despite the judges' service, Ramon Borrell was far from a passive president. When the judges hesitated over a legal question, it would be his ruling that decided the case.

[34] Salrach, *Justícia i poder*, 225. *JRCCM* 161. Ramon Borrell explained, "Et cum utrasque prefate partes vehemencius ex hoc in invicem litigassent, prefatus comes et coniuge sua comitissa, cum cetu pontifficum ac potentum vel ad firmacione iudicum, talem consilium inter utrasque partes dederunt et posuerunt: eo quod non valebant proprialiter expedire cuius iure liberior transisset, et eo quod difficile erat unius familie domi, ipsum solitudinis locum excolere, et ad culturam opus reducere, turremque municionis construere, et pro iugi sarracenorum adventu, non modica vicinorum solacia ibidem congregare, ut ex eausdem terras duas eque porciones fecissent, simulque communiter in unum turrem ibidem construant, ut una medietas sit Sancti Cucufati dedita, alia medietas sit prefate Adalaizis conlata, et ipsa turre, ut dictum est, comuniter eam construant, communiter eam cum felicitate possideant et ipsos stagnos conmuniter eos expiscari faciant, ipsosque pisces conmuniter iuste dividant per medium." The count continued, stipulating mutual obligations between the two sides. If one party should decide to sell the said land, the other should first be consulted.

Adelaida once more emphasized her son's claim based on Galí's land clearance efforts. Abbot Guitard again stressed his documents, particularly the 986 confirmation of King Lothair. Here Judge Ponç faced what would become a central question in the 1032-1033 case. The court wrestled with how to determine which argument took precedent: Lothair's seemingly incomplete precept, or Galí's clearance efforts. The answer was unclear because the priority between these arguments could not be determined.[35] The tribunal again reached a legal stalemate. With Ramon Borrell intervening, two factors helped the court find a resolution in Sant Cugat's favor. The first was given as the legal rationale for Adelaida's defeat: the fact the estates remained wasteland undermined a *perprisio* claim. Ramon Borrell used this argument to award Sant Cugat's full ownership, adding that he was "compelled by a fear of God."[36] The second pertains to the contract with Isembert. The man had not constructed the tower. Ramon Borrell nullified the agreement, because it antedated the monks' singular ownership. Given the dangers of the frontier, he ordered Guitard to find a replacement *castlà* to develop the land.[37]

[35] *JRCCM* 169: "Ventum est autem ut perlegerentur privilegia et precepta et perquirerentur voces petentis, nec inventum est quis primum predicto cenobio promulgatam terram heremam dedit, nec inventum est supranominata ecclesia possedisse eam, sed per multa annorum curricula herema permansisse. Etenim a parte petitricis non est inventum quis ipsorum aut eorum unde prefatam vocem successionis se habere dicebant umquam ullam possessionem in ipsa terra habuisse, sed similiter per multa amorum inveterata curricula erema permansisse et sine possessoribus solitaria." For discussion, see Salrach, *Justícia i poder*, 225-26.

[36] *JRCCM* 169: "Propterea iudicatum est in ipso iudicio melius et verius esse hec terra iuris principalis sicut et cetera spacia heremarum terrarum quam aut ipsius iuris que hoc petebat, aut iuris supra meminiti monasterii. Idcirco conclamatum est ab omnibus permanere debere hec terra, cum his que infra eius terminos sunt, in potestate principis Raimundi, sicuti et mansit; sed ille, compulsus timore Domini, concessit atque donavit prenotatam terram heremam cum aliis terrarum positionibus, cum omnibus que infra illorum terminos sunt iuri et dominio et in potestate Sancti Cucuphatis et serviencium ei, simul cum coniuge sua Ermesinde et filio suo Berengario."

[37] *JRCCM* 169: "Igitur quia necesse est edificare castela et municiones facere in marchiis eremis et in solitariis locis contra paganorum insidias, et quia ipse Isimbertus non condirexerat ipsam terram, sed erema et solitaria remansit, consiliatum iussumque est supranotato Gitardo, abbati, et fratribus suis cenobicis, ab indole comitissa Ermesisinde et a filio suo Berengario, comite, et a viris subter scriptis, ut inquirerent talem virum qui in servicio Dei et Sancti martiris Cucufatis edificasset et condirexisset ipsam heremam terram, sicuti et requisierunt, et illi per hanc precariam donacionis cartam ad condirigendum ita dederunt."

Not everything about this outcome is what it seems, and Ramon Borrell's ruling based on these rationales raises doubts over the sincerity of his reasoning. First, why was Galí's *perprisio* claim invalid in this 1016 tribunal, when it had been acknowledged in 1013? Despite the property being wasteland at that time too, the clearance effort had been enough to merit the division of the property. Moreover, Galí had been dead since the mid-980s, long enough for nature's erasure of any original augmentation to the estates. The present waste status should have been understandable. Moreover, improvement on the land was equally the responsibility of the monks since 1013. Perhaps both parties ought to have been held to account. Second, as it pertained to Sant Cugat's argument, why was greater scrutiny not focused on Lothair's incomplete confirmation? The document was inadequate to establish firm right to Santa Oliva and Calders. It is *not* what won the monastery its case; it certainly would not hold probative value during the 1032-1033 case. Although courts did not hesitate to dismiss evidence lacking proper protocols or other pertinent details, the issue was ignored here.[38] The indecision over the precedence of the two sides' arguments (given the available proofs) worried the judges, but it does not seem to have troubled Ramon Borrell. The judges' hesitation, despite being supported by legal and procedural norms, afforded the count an opportunity to advance the interests of his house vis-à-vis the Penedès.

An additional motive for Ramon Borrell's ruling is evident in the record's next topic of focus: the military situation at Calders. He knew of the contract with Isembert, having confirmed its details along with Ermessenda in 1011.[39] He had not raised any legal qualms about its validity until now, and certainly had not conveyed similar arguments when authenticating the papal

[38] Bowman, *Shifting Landmarks*, 147-51.

[39] *CSCV* 449. Both Ramon Borrell and Ermessenda subscribed the agreement.

privilege in 1013. It became an issue only when the count discovered that construction had halted. Cancellation of the contract on these grounds was the count's cover to rid the monks of Isembert, nullify any obligations he might demand from Abbot Guitard, and provide the monks the ability to find a new contractor. With an eye to frontier defense, and confident in his relationship with the monastery, the count prioritized Calders' military value.[40] The comital couple wanted a fortification built and likely believed that the widow's claim was hampering Abbot Guitard's already troubled efforts. If Adelaida lacked the means to even *help* fortify the property, the former cooperative ownership compromise would have to be terminated and the widow excluded.[41]

There is one final clue to help explain Ramon Borrell's disposition. In addition to his 'concerns' over Galí's clearance efforts, he reveals that he was *compulsus timore Domini*. His family had long sponsored Sant Cugat's welfare and we have no reason to doubt his "fear of God," but it is also possible that he worried over how his reversal of the 1013 compromise would appear to observers gathered for the assembly. In addition to contradicting that earlier division, the count had just hastily invalidated two legal rights (the *perprisio* and the construction contract). If he worried about the appearance of overreach, offering an ancillary rationale motivated by pious belief provided welcome cover for a controversial ruling that prioritized comital and ecclesiastical interests over a careful application of the code's strictures. As will become clear in stages two and three of the 1032-1033 case, this day's adjudication was the

[40] *JRCCM* 169: "Igitur quia necesse est edificare castela et municiones facere in marchiis eremis et in solitariis locis contra paganorum insidias."

[41] Salrach, *Justícia i poder*, 225-26.

origin of a considerable grudge against the count's approach to law, one that would persist into the next generation.

Following these proceedings and free of Isembert, Abbot Guitard struck another fortification agreement with one Boneto Bernat.[42] However, when Guitard sought comital approval of this arrangement by the close of 1017, he found Ramon Borrell was dead and the political vicissitudes reviewed in the previous chapter signaled that Sant Cugat's secure hold on the land was at risk. Barcelona's comital family became preoccupied with both external and internal challenges. As traditional power structures frayed over the 1020s, the monastery of Sant Cugat—under Abbot Guitard's leadership—faced legal peril from many sides. Yet, no record survives to explain how Boneto Bernat got on with the construction in the fifteen years between the establishment of the contract and the beginning of the 1032-1033 case. It is not certain whether he finished the tower.

Mention of inactivity on the land from later stages in the 1032-1033 case suggests that Sant Cugat may not have been able to realize its building ambitions under the conditions of broader political uncertainty that arose over the 1020s. That failure foreshadowed consequences: if the lack of construction persisted, it could have potentially weakened the monastery's claim. It is possible that by 1032, the need for resource allocation elsewhere, or a failure on Boneto's part, meant that progress would not be forthcoming. The monks would have required a long term contingency plan. Therefore, they decided to deepen their claim by strengthening the evidence of

[42] *CSCV* 464 provides two bodies of text. The first is dated to 9 March 1016. It provides the details of Adalaida's dispute with Abbot Guitard in the comital palace, before Ramon Borrell's death. The second is dated to 26 Apr. 1017. It lists the details of the agreement the abbot struck with Boneto. While the act is structured as a donation (*Donators sumus tibi, Boneto*), it is a formal contract to build on the land rather than an alienation. There are conditional clauses with penalties for both parties to the agreement. The man and his descendents were to guard the land as *castlans* bound to Sant Cugat.

ownership that they *did* possess: the documents. The problem they faced in doing so, however, is that the centerpiece of the collection, the precept of Louis IV, no longer existed. Moreover, Lothair's confirmation was faulty, omitting a full accounting of the property.[43] Therefore, with the parties that had long been involved with the affair advancing in age and memories fading, Sant Cugat needed a documentary recovery. In June of 1032, they called on Ponç Bonfill Marc—now "judge of the palace" (*iudex palacii*) and firmly associated with the comital family[44]—to help them. Agreeing, the palace judge set to work.

5.3. The case

5.3.1. Stage 1

This returns us to the church of Sant Pere d'Octavià on 28 June, where Ponç Bonfill Marc met two old men called Godmar and Guilarà. In the document, they describe themselves as "we who are worn down by infirmity and brought low by old age."[45] The expression of their age and health allows us to appreciate the action's urgency. Moreover, the softness of memory became a central concern for the various parties in later stages. Conceivably, all the arrangements had been made and Judge Ponç established a use of the *condiciones* strategy without issue. Over a score of named individuals gathered to stand as reputable community representatives. They were "good men" (*boni homines,* or *auditores* in this capacity), whom the judge divided into two distinct

[43] Bowman, *Shifting Landmarks*, 143, presents a general problem faced by Sant Cugat and other large institutions during this period. The impressive royal and papal documents that they produced in court were at times too broad in their claims, preventing them from advancing a concrete narrative detailing their ownership. This is also a possible factor at work in weakening the monks' documents.

[44] *JRCCM* 223. In addition to Ponç's more common titles of cleric and judge in subscription lists, he introduced himself as, "Ego Bonusfilius Marci, iudex palacii." He also acted as scribe for this action.

[45] *JRCCM* 241: "Gravati infirmitate sumus sive senectute depressi."

pools of observers.[46] Of *great importance*, this division would prove central to the judge's plan. Before this assembly, Ponç brought Godmar and Guilarà to the altar of Sant Pau in Pere's church and they swore their oath. Drawing on the standard language for such events, the men stated,

> We the witnesses, Godmar and Guilarà, swear together as one giving testimony first by God the omnipotent father and by Jesus Christ his son, and by the Holy Spirit, acknowledging this Trinity to be the one and true God, and by the altar consecrated to the holy apostle, Pau, which is situated in the church of the blessed apostle, Pere, which was built not far from the church of the most holy and blessed Cugat of Octavià, that we saw and also heard read a precept to the aforementioned monastery of Sant Cugat, which Louis, king of the Franks, father of Lothair, likewise king of the Franks, made concerning the gathered ecclesiastical affairs to be confirmed and presently conceded to this monastery.[47]

The pair's oath continued. At length, they detailed how the alleged precept of Louis IV Outremer (d. 954) stipulated the monks' ownership of the church of Sant Oliva, along with its alodial properties. They noted the boundaries and explained that the monks were known to have subsequently held Sant Oliva undisturbed for sixty years. Before the text of their oath, the judge-scribe had the pair explain that this precept had been lost during the 985 sack of Barcelona and was confirmed thereafter by Louis' son, Lothair. It is unclear why this important information was

[46] Godmar and Guilarà state the preface of their oath to a group of "good men" (*boni homines*), whom they name in their own voice: "Ego Godmarus et Guillara vobis…" For the role of *boni homines*, see Bonnassie, *La Catalogne*, I: 187; Paul Ourliac, "Juges et justiciables au XIe siècle: Les *boni homines*," *Recueil de memoires et travaux publé par la société d'histoire du droit et des institutions des anciens pays de droit écrit* 16 (1994), 17-33; and Bowman, *Shifting Landmarks*, 111-15, shows that *boni homines* commonly stood as silent observers, representing community acknowledgment of court activities. On rare occasions they intervened in cases. In *JRCCM* 241, the *boni homines* performed their most common function, as "ones hearing" (*auditores*) the witnesses words. Those serving as *boni homines*/*auditores* in this record appear in two pools. First, Judge Ponç names sixteen men who heard Godmar's and Guilarà's testimony and oath. The second group is not present in the introductory listing of the first sixteen. Instead, this collection of seven names appears in the subscription list, appearing directly after the witnesses and prior to the judge-scribe.

[47] *JRCCM* 241: "Iuramus nos testes, Godmarus et Guillara, unum dantes testimonium primo per Deum Patrem Omnipotentem et per Iesum Christum Filium eius, atque per Sanctum Spiritum confitentes hanc Trinitatem unum et verum Deum esse, et per istud altare consecratum sancti Pauli Apostoli quod situm est in aecclesia Beati Petri Apostoli, que non longe constructa est ab aecclesia Sanctissimi ac Beatissimi Cucufatis Martiris Octaviensis, quod nos vidimus atque legi audivimus preceptum Sancti Cucufatis cenobii praedicti quod domnus Ludoicus, rex Francorum, genitor Leutarii, regis similiter Francorum, fecit ad confirmandas res aecclesiasticas huic cenobio collatas aut in postmodum concedendas."

not included in the main text of their oath, given its importance to Sant Cugat's interests. Perhaps it owed to the incomplete nature of the confirmation. In the body of the cartulary entry, once this information was related, the voice of these two witnesses abruptly ends.

Perhaps it was at this time that the judge collected Godmar's and Guilarà's signatures. While their role in this matter was considered over, the text reveals how Ponç persisted in his attempt to fortify the monks' ownership. Prior to the document's subscription list, a second oath appears. This section was either pre-written at the time Godmar and Guilarà subscribed, or was eventually entered into a space Ponç had reserved for it prior to the beginning of the list and immediately following the first oath. If the copyist preserved the original layout, the structure of the record's constituent sections stands to tell us much about how Ponç conceptualized the case at this stage. He had come to the church knowing that this oath would not be enough to protect the monastery's tenure in the event of a dispute. His caution is understandable, given the fact that the precept to which the witnesses swore had been lost for forty-seven years. Therefore, it is likely that Ponç had always planned to collect the supporting oath of a priest (*sacer*) called Gelmir. This stands as the first indication of concern over the age and infirmity of the initial witnesses. Although the availability of eye-witnesses was a significant boon, the passing of nearly five decades and worry over their memories may have weakened that advantage.

Gelmir was not among those named as *boni homines*/*auditores* in the church of Sant Pere. Given the fact that he had not sworn as a co-witness alongside the first two men, it is likely that he was not present for that initial oath. Instead, the judge traveled several kilometers west to

the church of Santa Maria de Martorell later that same day.[48] Gelmir repeated the ritual with much the same language as the earlier oath, though he expressed fear of God as his motivating emotion. In this sense, we see that the *condiciones* strategy could include aspects of a witness' personal conviction and individuality.

> And I Gelmir, a priest (*sacer*), swear by the name of the Lord to be dreaded (*metuendum*) and trembled over (*tremendum*), and by the altar consecrated to the holy and blessed Virgin Maria, mother of the Lord, whose church is located in the county of Barcelona, before Martorell, that I saw and heard read the aforementioned precept about which the noted witnesses Godmar and Guilarà gave testimony (*testimonium*), and that I heard it reasoned in that place that the stated King Louis confirmed and concede by right to the church of Sant Cugat the church of Santa Oliva with that alod.[49]

Gelmir then conveyed the same additional details as Godmar and Guilarà had. The priest's oath then ended. Not only had he corroborated the previous oath with one of his own, but he had explained how he also was present to see and hear the precept read; he was a third eye-witness.

Judge Ponç then abruptly closed the body of the document, immediately moving to his pre-prepared subscription list. This list requires close attention. In the section where he wrote his own name alongside those from the second pool of *boni homines*, mentioned above, the judge-scribe explained that he received the testimony of these witnesses, thereby confirming that he had completed the requisite ritual actions at the altars of the churches in question.[50] One reading

[48] Beyond the close proximity of the churches, a same day exaction of Gelmir's oath is supported by the fact that Bonfill Marc reports a single date for the publication in *JRCCM* 241: "Late sunt hae conditiones IIIIº kalendas iulii, anno primo regni Henrici, regis, et dominice Incarnacionis XXXIIº post millesimum."

[49] *JRCCM* 241: "Et ego Gelmirus sacer iuro per metuendum atque tremendum nomen Domini et per altare consecratum sancte beateque Virginis Marie Matris Domini, cuius aecclesia sita est in comitatu Barchinonensi, in foro Martorelio, quod ego vidi et legi audivi supradictum preceptum unde supra notati testes Godmarus et Guillara testimonium suum dederunt, et audivi quod illic resonabat quod supradictus rex Hludoicus confirmabat atque concedebat in iure aecclesie Sancti Cucufatis aecclesiam Sancte Olivae cum ipso alodio."

[50] *JRCCM* 241: "Et hos testes ad testimonium recepit." In non-contentious cases of *reparatio scripturae*, the judge typically receives the oath.

of these lines suggests it is possible that select individuals from the second group performed this action alongside him. Given how pivotal these men would prove to the judge's plan in later stages, this was likely the case.[51] The record differs subtly from examples of documentary recovery performed in the previous centuries. Specifically, Ponç conflated the concepts of testimony (*testimonium*) and oath (*sacramentum*), seemingly disregarding a distinction that was hitherto widely observed and would continue to be by some scribes over the coming decades. We must rely on context in order to conclude that the *testimonium* the judge-scribe received was in fact in the form of a *sacramentum*. Given the frequent use of forms of the verb *iurare* in documents written by Ponç and his later reference to this verbal evidence at an altar as a *sacramentalis* in stage four, that context is quite navigable.

Some additional oddities should be noted. The body of the text, not just their oaths, is structured in the first person voice of the witnesses. Moreover, Ponç omitted essential background to Sant Cugat's claims, particularly the contentious history that extended twenty years and featured his own participation. This exclusion suggests how Ponç may have viewed the act of securing these oaths. The simplest explanation is that he considered the most pertinent

[51] Beyond appearing in separate sections of the record, the two groups of *boni homines*/*auditores* differed in social standing. The members of the second group, comprising seven men, were more illustrious than first, comprising sixteen. The seven men were: Viscount- *levita* Guislabert, Ramon arch-*levita*, Compannus *levita*, Gaudamir Ermemir, Miró *levita*, Isarn Guillem, Ramon Senofred. Their exclusion from the less elite group may be explained by the fact that they were not present, but merely consulted later, affording the action the authority of their status. There is some indication, however, that they were in attendance from the outset, and that Ponç intentionally reserved mention of them until the close of the document because they were performing a special function alongside the judge. Their names appear with Ponç's in the section featuring the judge's receipt of the oaths, "et hos testes ad testimonium recepit." The verb *recepit* may take the judge alone as its grammatical subject, or it could refer to each member of this list as its subject in turn. Although the second of these readings may be unlikely at first glance, broader context recommends it. With an eye to both the judge's focus on these men during the next two stages of the 1032-1033 case and his prioritization of their names over those of others fulfilling the same function during those events, it becomes clear that Ponç wished to heighten the prominence of these select men in the 1032-1033 case from its earliest stages. Having them receive the oaths alongside him would conform to Ponç's overall focus on their potential importance to the dispute's outcome in Sant Cugat's favor. It was a strategic play that stood to forestall future counterclaims.

information to be included in the oaths themselves. However, given the troubled history of Sant Cugat's tenure, the abortive construction attempts of at least Isembert, Adelaida's dismissed claim, Ramon Borrell's reversal of the 1013 compromise, the comital prioritization of a privileged ecclesiastical institution's interests, and the judge's own ambivalence over the precedent of the two claims in March 1016, it is likely Ponç recognized that to delve into the past would have undermined the present effort to legitimize the monks' hold on the land. It would have exhibited earlier inconsistency in the courts and bias in Ramon Borrell's presidency.

Judge Ponç wished to avoid a renewed challenge, because thus far, this most recent episode in the Santa Oliva and Calders affair was non-contentious. By 1032, the direct voices of Adelaida and her son Bernat had vanished from the records that made their way into the cartulary. We hear no claims against Sant Cugat's possession, and the monastery sent no delegates to the assembly. Given the case's background and the comital support for their house, it is possible the monks viewed the judge himself as their representative. They expected that he would advocate for their interests. To be sure, the man was going to great lengths to strengthen their claim at churches merely a stone's throw from the abbey walls. The fact that the monks could identify no immediate adversary and trusted the judge—perhaps believing the oaths he was exacting to be sufficient—does not mean that Ponç himself was unconcerned. He did not treat the 28 June hearing casually; the significant size of the assembly shows planning went into organizing a use of the *condiciones* strategy that would garner high-profile support from the monastery's neighbors. Our first indicator is his division of the *boni homines* into two groups, performing different functions. Because he understood the connection between community pressure and the utility of sacred spaces, he ensured that specific attendees—with key institutional connections—were involved.

The most prominent institutional representatives in attendance were connected to the cathedral of Barcelona and featured in the second group of observers. The most notable signatory was the *levita* canon and regent-viscount, Guislabert (d. 1062). It would one day be this man whose request to acknowledge the code Bernat Otger would reject. At this time, however, Guislabert, a first cousin of Mir Geribert, headed the viscomital family of Barcelona and was the uncle and guardian of Viscount Udalard II. The young Udalard had served alongside Ramon Borrell as a co-president when the count fully awarded Calders to Sant Cugat in 1016.[52] By 1032, Judge Ponç believed Guislabert, still holding the viscomital office on his nephew's behalf, could be a powerful ally to the monks. Therefore, while a cursory reading suggests Ponç provided only what was necessary to grant the document its legal value—the oaths and subscription list—his directness should not be mistaken for carelessness. Ponç tactically de-emphasized the troubling background of Sant Cugat's tenure and stressed those *boni homines*, like Guislabert. The viscount-*levita*, who would become bishop of Barcelona within two years, was an influential man. He possessed institutional and familial ties to the case that suggested he would continue to defend the monastery's possession, not to mention his command of the

[52] Ruiz-Domènec, *Quan els vescomtes*, 85-92, explains the position of Viscount-*levita* Guislabert I (d. 1062). He was the second son of Viscount Udalard I (d. 1014) and Viscountess Riquilda (daughter of Count Borrell II). He was also a maternal cousin to Mir Geribert (another grandson of Borrell II). Upon his father's death in 1014 and that of his elder brother, Bernat, shortly after, Guislabert ruled the viscounty of Barcelona in the name of Bernat's son, Udalard II (d. 1076). Despite becoming bishop of Barcelona in 1034, he retained rule of the viscounty and use of the title until 1041, when he at last relinquished the position to his nephew in full. The 9 Mar. 1016 tribunal featured an *Odolardus, vicecomes Barchinone*. Seeing as Udalard I had died two years prior, this likely refers to Udalard II (son of Viscount Bernat), who was acting under the guardianship of Guislabert, his uncle. Guislabert does not appear anywhere in the record for the 9 March dispute. However, it is unlikely that Guislabert, as guardian, would have trusted Udalard II to appear in his absence, if he would have thought Udalard might act against his wishes. Thus, by the 28 June action, we can reasonably conclude that Guislabert was informed about the history behind the 1032-1033 case and supported the position represented by Sant Cugat, Count Ramon Borrell and Countess Ermessenda, and Ponç Bonfill Marc. As a leader in the cathedral community of Barcelona, and with close ties in the comital and viscomital families, Judge Ponç's effort to secure and highlight Guislabert's support would have been critical in ensuring the cathedral's pro-Sant Cugat stance in the Penedès.

resources necessary to mount that defense. Judge Ponç's instincts for caution paid off, as a very real challenger arose within days, though perhaps sooner than he expected.

5.3.2. Stage 2

The first sign of opposition to the court's actions comes in the form of an oddly placed counterclaim in the subscription list of a cartulary entry dated to 3 July 1032, occurring just days after the 28 June proceedings.[53] Judge Ponç intended the record to commemorate his exaction of auxiliary oaths in support of the three witnesses. Both the counterclaim's placement in the subscription list and tone of the challenge resemble the description of Bernat de Calabuig's withdrawal in the 1019 Bàscara case (see Chapter 4). The sudden interjection suggests that the assault on the monastery's rights over which Ponç worried came sooner than anticipated. Most claims and challenges appear at the outset of records.[54] In this instance, however, Ponç, once again acting as both judge and scribe, inserted the information into the list of what was clearly not intended as a dispute record. The challenge likely arose as the hearing was ending, when the judge was collecting signatures. The day's work was part of Ponç's effort to buttress the earlier recovery; the sudden counterclaim disrupted that work in progress. Returning to the narrative offers insight into how Ponç's carefully laid plans were jeopardized, and how he salvaged them.

Following Gelmir's oath at Martorell, Ponç remained in the neighborhood until he inaugurated the 3 July hearing. A consideration of his potential actions in the intervening days shows how a judge evaluated risk, working to prevent conflict, rather than simply reacting to it.

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[53] *JRCCM* 242.

[54] Kosto, *Making Agreements*, 44, 104, explains the majority of disputes conformed to a basic structure as judgments (*notitiae*). In most dispute documents an explanation of the issues at stake, the location of the proceedings, the arguments of the litigants, and the proofs submitted appear early in the body of the text. This information precedes a third-person narration of the progress of the tribunal. The ruling of the court, the quitclaim (if relevant) often appear at the end, prior to the subscriptions.

Had Ponç not taken certain steps, the eventual challenge could have spelled disaster for the monks. The new assembly's large attendance, with multiple parties playing different roles, indicates Ponç kept busy planning the event. The coming 3 July challenge aside, his first obstacle was the cloud of uncertainty that seems to have formed in the wake of the first assembly (suggested by the fact that another hearing was necessary, despite the matter was still non-contentious). The problem was likely community ambivalence over the reliability of the initial witnesses' memories, given their advanced age and the fact that almost half a century had elapsed since they last saw Louis IV's precept. Memory aside, there was the immediate risk that the ailing men were close to death. Despite the existence of a new document preserving their oath, people may have feared that they themselves would not survive to testify at a future challenge. Documents did not solve all problems, as the many litigants introduced in Chapter 4 knew well.[55] The actual voice of witnesses was ideal.[56] Their looming deaths would leave only an echo of their testimony; Ponç wanted that echo to be as resonant as possible.

It is unsurprising that Judge Ponç did not record such doubts. The reason for his silence likely matched that which supported his omission of the case history. To express concern for the reliability of the initial witnesses' memories would stymie the recovery of a reputable description of Louis IV's precept. Age and infirmity were one matter; dependability of recall was more troubling. Therefore, the effort now focused on enhancing the reliability of the trio's testimony.

[55] See the 1000 Bages case involving Ajó, the 1002 Queralt case involving Sendred, and the 1025 Alp case involving Bonadona.

[56] Bowman, *Shifting Landmarks*, 166, discusses how eyewitness testimony was considered a powerful form of proof, and judges often sought witnesses in addition to documents. He characterizes these two means of supporting one's case as enjoying a "dual dominance as modes of proof."

Here a joint consideration of the strategic application of sacred space together with awareness of its limitations is necessary.

Just as with the probative effort of composing a document, the swearing of oaths in a sacred space was neither an automatic solution in disputing, nor universally convincing for all parties. As Bowman shows, the synthesis of different forms of proof was a hallmark of adjudication in the region; judges often requested supplementary oaths or additional forms of evidence.[57] The *condiciones* strategy was merely one of the complementary tools at judges' disposal, and—by the 1030s—increasingly an unpredictable one. The efficacy of using sacred space for court proceedings depended on how individuals, compelled to varying degrees by anxiety over spiritual sanction, reacted to the invocation of supernatural forces. Although, many litigants cooperated when officials invoked saintly power, as Pere and Enric had at Cornellà de Llobregat, the same could not be said for everyone. This would have been clear to Judge Ponç. With the code's other stipulated forms of proof unavailable (in the case of documents) or unrealistic (in consideration of the ordeal),[58] Ponç wanted an auxiliary oath to support those of the earlier witnesses. However, that path forward required care, because a future challenge was likely. Indeed, it came within days, and Sant Cugat's opponent would not be fully stopped by the power of the saints.

[57] Bowman, *Shifting Landmarks*, 166-67, shows that, by the eleventh century, judges evaluated testimony in conjunction with the consideration of other forms of proof, rather than automatically accept it on account of a witness oath. He argues that this amounted to a departure from earlier practices in which oaths were conceptualized within the same framework as the judicial ordeal. Under that paradigm, it was God who weighed the truth of sworn testimony. Bowman posits that this idea of compurgation was a prominent line of thinking in the Visigothic Code that changed over the course of the subsequent centuries.

[58] Bowman, *Shifting Landmarks*, 119-84, identified three broad categories of proof and discussed each at length. These include: documents, testimony, and the ordeal. Each had a basis in the Code, and the first two were frequently used in judicial proceedings throughout the period. The last of these was the rarest, with only a couple known examples.

Before turning to that challenge, we require a final point about Ponç's organizational efforts between 28 June and 3 July. He planned to use the *condiciones* strategy in a unique way by placing concerted emphasis on the value of community pressure undergirding the practice. This intensified focus on the responsibility of observers to ritual acts was necessary to mitigate the variability of individual conviction, a far greater problem in an age of withdrawals and mounting suspicion of courts. Therefore, Ponç would publicize the next hearing before a particular audience. To this end, he planned to convene the second assembly at the church of Santa Maria of Martorell to collect oaths from six of the sixteen named *boni homines* present for Godmar's and Guilarà's oath (taken from the first group noted in the 28 June hearing, see above). Rather than eye-witnesses to the precept, they were oath-helpers.[59] Beyond summoning these helpers, Ponç magnified his own role by recruiting auxiliary judges to help garner legal consensus around his actions. At least one of these new associates was familiar with the contention over Santa Oliva and Calders.[60] The judge-priest, Vives, had helped Ponç navigate the second tribunal between Adelaida and Abbot Guitard in 1016.

Judge Ponç made the support oaths the centerpiece of the 3 July hearing. He began his second document with the word "Oath" (*sacramentalis*), and opened its initial line with the words *condiciones sacramentorum*. Yet, being more nuanced than a conventional oath publication, his strategy interwove the authority of God with the realities of how human power

[59] Bowman, *Shifting Landmarks*, 166, shows how such individuals, less desirable than direct witnesses, swore in support of eye-witnesses. They were part of the same "logic of judicial ordeals" without the drama and associated concerns of that practice.

[60] The term *sacerdos* is used. The plural construction suggests it modifies both the judges Guifré Guillem and Vivés. A third new judge, one Sifredus, appears in the list, but is not mentioned at the outset of the document, suggesting he did not help officially run the proceedings. It is uncertain if this Guifré Guillem was the same judge from the court of Ramon Borrell. That individual was a *levita* canon and lacked the second name, Guillem.

was concentrated in the county of Barcelona. He used the consensus surrounding the spiritual conviction on which the practice of oath-swearing was established to build political consensus and community support for Sant Cugat's tenure. He hoped that, if necessary, aid would come in the form of tangible action from those observing the ritual. He had a plan.

The six oath-helpers would swear an auxiliary oath strengthening the initial witnesses' account of the precept. In so doing at the altar in Martorell, they would acknowledge their accountability before God and Santa Maria. That was helpful, of course, but the key factor was the new group of *boni homines* that Ponç had organized for the present hearing. To see and hear the oath-helpers, thirty-two named individuals and many other persons huddled into the church, crowding around the altar. Among the unusually large number of observers were prominent men of the county. In addition to the sizable number, there is another oddity. Eight of the thirty-two names appear grouped together three separate times in the record, as the judge anchored their involvement: first, at the point where Ponç introduced the oath-helpers and attendees; second, in the oath itself (see quote below); third, in the subscription list. This repeated emphasis, especially in the text of the oath, on individuals who were fulfilling a function that more often amounted to passive observation suggests Ponç's desire to underscore their participation to those present and to anyone who would read his record. The six witnesses swore:

> We the named witnesses swear chiefly by God the omnipotent father, by Jesus Christ his son, and also by the Holy Spirit, acknowledging the Trinity to be the one and true God, above the altar consecrated to the holy and blessed Maria mother of the Lord which is situated in the church founded under the castle Rodanas, near the *forum*, Martorell. The men Godmar and Guilarà, who were decrepit and also gravely infirm, imposed on us the mandate [*mandatum*] of their testimony. We were there in the presence of Judge (Ponç) Bonfill Marc, Viscount Guislibert, Ramon arch-*levita*, Compagnus *levita*, Miró *levita*, Gadamir Ermemi, Isarn Guillem, Ramon Seniofred, and Gelmir *presbiter* when Godmar and Guilarà testified by a series of publications over the altar consecrated (*consecratum*) to Sant Pau which is located in the church of the blessed apostle, Pere, which is built not far from the church of the most holy and most blessed Sant Cugat Martyr of

> Octavià. They had seen and heard read a precept pertaining to the monastery of Sant Cugat that the lord, Louis, king of the Franks, father of Lothair, likewise king of the Franks, made to the gathered ecclesiastical affairs to be confirmed and presently conceded to this monastery. And there, after many other property matters which were firmly reasoned to belong to that said church by this precept, King Louis confirmed and also conceded the church of Santa Oliva with that alod.[61]

Naming select *boni homines* in the *text* of this oath, as recipients of ritual speech along with God and the saints, was virtually unprecedented and requires comment. An eye to both previous and subsequent events elucidates the emphasis placed on these eight individuals and why Judge Ponç had the oath-helpers name them before God, and not others from the pool of thirty-two observers. Doing so was vital to the judge's strategy. Huddled in the crowded sanctuary and surrounded by members of his community, each of these eight men heard his name called out for Santa Maria to hear at her altar. There, under the supervision of God and his saint, each man became part of the oath spoken to God and personally vested in the outcome of the case. In the voice of the oath-helpers, their newfound involvement was broadcast to the remaining *boni homines*; they were now responsible, and should be treated as such. In the next stage of the 1032-1033 case, we will appreciate the dividends this strategy paid for Judge Ponç and his monastic clients.

[61] *JRCCM* 242: "Iuramus nos testes supradicti, primo per Deum Patrem omnipotentem et per Iesum Christum Filium eius atque per Sanctum Spiritum confitentes hanc Trinitatem unum et verum Deum esse, super altare consecratum sancte beateque Marie Matris Domini quod situm est in aecclesia fundata subitus castrum Rodanas, prope forum Martorelium, quod quidam homines Godmarus et Guillara, etate decrepiti atque infirmitate gravati, iniunxerunt nobis per illorum mandatum suum testimonium, et nobis presentibus in presencia iudicis Bonifilii Marci, et Guisliberti vicecomitis, et Remundi archilevite, et Compagni levite, et Mironis levite, et Gadamiri Ermemiri, et Isarni Guilelmi, et Remundi Seniofredi, et Gelmiri presbiteri, iureiurando testificati sunt per seriem conditionum super altare consecratum sancti Pauli quod situm est in aecclesia Beati Petri Apostoli, que non longe constructa est ab ecclesia Sanctissimi ac Beatissimi Cucufatis Martiris Octavianensis, quod ipsi viderunt atque legi audierunt preceptum Sancti Cucufatis cenobii predicti quod domnus Hludoicus, rex Francorum, genitor Leutarii, regis similiter Francorum, fecit ad confirmandas res aecclesiasticas huic cenobio collatas aut in postmodum concedendas, et illic post multas alias res possessionum quae per eundem preceptum in iure predicte aecclesiae confirmate erant resonabat, quod supradictus rex Hludoicus confirmabat atque concedebat aecclesiam Sancte Olive cum ipso alodio."

Who were these eight men, though? They were not taken from the first group of *boni homines* named by Godmar and Guilarà, and Ponç had not asked them to stand as oath-helpers themselves on 3 July (it should be remembered that the oath-helpers were pulled from group one). Instead, they were the same as those more elite persons associated with the judge in the reception section of the 28 June subscription list: the *second* group of *boni homines*. That group had included seven names, each of which appears in this new privileged group within the oath. The eighth name belonged to a newcomer to the matter, a priest called Gelmir. Though new, his inclusion in this group must have signaled his importance within and to the community.[62] The judge-scribe clearly found the eight to have special relevance to the case. Yet, importantly, that relevance may have been something Ponç was seeking to construct in the actions of these two stages, rather than standing as a previous connection.

We have a clue as to why Ponç desired to bind these men to the case: four of the eight were *levita* canons at the cathedral of Barcelona, including the chapter's *archlevita*, Ramon, and Viscount-*levita* Guislibert (introduced above). Though focusing particularly on evidence from the diocese of Vic, Paul Freedman explained the position of the *levitae* in the early eleventh century. They were full members of a cathedral chapter who did not live a regular religious lifestyle. However, *levitae* did maintain a spiritual relationship with the community. This membership without ordered attachment led to the rise of a class of military *levitae* that remained a feature of diocesan administration up to the middle of the century, when the situation on the frontier stabilized. Bishops entrusted their cathedrals' border fortifications to these canons,

[62] It is unlikely that this Gelmir was the same man as the priest, Gelmir, the third original witness from 28 June. That previous Gelmir was titled, *sacer*, while Ponç titles this new man, *presbiter*.

tasking them with guarding ecclesiastical interests.[63] As Bishop Sal·la of Urgell (Sendred de Gurb-Queralt's old foe) wrote, the personal conviction of these men and their dedication to God were central qualities in their readiness to assume this role.[64] It was their duty to defend ecclesiastical interests. For Judge Ponç, this spiritual affiliation and duty perhaps suggested these men would take their role as *boni homines* quite seriously. Ponç perhaps held an additional interest in Viscount-*levita* Guislabert. In addition to Guislabert's status as a *levita,* he also headed the viscomital family. Despite his likely approval of Ramon Borrell's award of the property in full to Sant Cugat in 1016 (see above), he still hailed from the county's viscomital house: a family with historic hostility toward the monastery's Penedès interests.[65] Ponç may have wished his cooperation to broadcast the appearance of reconciliation between the monastery and one of its old rivals. Just as the ritual action communicated divine support for Sant Cugat's tenure, involving Guislabert in that display proved to the community how earthly powers did as well.

These factors may help explain why Judge Ponç so forcefully emphasized the role of eight chief *boni homines* at this hearing: such men—possessing the political and military resources Sant Cugat required as surety against future challenges—were more likely than others to be reliably compelled by the ritual. Together, the thirty-two stood as a supernaturally-obliged deterrent to would-be violators. Although investing *boni homines* with such responsibility was not a new phenomenon, this particular level of layered emphasis, resembling an extended chain,

[63] Kosto, *Making Agreements*, 181-82, shows that the cathedral of Barcelona administered numerous Penedès fortifications by the close of the tenth century.

[64] Freedman, *The Diocese of Vic*, 22-24.

[65] Salrach, *Justícia i poder*, 220-26; Ruiz-Domènec, *Quan els vescomtes*, 62-74; Kosto, "The Elements of Practical Rulership," 71-72; Santiago Sobrequés, *Els grans comtes de Barcelona* (Barcelona, 1970); and Gaspar Feliu i Montfort, "El comtat de Barcelona," in *Catalunya romànica XX: el barcelonès, el Baix Llobregat, el Maresme*, ed. Antoni Pladevall i Font, et al. (Barcelona, 1992), 72-76.

is exceptional. Moreover, it demonstrates considerable concern on the part of Judge Ponç and his colleagues. In time, we shall see that they were right to rely on these men. With the auxiliary oaths collected, the judges moved to end the proceedings. However, they encountered a problem: the hostile designs of Mir Geribert.

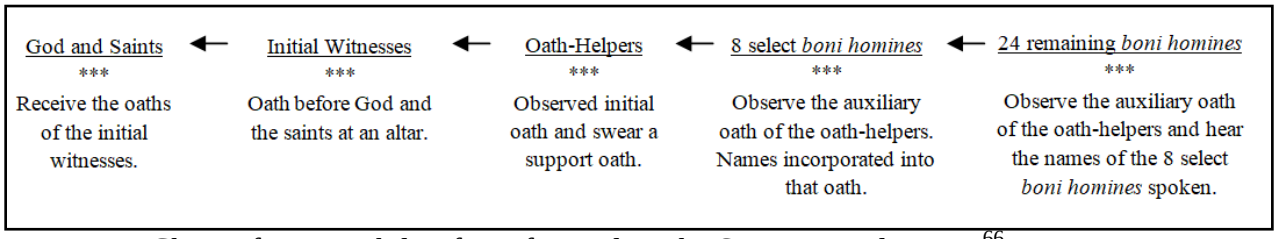

Figure. 5.2 Chain of responsibility for safeguarding the Stage 2 ritual action.[66]

Mir Geribert—the challenger—appears abruptly in the 1032-1033 case, with no mention of his name among the *boni homines* specified for the events of 28 June or the main stages of these current proceedings. The baron arrived as the subscription portion of the hearing began, and immediately issued a counterclaim. Judge Ponç wrote an account of Mir's arrival, his claim, and how he reacted in a passage inserted into the subscription list,

> I Mir Geribert, who affirming the guardianship of my son, Guillem Mir, asked for these above-stated possessions in a judgment and in the hearing of those mentioned above. And I received the aforementioned witnesses, and if I cannot, with other witnesses being present, defame by the laws those witnesses whom they brought forward to swear to these publications within the space of six months, I shall confirm with my full voice that which I have in the matters proposed above by right to the church of Sant Cugat.[67]

In this statement, Mir reveals that he had previously claimed the property on behalf of his minor son (the grandchild of Adelaida), explaining how this occurred as part of a judgment. However,

[66] The arrow indicates direction of one's accountability.

[67] *JRCCM* 242: "Ego Miro Geriberti, qui has possessiones supranotatas aiens tutelam filii mei Guilelmi Mironis in iudicio atque supradictorum audientia requisivi, et supradictos testes recepi, et si ipsos testes supradictos qui ipsum testimonium aliis testibus presentibus qui ad has condicionibus iuraverunt iniunxerunt infra hos sex menses legibus infamare non potuero, omnem meam vocem quam in supradictis rebus propulsatis habeo in iure Sancti Cucufatis aecclesie confirmo."

the timeline is hazy. We do not know if his asserted claim had been heard years prior or more recently. While the baron intimated that some of the present attendees knew of his efforts, he did not specify who among them. We also have no indication of whether Ponç was aware that Mir had established a connection to the property. The tone of the record, the unplanned mention of Mir's counterclaim in the list, and the lack of detail concerning the baron's challenge suggests the judge may not have been. Yet, the passage does show important events that resulted from Mir's arrival, and reveals how the two sides quickly developed legal strategies in what was now a contentious dispute. Like the posturing between Judge Sunifred and Bernat de Calabuig in the 1019 Bàscara case, the sides slipped into the register of the *condiciones* strategy.

Seeing that Judge Ponç had ensured a sizable assembly, the invitation must have been distributed widely. Mir was informed of it, and planned to attend. He arrived late; conveniently missing the oaths that he knew countered his designs on the land. The trouble Mir encountered in trying to advance his son's claim, however, was the fact that the auxiliary oaths (not to mention the original witness oaths) had been sworn at all. That ritual action, along with its exhibition before the community, could not be ignored once inaugurated. When the judges explained this to Mir, the baron declared the original witnesses false, invoking his legal right to prove their infamy within the space of six months (*infra hos sex menses*), as he knew was his legal due according to *LV* II.4.7.[68] This too was a community-focused strategy that would undermine the reputations of these men before God, Santa Maria, and the important people gathered. If Mir could defame them, then perhaps he could break the chain of layered responsibility that Judge Ponç had forged

[68] Mir offered a conditional statement that stipulates rules governing his right to address the infamy of men providing evidence against him that originated in the Visigothic Code. *JRCCM* 242: "Et si ipsos testes supradictos qui ipsum testimonium aliis testibus presentibus qui ad has condicionibus iuraverunt iniunxerunt infra hos sex menses legibus infamare non potuero." For a discussion of infamy in the code see, Bowman, "Infamy and Proof," 99-102.

through ritual at Martorell's church. Doing so would reduce their value to Sant Cugat and lay open the way for a counterclaim. The flaw in the baron's plan was that there existed a procedural framework for defamation; it required evidence.

If Mir was truly capable of demonstrating their infamy, and this was anything other than an attempt to stall the court, then we would expect the baron to have submitted proofs or at least made some statement detailing the exact nature of the witnesses' perfidy. Mir introduced no evidence, and he would struggle to articulate a specific accusation all the way to stage four of the case. The ad hoc nature of the baron's approach did not go unnoticed. Doubting Mir had proofs, Judge Ponç saw an opportunity to neutralize Mir by coupling him to the chain of responsibility and, using ritual display before the gathered community, to restrict the baron's range of future argumentation. Ponç's tactic—part of his broader plan based on compound and mutually interdependent uses of the *condiciones* strategy—would require him to acknowledge that Mir indeed had the right to challenge the witnesses. The judge decided to use such an acknowledgement in order to extract Mir's recognition of the court's legitimacy and insist that he accept the oath there on the spot. Ponç would hear evidence of the men's falsehood at a later date, if only Mir would formally receive these six oath-helpers now. The judge wanted the baron to make a commitment to participate within a system under his control, and to do so through ritual performance. Mir complied (*et supradictos testes recepi*).

Although Ponç's use of the *condiciones* strategy is in many ways novel, we have seen an aspect of the approach before. In his letter to Sunyer and Ató over fifty years prior, Joan stressed the counter-witness stipulations at the end of *LV* II.1.25 and afforded the pair the opportunity to continue the case, only if they would agree to acknowledge the legitimacy of the proceedings and the court's authority. While neither *LV* II.1.25 nor any other direct citation are mentioned in

stage 2 of the 1032-1033 case, Mir's legal reference is clear. It is reasonable to imagine that Ponç reacted with the same professional concern as Joan. Both judges wished for litigants to acknowledge the legitimacy of the legal system itself. Ponç could not allow the community unity he established to be jeopardized by a public rejection of the system on the part of Mir. Allowing the baron the *opportunity* for future defamation kept him participating.

In light of the responsibility Ponç had just vested in the *boni homines*, the judge was unsurprised that Mir received the oaths. Such community support also allayed his concerns that Mir likely engaged in the reception out of obligation rather than an independent sense of piety. Were Mir to reveal himself less motivated by supernatural power than most, Ponç could rest easy in the pressure the other links in his chain could apply. For the *boni homines* in stage two, Mir's commitment to the saint and to God mirrored their own. As *dotalia* show, the people of the province were driven to found, support, endow, and defend religious establishments out of deep-seated concern for salvation and fear of the saints; let us not forget the fear evident in Gelmir's oath on 28 June, and how closely that expression corresponds to sentiments expressed in *dotalia*. As argued in Chapter One, the community conceptions of sacred space shared by the judges, many of whom were also under clerical orders, attended dedication events, and appear in twenty-six of the surviving *dotalia*.[69] As an experienced judge and cleric, Ponç Bonfill Marc understood the spectrum of impressions judicial action in a church had on witnesses, litigants, and *boni*

[69] Ponç Bonfill Marc authored an irregular *dotalium* from 1020: *Dotalies* 137. At a hearing in Manresa, Ponç acted as scribe for the bishop of Vic and comital family of Barcelona. Rather than celebrating a new consecration, the bishop and the court worked to recover documents that were lost during the time of Ramon Borrell, when Manresa had been sacked by Muslim forces and documents pertaining to the foundation of the city's churches lost. He writes how, with the bishop's approval, a *levita*-judge called Guifré interviewed the witnesses and collected their oaths.

homines. And as the 1024 case concerning property at Montgat illustrates, he had successfully capitalized on the power of these spaces before.[70]

Moreover, Judge Ponç understood how to use the more stable community conception of sanctuary power as a means to compensate for the variability of individual conviction. It was the cornerstone of his strategy thus far. Ponç linked together groups of mutually referential witnesses, oath-helpers, and *boni homines* who made one another's commitments to God essential components of their own. Ponç's choice to so forcefully emphasize tribunal observers over the course of multiple hearings, rather than concentrate primarily on the litigants or witnesses, allowed him to draw on the more predictable *societal* conception of sacred space to support rulings, and ultimately to limit litigants' range of response to rulings. The reception-with-defamation tactic Ponç used against Mir would not have been possible without the community-based iteration of the *condiciones* strategy that the judge had employed over the course of the first two stages of the 1032-1033 case. Under such circumstances, and in the present legal and political climate, an effective judicial use of sacred space required such additional considerations. Ponç's careful organization and planning demonstrates he understood this.

Mir adapted to Judge Ponç's strategy and attempted to navigate his way through it by making a commitment (via the reception) to pursue his defamation charges. Yet, doing so caught the baron in a series of legal traps, from which he struggled to extricate himself both now and in the coming stages of the case. Further in the subscription list, Ponç noted Mir's acknowledgment with a weighty caveat. In place of a normal subscription, the judge-scribe wrote, "And in the

[70] For an example, see *JRCCM* 211.

voice of the aforementioned Mir who withdrew himself from the tribunal without the judge's permission."[71] What had happened? Why did the baron leave after his reception? Stage four, as we will see in time, offers the likely answer: Mir, although willing to pursue the defamation angle in the dispute, still wanted the judges to go ahead and acknowledge his son's claims. They refused to act out of proper order, and, therefore, Mir angrily took his leave. Yet, in the framework of Ponç's strategy, the baron's reception still counted; its irreversibility owed to Mir's participation in a ritual act. His departure did nothing to reverse that participation. It was now a commitment to God. Thus, Mir's name was included among those of the action's supporters, because in the eyes of the community, the saint, and God, he was. Whether he liked it or not, the baron became the final link in Judge Ponç's chain, forged through the *condiciones* strategy. In time, the court would use the chain against him. For the moment, however, Mir was angry, but neutralized. Ponç finished collecting the signatures, signed the document himself, and closed the hearing.

If this reconstruction of stage two is correct, it shows that Ponç Bonfill Marc was well aware of the fragility of court authority—demonstrated by withdrawals from judicial assemblies, such as Mir's—that had become a more noticeable feature of assemblies over the course of his career. He knew that the effects of the first transformation required more concerted action. Multiple uses of the *condiciones* strategy to forge the chain of responsibility amount to an attempt by this adroit judge to compensate for that damage wrought by that transformation. Turning to the next two stages, we will see the short term gains and long term losses that approach garnered.

[71] *JRCCM* 242: "Et vocem supradicti Mironis qui se abstraxit de placito absque consultu iudicum."

5.3.3. Stage 3

After the 3 July hearing, the court left Mir Geribert to find credible witnesses who would testify to the alleged infamy of Godmar, Guilarà, and Gelmir. The law permitted the baron six months to do so, but the next we hear of him is a cartulary entry dated to 22 July 1032. In a dispute presided over by Judge Ponç and his judge-priest colleague, Vives, Mir was among the *boni homines* in an unrelated inheritance tribunal involving his new wife's uncle, Gombau de Besora (d. 1050).[72] It is possible that Mir was mindful of the optics of his withdrawal before Santa Maria and wished to replenish his credibility by serving as an upstanding participant in this case. Given the baron's familial connection to Gombau, however, it is also possible he harbored designs on the land. That contest aside, the next mention of the 1032-1033 case comes from a tribunal record dated to 30 July. That is certainly the day the hearing ended, but the text suggests an eight-day recess was granted prior to the court's dismissal. This would mean that the tribunal first opened on 22 July, the same day Mir participated in the inheritance case.

Both Bowman and Salrach have studied this assembly (stage three), as well as addressing the subsequent actions stretching into March of 1033 (stage four).[73] By considering the revised dating scheme, applying the interpretive lens of the judge-centered approach, and remaining cognizant of the context derived from the first stages, we stand to learn more about this tribunal

[72] *JRCCM* 243. Here, Judge Ponç Bonfill Marc is described simply as Bonfill. He does not act as scribe on this occasion. The tribunal itself involved disputed inheritance between two brothers and a magnate called Gombau de Besora. Bramon, "El conflict de Mir Geribert," 797, explained that following the death of his wife Dispòsia (from the Santmartí family), in 1030, Mir married Guisla de Besora (d. 1088), niece of Gombau, in an effort to secure property in Vallès area and the county of Osona. Martin Aurell, *Les noces du comte: Mariage et pouvoir en Catalogne, 785-1213* (Paris, 1995), 77, added further context, suggesting the possibility that Gombau's position as a supporter of Countess Ermessenda signaled an effort by the countess to establish a closer hold on Mir Geribert by orchestrating the marriage to Guisla. The attempt proved unsuccessful.

[73] *JRCCM* 244, 246; Bowman, *Shifting Landmarks*, 158-64; Bowman, "Infamy and Proof," 111-15; Salrach, *Justícia i poder*, 228-31.

and its aftermath. Bowman argues that the hierarchy of proofs (documents and witness testimony) was paramount to navigating litigants' conflicting claims in this tribunal. To Bowman's argument, we may add three additional considerations: (1) Judge Ponç's multi-stage use of the *condiciones* strategy in support of those proofs; (2) the chain of community responsibility established through linked ritual actions; and (3) the trap the judge had set for Mir, should the baron deviate from his obligations. Ponç's strategy was a hybridization of citations from the code and the principle that ritual action was irreversible. At the height of the tribunal, Mir's previous reception and commitment to defame would prevent him from adapting to changing dynamics in the case.

By late July, the matter had assumed new dimensions, and the complex case history from the days of Ramon Borrell saw renewed pertinence as Countess Ermessenda, Count Berenguer Ramon I, and his wife, Countess Guisla de Lluçà (d. 1079), became involved. The baron also now faced an opposing litigant; Sant Cugat had at last sent a representative, Abbot Guitard. This adversary had not appeared in the first two stages of the case. Perhaps the matter's scope had not yet merited his attention, with the documentary recovery left in the hands of the sympathetic judge. The two earlier stages were merely preparation for future conflict. Therefore, the abbot directed his attention elsewhere. However, in the wake of Mir's challenge, Guitard deemed his presence necessary. The baron's Penedès forces posed a danger to Sant Cugat's hold on Santa Oliva and Calders. Even if the abbey prevailed in court, an embittered Mir would prove a dangerous neighbor. From Mir's perspective, however, Sant Cugat was an equally capable adversary. The house could call on powerful allies, enjoying the backing of the comital family. Indeed, Mir's own cousin and family-head, Viscount-*levita* Guislabert, supported the monks. This unified front jeopardized the baron's ambitions to grow influence in the Penedès. As seen in

the background reviewed above, Abbot Guitard had stewarded the monks' holdings there for at least two decades and was an experienced litigant.[74] The abbot's resumed participation and the renewed presidency of the comital family convinced Mir that he had to abandon what he might have considered now the less feasible path of demonstrating the infamy of the 28 June witnesses.

Mir returned to his strategy of emphasizing his son's claim, granting himself a rhetorical tool: he could demonstrate the imbalance caused by comital favoritism for ecclesiastical interests. If he could stress the wrongdoings of the monastery and its allies in previous litigation and show how imbalance persisted to the present, he could cast doubt over the efficacy of these proceedings. He could underscore, before a sizable assembly, the infeasibility of men such as himself obtaining justice. The baron, therefore, would expand his earlier argument into a full narrative. As the tribunal began, Mir explained how the property rightfully belonged to his son, Guillem Mir, who was the grandson of Adelaida and great-grandson of Galí de Santmartí. Listening to the baron tell the familiar story, after almost a decade, Ponç Bonfill Marc, and the comital family once more heard of how Galí had brought the properties into cultivation and how his heirs therefore held them by right of his *aprisio*.[75] Indeed, upon Galí's death, the lands had passed to his heirs, Guillem and Adalaida, the parents of Mir's late wife, Dispòsia (d. 1030).[76] With Dispòsia dead, her son by Mir Geribert should now lawfully possess Santa Oliva and Calders.

[74] Bowman, "Infamy and Proof," 111 n. 46, for a list of cases from Sant Cugat's cartulary involving Abbot Guitard.

[75] Galí's *perprisio* claim was now styled as *aprisio*.

[76] *JRCCM* 244: "Aiebat enim iste Miro supranotatus in suis peticionibus quod suprascripte res ad hanc peticionem pertinentes iuris filiorum suorum predictorum debebant esse, eo quod, uti ipse asserebat, Galindo, avus eorum, per suam propriam apprisionem eas capuerat, et notas atque signa ad terminos earum faciendo, terminosque figendo ad possessionem suam deduxerat, et ipsa stagna quandiu postmodum vixerat ad opus suum pisces ex ipsis capiendo de ceteris hominibus defensaverat. Post obitum quoque eius, Guilelmus, filius eius, hanc possessionem heremi et stagna similiter ad opus suum retinnerat."

Baron Mir pressed his attack, intimating a virtual conspiracy between the abbey and the tribunal presidents. He recounted the multi-stage judicial proceedings that had occurred at the comital palace. The court's actions in 1016 had been a singular wrong orchestrated against his wife's family. As Mir told it, sometime before Adelaida brought her initial suit in 1013, Abbot Guitard had wrongfully persuaded Ramon Borrell to help his monastery obtain these properties. Thus, now, before the sizable assembly, Mir implied the abbot of Sant Cugat was a thief and portrayed Ramon Borrell as a man easily misled. These men had acted by "unjust order" (*iniusto ordine*).[77] This sort of indictment of comital leadership and the implication of its favoritism in court for institutions like Sant Cugat was not novel criticism. Yet, previous manifestations had been less overt, with embittered disputants preferring to withdraw without explanation or propose judicial combat rather than hurling direct accusations against comital authorities. In contrast to those subtler modes of resistance, Mir made his feelings clear in both word and action. Never before had a litigant connected a count's perceived malfeasance with his relationship to a religious house. Thus, Mir, an embittered baron excluded from the county's upper echelons of power, voiced his consternation with the prevailing political and legal dynamic.[78] When Mir had finished this story, he insisted on introducing witnesses to support his position.[79] At this point, however, Abbot Guitard interjected.

[77] *JRCCM* 244: "Adiecit autem quod, eo ab hac vita discedente et infestacione paganorum a supradicta Marchia cessante, Adalaizis, uxor predicti Guilelmi, aiens tutelam filiorum suorum quos ille ex ea genuerat, voluit municionem ibi construere et ad culturam eandem possessionem perducere, sed obieccionibus iam dicti Guitardi, abbatis, permotus, comes Remundus, Borrelli filius, repulit eam ab eadem apprisione et possessione, et iniusto ordine, sicut predictus petitor adfirmabat, in iure Sancti Cucufatis aecclesie confirmaverat."

[78] For additional discussion on Mir's interest in marriage as an avenue toward social and political advancement, see Kosto, "The Elements of Practical Rulership," 71-72; Stephen Bensch, *Barcelona and its Rulers, 1096-1291* (Cambridge, 1995), 130.

[79] *JRCCM* 244: "Allatis quippe testibus voluit hoc comprobare."

In contrast to his explication of Mir's view on the background to the case, Judge Ponç chose to provide a first-person quotation when relating the abbot's words. Relying on the same probative tools, impressive documents, he had invoked before Ramon Borrell, Guitard explained: "Certainly, this possession, which I retain for my church, is mandated on my behalf through a royal precept, and a just privilege of the bishop of the Romans for whom the position of the holy Church is confirmed as much now as in the future, and from which this possession is confirmed rightly to my church."[80] On account of the abbot's assertion that his house rightfully held the property, the assembly heard the confirmation of Lothair (the replacement for that of Louis IV's precept) read aloud.[81] The judges listened, but harbored concerns over the lost document of Louis IV; as we saw in the case history, the confirmations of Lothair or Sylvester II were not fully probative (with the former missing mention of at least Calders).[82] In doubt, they asked Abbot Guitard to produce witnesses who had seen and heard the Louis' precept read before 985. It must be noted, that Ponç, as the lead judge, was well aware that witnesses *did exist*, as he had collected their oaths himself. The intent behind the court's request was to remind Mir of the chain of supporters, linked to the baron himself by ritual action.

[80] *JRCCM* 244: "Possessio quidem haec quam ad opus mee aecclesie retineo et a me requiritur per preceptum regale, et per iusta privilegia presulum Romanorum quibus status sancte aecclesie confirmatur multum iam temporis est, ex quo in iure meae aecclesie confirmata est."

[81] *JRCCM* 244: "Ob quam causam cum Leutarii principis preceptum perlectum fuisset, ventum est ad locum ubi inter alia resonabat, quod omnes res huic aecclesie collatas et adhuc concedendas, idem Leutarius, rex Francorum, ita illi concedebat atque confirmabat, sicut iam illi confirmaverat atque concesserat pius genitor eius Hludoicus per renovabile preceptum, quod postmodum infestacione paganorum delectum fuit in captione Barchinone civitatis atque in postmodum per supranotatum preceptum Leutarii renovatum atque reparatum." Kosto, *Making Agreements*, 155, notes it was common to read documents to assemblies.

[82] *JRCCM* 244: "Quia non valuerunt preceptum ex toto deletum videre." In *JRCCM* 241, Godmar and Guilarà acknowledged Lothair's confirmation, but did not include that statement in their oath, which focused on the precept of Louis IV.

Ponç set his trap. The abbot requested eight days recess in order to find the witnesses from 28 June.[83] The court reconvened on 30 July, once more at the church of Santa Maria de Martorell, the sanctuary in which Mir had made his commitment. Guitard brought forth Godmar and Guilarà. On account of their infirmity, six *boni homines* helped them complete their *mandatum* (administrative order to testify upon request).[84] The names of these six men come as no surprise: Viscount-*Levita* Guislabert, *Archlevita* Ramon of the chapter of Barcelona, *Levita* Campagno, *Levita* Miró, Isarn Guillem, and Ramon Sunifred. The first four were among those eight privileged *boni homines* whose names were highlighted in the oath-helpers' 3 July support oath at the altar of this very church. Moreover, these names also appear among those in the list of the 28 June record, in the second group that subscribed immediately preceding the statement: "and I receive the witnesses to this testimony."[85] These men had ritually vouched for Godmar and Guilarà through the reception step of Rite of the Guarantor; they were bound to protect the monastery's interest in this matter. Judge Ponç's inclusion of these men paid off. They were in resolute support of Sant Cugat's ownership. Now, led by the viscount-*levita* and the *archlevita*, the *boni homines* stood before the assembly, "making a *mandatum* for those worthy men

[83] *JRCCM* 241: "Iccircho, a parte predicti abatis requisierunt si habebat testes qui eundem preceptum Hludoici regis vidissent et legi audissent, et pleniter cognovissent quod ipse res unde intencio vertebatur in hoc eodem precepto resonassent. Ille vero postulatis sibi legalibus octo dierum induciis attulit idoneos testes Bonofilio Marci, iudici, qui iussus atque informatus a principe et a primatibus patrie est dirimere causas, Godmarum, scilicet, atque Guillaranum, qui se dixerunt hoc plenissime nosse."

[84] The term *mandatum*, in the context of the 1032-1033 dispute, was the witnesses' obligation to testify concerning this matter whenever requested. We can see this measure as an administrative command or a writ that mandated Godmar's and Guilarà's participation. The appearance of the *auditores* here stands as an effort to assist them in completing that obligation. The *mandatum* as a legal tool was quite old, with antecedents to be found in the Ripoll formulary. See Zimmermann, ed., "Un formulaire," 85-86, and Zeumer, ed., "Formulae Visigoticae," 41-43 (at 594).

[85] *JRCCM* 241: "Et hos testes ad testimonium recepit." This phrase appears directly following the listing of these men's names.

(Godmar and Guilarà) before the aforementioned judge, they enjoined their testimony for them."[86]

Counting as this *mandatum*, the entry's next section presents an extended quotation of Godmar's and Guilarà's oath from the document that the judge-scribe had written during stage one. This includes the lengthy introduction, the names of the 28 June *boni homines* (from the first group) who would become oath-helpers on 3 July, an expression of the pair's age and infirmity, and finally an explanation of Louis' lost precept. The centerpiece of this quote, however, is the oath Godmar and Guilarà swore at Sant Pau's altar in the church of Sant Pere: the legal-ritual action that reified the lost precept. That reification would be upheld.

Ponç then related how the tribunal proceeded after the presentation of this evidence: the court confirmed the information introduced in the *mandatum*, highlighted Mir's previous reception on 3 July, explained why Sant Cugat's claim had priority over that of the baron's son, prohibited Mir from introducing witnesses, and explained why anything Galí may have done was unlawful. Moreover, in the midst of these pronouncements, Judge Ponç Bonfill Marc sprang the trap he had laid for Mir Geribert. A look at the full text of the ruling is instructive:

> But after this testimony from the witnesses given by a sworn oath, the above-quoted *mandatum* was made and in all ways legally confirmed, just as it can be examined in the roll (*in conscriptis*) for this case by these publications, and with all parties meeting on the appointed final day (30 July) in the church of blessed Santa (Maria), located next to the *forum* of Martorell. And although they long quarreled, the judges seeing the truth of the matter on the part of the church of Sant Cugat, they demanded the above-noted publications (*condiciones*) of the witnesses to which they swore in the aforementioned territory of Octavià. And with the courtroom becoming silent, they did this legally. Then through correct judgment the judges ruled according to their conscience, that the aforementioned

[86] *JRCCM* 244: "Et quia gravati senectute vel infirmitate erant, congregatis in Octavianensi territorio idoneis viris Guisliberto, levita et Barchinonensi vicecomite, et Remundo sancte Sedis Barchinonensis archilevita, et Compagno levita, et Mirone levita, et Isarno Guilelmi, et Remundo Seniofredi, coram supradicto iudice mandatum facientes idoneis viris testimonium suum illis iniunxerunt."

> Mir had received witnesses who were honorable and worthy to testify, (and) for whom the testimony of others was ordered (as oath helpers), that this matter might come to a close since the claim of the said church (Sant Cugat) was in all ways just and truer and also older than Mir's sons' claim was known to be, even with respect to the length and fullness of possession (of Galí and his heirs), whence later a confirmation was made most justly through a series of grants to the church in his right by Prince Ramon, of divine memory, and his wife Ermessenda, who are lords of the Marches and are knowledgeable about this possession.
>
> And therefore it was not just to receive witnesses on the part of Mir, since even if it was lawful to do so, that *aprisio* of Galí from the aforementioned possession out of which this matter arose—just as Mir was prepared to prove in the hearing through other witnesses—was thoroughly unjust and was later dismissed, since in whatever way Galí had seized and designated and claimed there through *aprisio*, he did so in and from the possessions of the holy Church of God. And if he or his descendants retained something there, then they retained it against the order of justice and law and through a presumptuous novelty (*per presumptivam novitatem*), since as we just said, the claim of the church is prior to and greater than the claim of Galí and his descendants, as the time of Louis of divine memory who made this precept approves, and indeed that the writings addressed, which testify to be from the possessions which are around this possession of Sant Cugat, proclaim and teach.[87]

This passage shows that after the submission of the *mandatum*, the parties to the case argued over the merits of each position. Given Mir's accusations that Ramon Borrell colluded with Sant Cugat, we might imagine this debate proceeded with great acrimony. Yet, once Judge Ponç and

[87] My emphasis. *JRCCM* 244: "Postquam autem hoc testimonium a testibus secundum leges iure iurando datum est, et supradictum mandatum factum est atque utrumque legaliter confirmatum, sicut inspici potest in conscriptis pro hac causa condicionibus, utreque partes convenerunt ad constitutum termini diem in aecclesia Sancte Beate (Marie) iusta forum Martorelium sita. Et cum diu litigassent, videntes iudices tantam rei veritatem a parte aeclesiae Sancti Cucufatis, requisierunt testium supra me[mi]nitas condiciones ad quas iuraverant in territorio predicto Octavianensi. Et facto in audientia silencio, eas legi fecerunt. Tunc per rectum iuditium secundum eorum conscientiam iudicaverunt, ut supradictus Miro recepisset suffitientes et idoneos testes ad testificandum quibus aliorum testimonium iniunctum fuerat, ut haec res finem accipere quoniam omnibus modis iusta et verior atque anterior voce filiorum Mironis patebat esse vox aeclesie predicta, nec non et annosa sive possessionis plena, unde in postmodum a principe Remundo, dive memorie, et a coniuge sua Hermessinde, qui domini Marchiarum et ipsius possessionis esse noscebantur, per largitionis seriem in iure eiusdem aeclesie iustissime confirmacio est facta. Et iccirco non fuit iustum a parte Mironis testes recipere, quoniam si ita fuit ipsa apprisio Galindonis ex supradicta possessione unde intencio vertebatur, quemadmodum Miro per allatos in audiencia testes paratus erat comprobare, iniusta penitus et evellenda in postmodum fuit quia quacumque ibi Galindo capuit atque signavit vel apprisiavit in rebus et de rebus sancti Dei Aeclesie haec fecit. Et si aliquid ibi ipse aut posteritas eius retinuit, contra ordinem iusticie et legis sive per presumptivam novitatem hoc retinuit, quoniam sicut iam diximus, anterior est vox aecclesiae et largior voce Galindonis et eius posteritatis, ut tempus dive memorie Hludoici qui eundem preceptu[m] fecit approbat, nec non et ut scripturae eadite ex possessionibus que circa sunt que hanc possessionem Sancti Cucufatis esse testantur proclamant atque edocent."

his colleagues had heard enough, they called out for the assembly's silence and there, in the church of Santa Maria de Martorell, they confirmed the authentication of Godmar's and Guilarà's account and proceeded to their ruling.

At this moment, Judge Ponç used the chain of responsibility to entrap Mir, revealing the consequences of reception. In this very church, Mir had formally acknowledged the oath the court now confirmed. Like the oath-helpers, the *boni homines*, and witnesses themselves, Mir could not undo that acknowledgment. The baron had but one option: he had to address the witnesses' integrity, emphasizing how they had undermined *their* commitment to God, before he could be released from his own. What is more, Mir had confirmed in a sacred space that he was prepared to acknowledge the fact that Louis had indeed issued a royal precept that would surely outweigh any later *aprisio*-based claim. Ponç explained that the abbey's claim was older and grander than that of Mir's sons. The baron's story of Galí's pains and the subsequent comital overreach were thus illegitimate. For these reasons the court rejected Mir's demand to introduce new witnesses. Judge Ponç completely sidestepped Mir's accusations about the count and the system, refocusing the assembly's attention onto the baron's own obligation. Yet, how did the *court* view Mir's position?

Onlookers could note that Mir had been the one who raised the issue of defamation on 3 July. It was Mir who submitted the complaint leading to the 22-30 July tribunal, initiating the proceedings well before the exhaustion of his allotted six months. He had brought no proofs of the witnesses' *infamia* to court, nor had he even further elaborated his allegations. Instead, the baron had pivoted strategies, doubling down on his son's claim in order to more forcefully level criticisms publicly against Guitard and the comital family. Perhaps he hoped this outburst would shift focus away from the defamation obligation, placing Ermessenda and Berenguer Ramon on

the defensive, and drawing the integrity of any ruling against him into question. It is for this tactic alone that Mir brought witnesses. For those present in court, however, the baron's lack of evidence for the defamation was telling: either (1) Mir could find no one to impugn Sant Cugat's witnesses, or (2) Mir no longer officially questioned their integrity, therefore the legal weight of his reception on 3 July stood. For Judge Ponç, regardless of which of these two interpretations might have been correct, both signaled that Mir could not topple the weight of Louis IV's now authenticated precept. The baron's reception and subsequent change of strategy had damned his hopes of securing the properties.

Mir was furious, and if many expected him to refuse judgment, the baron did not disappoint. Ponç writes that the baron, "seeing no justice to be obtained for his son, but struggling to recognize this ruling, said that he did not wish to receive the above-noted witnesses, but instead obstinately stated the case of Sant Cugat to be unjust and that of his son to be the just one."[88] At this point, we must assume, given how such practices usually unfolded, that Mir abandoned the proceedings without permission for the second time that month, leaving the officers and attendees to proceed without him. Mir's name does not appear among those of subscribers.

Mir's feelings on the matter aside, Ponç next explained that "because the law orders it, the judges received those aforementioned witnesses, whose testimony was joined by a series of publications (*per condicionis seriem*) and the testimony of those at Martorell on 3 July.[89] This

[88] *JRCCM* 244: "Videns nil iusticie obtinere filiorum suorum vocem, sed hoc recognoscere contendens, noluit supradictos recipere testes, sed pertinaciter vociferabat iniustam esse vocem aecclesie Sancti Cucufatis et vocem filiorum suorum iustam."

[89] *JRCCM* 244: "Quia lex iubet, iudices receperunt suprafatos testes, quibus testimonium iniunctum fuit per condicionis seriem."

testimony had been read out to the court along with Godmara and Guilarà's oath, and Ponç now recorded it below the statement of Mir's withdrawal. Gelmir's oath, sworn on 28 June, came immediately after this quotation. Finally, Judge Ponç provided four legal citations in support of the ruling.[90] The first measure he cited (*LV* II.4.7), was a tacit reference to Mir's commitment on 3 July. It placed the burden squarely on Mir's shoulders: because his opponent, introduced witnesses against him, it was his responsibility to explain why they should not be heard. Mir failed to impugn the witnesses, and therefore it remained lawful for the court to accept them. The second citation (*LV* V.1.1) explained that once a donation to a religious house occurred, it was irrevocable. The fact that the order granting the property to Sant Cugat was a royal precept aside, Sant Cugat had accepted and took possession of the property. Therefore neither Galí, nor his children, nor Mir could remove it from the monks' hands justly. The third measure (*LV* X.2.6) details that if one occupied a property for more than thirty years, possession became lawful. As the witnesses agreed, Sant Cugat enjoyed possession beyond sixty years, double the legally requisite time. The final citation (*LV* X.3.4) stipulated that if a property was held and that ownership was broadcasted with signs, and no challenge thereafter introduced, then the holding should remain perpetually secure and immune to challenge. Here Judge Ponç indicated that this

[90] *JRCCM* 244: "His autem omnibus sacramentis a testibus datis per auctoritatem legis in qua resonat: 'Si quis cause sue cupiens accelerare propositum testem in iudicio protulerit si ille contra quem causam habet presens adfuerit, et quid in reprobacione oblati testis opponat nescire se dixerit, res siquidem ipsa de qua agitur per oblatorum testimonium testium in iure illius ad cuius partem testificaverunt iudicis instancia contradatur.' Et per auctoritatem legis inter alia dicit: 'Quapropter quaecumque res sanctis Dei basilicis aut per principum aut per quorumlibet fidelium donaciones collate repperiuntur votive ac potencialiter, pro certo censetur ut in earum iure inrevocabili modo legum aeternitate firmetur.' Et per auctoritatem legis que inter alia insonat: 'Nam quod XXX quisque annis completis absque irrupcione temporis possidet, nequaquam ulterius per repetentis calumpniam amitere potest.' 'Verum et ubi unus possessor sine alterius domini mansoribus publice possidens per evidencia signa locum ex integro vendicare videtur, nulla racio sinit ut eius possessionis integritas decerpatur. Unde si alter illic se per presumptivam introduxerit novitatem, nihil nocere poterit possessori.' Iudices huius negocii hec omnia suprascripta perpetualiter retinenda confirmaverunt in iure dominacionis aeclesie Sancti Cucufatis predicti in manu Guitardi, predicti abbatis, ut si quis hoc amplius iniuste movere temptaverit, componat hec que de mala peticione legibus continentur, et XII libras auri purissimi cui iniusticia facta fuerit, et insuper hoc firmum permaneat."

measure is the lens through which he viewed Mir's story of Galí's work on the land. In the earlier passage when Ponç explained Mir's reception, he had directly quoted this measure: *per presumptivam novitatem*. This was not accidental. He considered Mir's story to be a 'presumptuous novelty.' Ponç associated these measures with the oaths sworn by the witnesses (*His autem omnibus sacramentis a testibus datis per auctoritatem legis in qua resonat*), melding the exaction of oaths in sacred space and legal citations into a hybridized judicial strategy, the *condiciones* strategy. With these legal rationalizations explained, the court awarded the property to Sant Cugat, the proceedings at last closed, and the assembly turned to the subscription list.

3.4.4. Stage 4

Mir Geribert remained determined to secure the properties and continued to do so through the courts. Despite Mir's future dominance in the Penedès, at this time, he likely did not possess the requisite resources or familial cooperation to make seizing and holding the lands a plausible alternative. Indeed, Mir's commentary on the comital court during these tribunal stages makes greater strategic sense when considered as part of a broad effort to cultivate local support for a semi-autonomous Penedès powerbase.[91] This would have been especially useful to Mir, given that the head of his family, Viscount-*levita* Guislabert, presently stood with his comital

[91] Bonnassie, *La Catalogne*, II: 627-28, explained that the solidification of Mir's position in the Penedès and the beginnings of closer cooperation between the baron and his cousins leading the viscomital house (and also the bishopric of Barcelona) dated to after the death of Berenguer Ramon I in 1035. By the early 1040s, Mir styled himself as *princeps Olerdolae* and commanded a formidable network of fortresses on the frontier. A degree of the baron's success owed to improved relations with Viscount-*levita* Guislabert, who became bishop of Barcelona in 1035. Evidence comes in 1041 when Guislabert gave the castle of Ribes to Mir. For this document, see Francesch Carreras y Candi, "Lo Montjuich de Barcelona," *Memorias de la Real academia de buenas letras de Barcelona* 8 (1901) 17 (at 399-400). Bonnassie shows that Mir would have been incapable of consolidating power in the Penedès without the acquiescence of the other barons there. This point supports the conclusion that Mir's repeated public withdrawals during the 1032-1033 case were intended to communicate a message about comital legal power. By highlighting the bias toward ecclesiastical institutions, he was attempting to garner support for an eventual consolidation of power south of Barcelona. Thus, despite Mir's continued participation in tribunal proceedings even after this case (a likely necessity until he took Olèrdola sometime toward the end of the decade), we may be seeing early efforts to posture among this group.

adversaries. Mir, however, also recognized he had hit a wall with Judge Ponç. After the trap on 30 July, Mir sought to engage different officials. He still believed that a strategy based on his son's claim was his best argument, but wished to avoid being locked into the commitment to defame the monks' witnesses. Perhaps he thought that his preferred strategy would prevail with a fresh start. Therefore, sometime before December 1032, Mir brought Abbot Guitard back to court before a group of judges. Their names were omitted by the man who would later compose the record for the events in this stage, the *levita*, Bellhom Gerald.

Mir once more outlined his son's claim. As in the record of the 30 July tribunal, the scribe paraphrased the baron's narrative, while providing Abbot Guitard's arguments in the first person:

> I do not know about this *aprisio* of which you speak, but I do know that the kings of Francia and the popes of Rome, and not least the marcher counts of this country confirmed through their own authority and writings this possession to my church justly. This church is required by me, and I retain, and I led it to cultivation from the squalor of wasteland with great dispense, hard labor, and danger on my own (*ex parte*). And I constructed defenses against the infestation of pagans there.[92]

Immediately after this quotation, Guitard submitted a collection of documents including papal privileges, royal precepts, and comital documents (*ostendit privilegia et precepta regum et scripturas comitum*).[93] With the arguments submitted, the judges discussed what to do. Despite

[92] *JRCCM* 246: "Hanc autem aprisionem, quam dicis, nescio, sed scio quod reges Francie et Romanorum presules necnon et marchiones istius patriae comites confirmaverunt per illorum auctoritates et scripturas in iure aecclesie mei monasterii hanc possessionem, quae a me requiritur, et ego retineo, quam de heremi squalore magnis dispensis et duris laboribus atque periculis ex parte ad culturam perduxi, et municiones contra infestacionem paganorum ibi construxi." Guitard's statement that he had never heard of Galí's claim—a central feature of the 22-30 July tribunal—at first glance supports the *CSCV* dating scheme over that offered in *JRCCM*. However, in addition to the consideration of eleventh-century dating norms and other circumstantial evidence (see discussion above), Guitard's statement would be false, regardless of the exact date in 1032-1033. The abbot had first been informed of Galí's *aprisio* claim at the court of Ramon Borrell in 1013, and again in 1016.

[93] It is uncertain which documents the abbot submitted, but the collection likely included at least the problematic confirmation from Lothair IV and the 1002 bull of Sylvester II that Ramon Borrell and Ermessenda amended at

Mir's desire to introduce witnesses in support of his son's claim, the judges stated that they preferred to hear the abbot's witnesses (surely in the form of the documents, as no additional persons are noted as participants), flatly denying Mir the opportunity to submit counter-witnesses.[94] They did, however, provide the baron a reason for dismissing his suit. The abbot's evidence took precedence because the "voice of the precept" was older than any evidence Mir might produce for Galindo's *aprisio*. Thus, the judges upheld the same argument Judge Ponç made on 30 July. They then confirmed the monastery's possession of the property, "just as law orders." Once again Mir's strategy crumbled in court. The baron angrily refused to accept the authenticity of the abbot's documents and, for the third time that year, withdrew from court without permission.[95]

With Mir Geribert's prospects of obtaining the properties growing bleaker, he needed to rethink his approach. Perhaps he had been too assiduous in pursuing the *aprisio* claim. There is no evidence that his antagonism toward comital authority had gained him supporters of consequence; the chain was holding strong. But what of his defamation commitment? The judge had not closed that door. Perhaps Mir's sudden cooperation would catch the judge off guard.

Guitard's requested in 1013 (*CSCV* 382, 451). It is also possible that he included the documents from the first three stages of the 1032-1033 case, constituting a recovery to replace Louis IV's lost precept (*JRCCM* 241, 242, 244). The record from 22-30 July bore comital signatures, including those of Berenguer Ramon, Guisla de Lluçà, and Ermessenda.

[94] *JRCCM* 246: "Volente autem prenotato Mirone conprobare predictam aprisionem maluerunt iudices quos causa fecit esse presentes a parte prenotati abbatis testes recipere quam de Mironis parte quoniam anterior erat vox precepti, quod Hludoicus rex Francorum, genitor Leutarii regis, fecit ex his rebus aecclesiae iam dictae Sancti Cucufatis voce aprisionis, quam prenotatus petitor asserebat fecisse ibi Galindo proavus iam dicti Gilelmi."

[95] *JRCCM* 246: "His autem testibus receptis a iudicibus et confirmata ipsa possessione ab eis in iure iam dictae aecclesiae, sicut lex iubet, postquam Miro predictus abstraxit se sine consultu iudicum de ipsa audientia, et quod noluit recipere supra notatos testes."

Indeed, if Mir could cast doubt on the precept that "took precedence" over his *aprisio* argument, then he might have a chance. As 1032 drew to a close, Mir resolved to seek out the judge.

On 31 December, Mir found Ponç in Barcelona and told him that at last "in accordance with reason, he wished to accuse those witnesses."[96] The scribe tells us that "just as law orders, he patiently heard what Mir said against each one of those witnesses."[97] And Mir had much to tell. He opened his assault on the 28 June witnesses with allegations against the priest, Gelmir. Supposedly, he was at one time a monk, but had apostatized, cast off his habit, and reverted to lay life. What is more, Gelmir had taken up concubines who bore him children. Mir then turned to the other two. Evidently, Guilarà was an adulterer. Wishing to atone for this evil, he later accepted absolution from Abbot Guitard himself (*petitori pro hoc satisfecerat*). The implication was clear: Guilarà was indebted to the corrupt abbot and could not be trusted to give an honest account in court. Finally, Godmar had been circumcised and "abandoned the Christian faith, to live according to the faith of the Muslims."[98] Clearly, in Mir's mind, the infamy of these men negated the probative value of the recovered precept and lay open the path for his son's claim. As Bowman argues, Mir demonstrated solid knowledge of the code in these allegations—such as the chief measures concerning infamy and witnessing, *LV* II.4.3 and II.4.7—and an awareness of how to meld certain strictures to the contours of his legal arguments, seeking advantage in

[96] *JRCCM* 246: "Venit ante iudicem Bonumfilium Marchi Barchinone et dixit illi quia habeat quod reacionabiliter acusare valebat contra testes supra meminitos."

[97] *JRCCM* 246: "Sicut lex iubet, pacienter audivit quod idem Miro unicuique ipsorum testium obitiebat."

[98] *JRCCM* 246: "Obiciebat siquidem Gelmiro, sacerdoti, quod ipse monachus cum benediccione habitus et ordinis monacorum fuerat, et apostatizando ad laicalem conversacionem redierat, concubinas apeten do et filios ex his procreando, habitu religionis monacorum derelicto. Guillarano quoque obiciebat quod alienam uxorem adulteraverat et in audientia domni Guitar di, predicti abbatis, hoc recognoverat, et petitori pro hoc satisfecerat. Gondemaro quippe quod circumcisionem carnis prepucii sui exercuerat, a fide christianitatis deviando et fidem muthleemitarum imitando."

court.[99] Yet, as the baron was about to discover for the second time, in matters of the code, Ponç Bonfill Marc was the expert.

The judge listened to these accusations. They were serious and carried grave implications for Sant Cugat's tenure. Ponç had received their oaths himself, endorsing the credibility of these men. He responded by instructing Mir to produce witnesses to substantiate his allegations. If he wished to destroy the reputations of these men, he would need proof. As Bowman argued, Judge Ponç was likely confident that Mir would not be able to find individuals willing to testify to such fantastical charges.[100] After the passing of more than six months, the fact that the baron was only just now issuing details was telling. Mir was stalling. Moreover, the baron soon revealed his true intention, a trap of his own. He sought to hurry the judge into awarding him the property. If Ponç harbored doubts or believed Mir to be lying, he hid this from the baron who took no note. Mir Geribert proceeded to overreach.

Answering the judge's request, Mir said he did not have the witnesses with him, but would submit them at a later date. While they were all gathered, however, he urged Judge Ponç to receive the witnesses that he *had* brought to court; an especially urgent matter given that they too were of advanced age. Now, of course, these men, called Giscafred and Lobatonus, knew nothing of the infamy of Sant Cugat's witnesses. They did, however, just so happen to have intimate knowledge of Galí's *aprisio*. They were prepared to swear, but Ponç refused to hear them. The judge provided a legal argument that prohibited him from granting Mir's request:

[99] Bowman, "Infamy and Proof," 113. For his discussion of *LV* II.4.3 and II.4.7 and the code's view on the *infames*, see "Infamy and Proof," 99-102.

[100] Bowman, "Infamy and Proof," 113.

> Certainly, this *mandatum* that you seek me to make, on account of fear of the preoccupation of the death of the witnesses to the aforementioned *aprisio* claim, one of which is troubled by great infirmity and the other remains in a state of old age, shall always be invalid, and devoid of every authority of justice, unless you first demonstrate that the witnesses against you are infamous, or first proved them to have issued false testimony against you according to the order of law.[101]

As Bowman observed, Judge Ponç made two essential points in this statement: first, these novel witnesses, Giscafred and Lobatonus, were themselves old and sickly; their judgment was in question. Second, the story concerning the inherited *aprisio* claim would remain invalid until the castellan brought forth witnesses to the defamation.[102] Until he addressed the evidence against him, the judge would never entertain his son's claim. Ponç gave Mir until March of the new year (1033) to find the desired witnesses. Following this hearing at the end of December, Judge Ponç warned Abbot Guitard and Viscount-*Levita* Guislabert that he intended to convene a new tribunal and hear whatever evidence Mir could bring against the monastery's witnesses.[103] The two men pushed back against this decision, citing *LV* II.4.7. They reminded the judge that Mir had only six months to prove the witnesses' infamy. Seeing as Ponç had recognized Mir's right to defame on 3 July and explicitly stated the six-month timeframe, any attempts to substantiate the defamation charge should now be illegal. The scribe does not record Ponç's response to this

[101] *JRCCM* 246: "Hoc vero mandatum, quod a me requiris fieri, propter metum preocupacionis mortis testi um supradictae aprisionis, eo quod unus illorum gravi detinetur infirmitate et alter iam manet in decrepitate aetate, semper erit invalidum, et omni auctoritate iusti cie carebit, nisi prius testes contra te prolatos infames esse conviceris, aut falsum contra te dedisse testimonium secundum ordinem legis prius eos comprobaveris."

[102] Bowman, "Infamy and Proof," 112-13.

[103] *JRCCM* 246: "Qua causa idem iudex monuit Guitardum, supradictum abbatem, et domnum Guislibertum vicecomitem, qui eandem possessionem per ipsum retinebat, ut reiterarent ipsam audienciam et audirent quid supradictus Miro contra sibi prolatos testes dicere asserebat."

criticism, but we know that he waved their concerns aside; the document immediately turned to the reconvening of the court on 18 March 1033 at the church dedicated to Santa Maria de Cornellà, west of Barcelona.

For these proceedings, in addition to Abbot Guitard and Viscount-*Levita* Guislabert, Judge Ponç gathered together important officials from the cathedral, including Bishop Guadall Domnuç (d. 1035) and numerous *levitae*. It is hard to ignore the impression of a formidable display of ecclesiastical solidarity, with the lay clergy of the bishopric—with vested interest in the Penedès—in support of Sant Cugat's tenure. This was the sixth assembly to address the fate of this property in less than a year. All likely felt the need to bring about the end of the case. Mir had stormed out of proceedings on three of these hearings so far, threatening the court's prestige. Those involved must have wondered if he would repeat this behavior. On the day of these newest proceedings, however, Mir never showed—itself a clear statement of contempt. The scribe wrote, "On the day designated for Mir to come to the hearing, he did not come, but withdrew himself from the assembled *placitum*."[104]

With Mir's absence, Judge Ponç moved to close and ensure that neither the baron nor his descendents could pressure any judge in the future to hear proofs concerning the *aprisio* claim. Mir's witnesses were to be rejected until he dealt with those of Sant Cugat. By now, all must have recognized that would never come to pass. Yet, with all that had transpired, especially the baron's repeated assaults on the comital court's authority, Ponç wished to emphasize the legality of his ruling to the assembly. To begin, he announced that Mir was incapable of proving the three witnesses' falsehood, either by law or reason. He provided two rationales to support his

[104] *JRCCM* 246: "Ad diem constitutum venire ad audientiam, non venit, sed de placito constituto se abstraxit."

ruling: First, the royal precept in question had been supported and upheld by both Borrell II and Ramon Borrell. The latter, in particular, had recognized how the monks brought wasteland, lacking inhabitants or the buildings of *aprisio* holders, into cultivation. Thus, there was multi-generational comital support for the abbey's tenure. Yet, the two strongest reasons why Giscafred and Lobatonus should not be heard in the future are that the precept of King Louis IV predated their account of the affair, and the fact that Mir had not dealt with the monks' witnesses properly.[105]

In the record of this stage, the scribe followed the judge's legal rationale with an additional statement. Ponç afforded Mir eleven days to appear and respond. We find that "Because on the appointed day Mir did not wish to come, but went into contempt, the judge confirmed this record of the judgment."[106] Judge Ponç Bonfill Marc then brought the matter to a close, stipulating a fine of twelve pounds of gold to be paid to the monastery in the event of a violation. The case ended.

5.3.5. Case epilogue

Despite the fact that Mir decided not to pursue the matter further, a new claim arose at the instigation of Bernat Otger in 1036.[107] As explained in the chapter introduction, the monastery's

[105] *JRCCM* 246: "Si aliquis iudex fuerit qui dicat idem testimonium debere recepi, hoc non erit iustum neque necesse ut ipsum testimonium susceptum ut valorem optineat a susceptoribus confirmetur, quoniam Raimundus, comes predictus, qui ipsam terram heremam et sine habi tatore et sine edificio alicuius aprisiatoris invenit, iustissime potuit, sicut et fecit, scripturam donacionis exinde huic ecclesie facere, et dare quod pre[de]cessores sui comites illi confirmarerunt. Et non erit iustum seu necesse ut ipsum testimonium recipiatur, quoniam anterior est vox precepti Hludoici supra notati quam ipsa aprisio quam ipsi testes Giscafredus et Lobatonus tempore Poncionis, abbatis predicti monasterii, factam fuisse testificati sunt, et eo quod Miro supradictus non quivit vel potuit sufficienter atque legaliter comprobare infamiam predictorum testium, aut quod falsum contra illum dedissent testimonium."

[106] *JRCCM* 246: "Unde quia neque ad diem super adieccionis noluit venire, sed contempsit, iudex supradictus confirmavit hanc iudicii scripturam."

[107] *JRCCM* 256: In addition to challenging Sant Cugat's hold of Santa Oliva and Calders, Bernat Otger claimed to property at Castellet.

sole tenure, which had been established in 1016, only narrowly withstood this final assault. While we need not repeat the course of the tribunal, the case reveals what became of the accountability chain Ponç Bonfill Marc had forged. With the absence of Ponç in 1036, and considering the deepening political challenges that emerged from Berenguer Ramon's death the previous year, the power dynamics in the county (particularly in the Penedès area) were in flux. Under these circumstances, the chain which had successfully protected ecclesiastical interests from Mir Geribert failed. As a sophisticated deployment of the *condiciones* strategy emphasizing litigant commitments, it was designed to stymie litigant resistance to imbalances within the system. The 1036 case, however, signaled something new. Bernat Otger rejected the system altogether, making this clear from the outset. All subtext was gone. He would not quibble over interpretations of measures in the code or highlight inequity through symbolic withdrawals; he dismissed the code itself. The synthetic power of the strategy was ineffectual under these circumstances.

The star link in Judge Ponç's chain had been Viscount-*levita* Guislabert, now bishop of Barcelona. In his new capacity as copresident in the 1036 case, Guislabert held firm. He "ordered those men on both sides, disagreeing and fighting, to submit to the law, and explained that they ought to give guarantees that they would present their cases to him under the sanction of the laws in the *Liber iudicum*."[108] Guislabert sought to follow procedure. He was not the faulty link; that position belonged to Bernat Otger. On 3 July, when the oath-helpers spoke Guislabert's name at the altar, Bernat had been among the lesser *boni homines*. His role was to ensure those swearing remained true to their obligations. Bernat had also seen Mir Geribert introduce the *aprisio* claim,

[108] *JRCCM* 256: "De hoc alterca]ntes atque inter se contendentes iudicavit Gislibertus, suprascriptus episcopus, et donno Bernardus [Sendredus, et Fulco Geri]bertus, ut ex ambobus partibus misissent se] sub lege, et [dedissent fideiussores ut secum] dum sanccionem legis Libri Iudicum fecissent sibi inter se directum."

receive the oath, and commit to defame the three witnesses. While he does not appear in other stages, his continued attendance would be unsurprising given his own interest in the lands (he was perhaps not close enough to the case to merit subscription in stages 3 and 4). Nevertheless, 3 July was the key moment. Bernat witnessed the capstone of Ponç's linked use of the *condiciones* strategy, the force that ultimately trapped Mir. Yet, given Bernat's expressed low regard for the code in 1036 (not an estimation shared by Mir), he likely recognized the baron's broader conclusion in the 1032-1033 case.

Mir had outlined inequities in the case's history, particularly collusion between Ramon Borrell and the monks. He stressed his points with dramatic withdrawals. These gestures of contempt did not result from disrespect for the code. In fact, the baron withdrew because he believed the officials and his opponent were manipulating the law to their advantage. Mir argued legal nuances with the judges prior to each departure. In the end, this sparing simply afforded Judge Ponç the opportunity to latch Mir to his chain. It is quite possible that Bernat Otger learned from this outcome. To succeed in his own case, and neutralize the community pressure that Ponç carefully built, Bernat ruptured the synthesis of the *condiciones* strategy. At a moment of political uncertainty, Bernat denounced the Visigothic Code, leaving only the more malleable raw material of supernatural power. He used that power to rend the court from its procedural comfort zone. Even though his proposed trial by ordeal proved inconclusive, the resultant negotiated settlement brought Abbot Guitard to the table. There may be more than first appears behind Bernat's final quitclaim of his half of the properties. Before the close of the decade, Guitard struck Sant Cugat's third contract with a potential *castlà*, one Bernat Gelmiró (another

link from 3 July), tasking him with constructing a tower within ten years.[109] If he could manage this, he would hold Calders "*per nostrum fevum*."[110] We do not know what came of this relationship, but, by 1044 it was Bernat Otger who held this position.[111]

These events enhance our understanding of the 1032-1033 case and judicial consequences of the socio-political transformations of the period. The 1036 case does not feature a judge at loggerheads with an outraged litigant, as is evident in many eleventh-century *condiciones* episodes. Here, one litigant dictated terms to the entire court, including the venerable countess, her grandson, the bishop, and judges. Salrach positioned this case as a watershed for change: a new generation of aristocrats was no longer automatically invested in the *placita*-based order and increasingly favored negotiated settlements.[112] While his estimation of what was to come is supported by the starkness of Bernat's actions, its position as a watershed requires qualification. I argue that Bernat's boldness is a milestone on a long road of change; a path stretching across topography marked by imbalanced uses of the *condiciones* strategy and litigant withdrawals during the proceeding decades. Events like the 1032-1033 case and disputes studied in Chapter 4 stand as earlier landmarks. Bernat Otger would not have found his way to this point without such waystones. Many of those earlier cases, taken together with the 1032-1033 case and its epilogue tribunal, afford us an important detail in the history of the *condiciones* strategy. The likes of Bernat de Calabuig, Mir Geribert, and Bernat Otger certainly had a part in

[109] *CSCV* 544. Given the inexact dating of *JRCCM* 256, it is uncertain if this contract was made prior to the tribunal involving Bernat Otger or after it.

[110] Kosto, *Making Agreements*, 216 n. 226; and *CSCV* 544.

[111] *CSCV* 571.

[112] Salrach, *Justícia i poder*, 231-32, argued this case reveals an important shift in thinking about the ordeal and mediated settlement. He explained that from this point forward, resistance to the ordeal lessened and compromises became more common, as the secular aristocracy lost faith in the traditional system.

the looming rupture of the strategy's synthetic nature. Yet, judges like Ponç Bonfill Marc also bear responsibility for damage done to the system. To close our analysis of the 1032-1033 case and better understand the causal forces at play, it is important to reflect on his role, a role largely representative of judges in this era.

Much had changed over the long decade of the 1020s. The deaths of Counts Ramon Borrell and Bernat Tallaferro, Hug of Empúries' violent designs on Ullastret, a struggle between Countess Ermessenda and her son, and a number of other dramas had reshaped the political landscape of the region. By 1032, this turmoil helped define the judicial outlook of Ponç Bonfill Marc, who had developed especially close ties to Ermessenda. He served as legal advisor to the comital house (*iudex palacii*) and was an advocate for its interests as the embodiment of the traditional order, an order challenged by upstarts like Mir Geribert.[113] As a young judge, the indecision Ponç showed in the 1016 tribunal (see case background above) was born from a desire to guide the court within the bounds of correct procedure the code mandated. This of course had resulted in Ramon Borrell capitalizing on the moment and guiding the dispute toward his own benefit, what Mir later called an *iniuste ordine*. Despite that outcome, Ponç's ambivalence conveys his respect for the rules. By 1032-1033, his philosophy had adjusted to a new environment.

In a time of political danger for the comital house, rather than affording both parties equal procedural opportunities, all that mattered was adherence to the traditional system. In the hands of a judge like Ponç Bonfill Marc, the *condiciones* strategy had become a key tool for guaranteeing that adherence. Thus, the tone and function of the strategy within the broader legal

[113] Aurell, *Les noces du comte*, 236-38; and Kosto, "The Elements of Practical Rulership," 71-75. *JRCCM* 223 shows that by 1028 Ponç used the term *iudex palacii* to describe himself.

system had changed significantly from what we saw in early cases like the 834 Fonts dispute or the 913 Vilamacolum case. As long as litigants did not resort to extrajudicial action, procedure was malleable. This helps explain some apparent hypocrisy in Ponç's leadership of the 1032-1033 case. When Mir wished to introduce witnesses for the *aprisio* claim, Ponç repeatedly declared this impossible on account of the code's mandates. Yet, when Abbot Guitard and Viscount-*levita* Guislabert reminded him that Mir's allotted time for the witnesses defamation had expired, the judge disregarded their concerns. Mir had indicated he planned to appear before the court in March, reaffirming the court's authority before the gathered assembly. That appearance was what mattered in Ponç's eyes. The baron's recalcitrance could not be permitted to entrench a pattern in the region, nor could he be allowed to bully the court. Thus, even if Mir had produced witnesses on 18 March, it is likely that Ponç would have found some other reason to prolong the affair. He was stringing the baron along. In a climate of political uncertainty, the legitimacy and operability of the legal system took precedence over rigid adherence to the code itself. It is within this context that Ponç conceptualized the law and its utility in the 1032-1033 case. However, that mentality carried long-term destructive consequences as inconsistent application of the code further illustrated the bias that Mir sought to highlight with his withdrawals. Individuals such as Bernat Otger were watching.

5.4. The *condiciones* strategy in the later eleventh century

Map 11. Sites discussed in case studies of the later eleventh-century[114]

Scholars often isolate the eleventh century as a period of significant change in the social, political, and legal spheres of the Province of Narbonne. There is much supporting this narrative. As Pierre Bonnassie first established, following the death of Berenguer Ramon I in 1035 and with the political turmoil that marked much of the tenure of his son, Ramon Berenguer I, dispute culture in the province entered a period of experimentation as traditional authorities, such as counts, bishops, and their judges, lost their grip over the system. The novel enthusiasm for mediated compromise and even the ordeal (though very rare) reveal a growing interest in alternative forms of dispute resolution. In this period too, Adam Kosto showed that written agreements (*convenientia*) became an important means of forging relationships, though likely not conceived as an alternative to traditional *placita* assemblies. Looking at courts themselves, Jeffrey Bowman illustrated that rigidly structured tribunals during which litigants grounded

[114] Italicized place names are sites of the *condiciones* strategy.

arguments in the Visigothic Code, participants recognized comital presidencies, and judges' evaluated proofs never disappeared. This research, when taken as a whole, signals both significant transformation and continuity.[115] This pairing also appears in a review of the *condiciones* strategy in the later decades of the century.

5.4.1. An expansive spectrum

Rather than a sudden rupture or total collapse, the sources present a widening of possibilities and creative solutions to novel problems that would otherwise foster impasse. The old tribunal structure coexisted with newer ad hoc practices. Setting aside the broader socio-political narrative that has received much scholarly attention, a look at the state of the *condiciones* strategy at this time offers evidence that, in terms of this legal subroutine, there was a relatively balanced mixture of change and persistence in conceptualization, implementation, and description of sacred space in legal affairs. In fact, cases featuring this strategy may be plotted on a rough spectrum, even as diplomatic irregularity and other forces make identifying and categorizing cases of the *condiciones* strategy increasingly difficult. The frequent blend of tradition and novelty makes quantifying how many records pertain to one pole or the other a challenging task. This is why approaching this portion of the corpus as a spectrum and from a qualitative perspective, rather than a quantitative one, offers the best way forward. This

[115] Bonnassie, *La Catalogne*, II: 611-46, explains: "Partout, en Catalogne, les années 1040-1060 fuerent un période de grave péril pour l'institution comtale" (quotation at II: 644). Berenguer Ramon I's death in 1035 triggered an acceleration of castellans carving out independent powerbases and usurping comital prerogatives. Bonnassie explains that the first assault on comital power occurred between 1041 and 1046. A second break came with the rebellion of Mir Geribert that stretched over much of the 1050s. Kosto, "The Elements of Practical Rulership," 69-71, supported and nuanced this observation. Kosto, *Making Agreements*, 26-32, also explains the proliferation of agreements in this period. Bowman, *Shifting Landmarks*, 7-11, argues that observation of such change should not distract us from noting continuity where it existed. He shows how figures like Judge Sendred from *JRCCM* 219 (18 Nov. 1027) represent a corruption of the old Carolingian order, while also serving as a traditional representative of that very order in other cases, such as *JRCCM* 186 (27 Jan. 1020).

concluding section of the chapter elucidates the diversity of this spectrum with representative case studies. Before turning to those, however, it is worth addressing the spectrum as a whole.

At one pole are proceedings that closely adhere to earlier practice, with judges using the synthetic pairing of the code and liturgical action to invigorate court authority. For example, in a 1045 dispute between Sant Cugat and two brothers over vineyards along the Tort River, the proceedings unfolded in a similar fashion to Pere's and Enric's defeat in the 1001 Cornellà de Llobregat case. Before presidents and judges, two brothers succumbed to the use of the *condiciones* strategy at an altar. Like Pere and Enric four decades earlier, their fear of divine sanction compelled them to quitclaim and ritually receive the witness oath against them. In this later period, that deep respect for supernatural power brought to bear in law remained a influential feature of disputing. It could serve as the basis of submissions that reinforced belief in the potency of church space and the efficacy of the larger system. A 1034 dispute held at Santa Creu de Joglars is perfectly reglular, being presided over by the counts vicar, Sunifred de Lluçà. The judge navigated the proceedings in keeping with tradition.[116] This shows that not all lords in Bernat Otger's position felt disinclined to participate within the bounds of established legal norms. Some understood the system's value to their socio-political advancement and looked to assume the role of president. A separate case from sometime after 1055 shows another success. Here, a defeated and excommunicated litigant journeyed to a monastic church in Pallars Jussà to rekindle a damaged relationship with Santa Maria de Gerri and her monks.[117] Such cases persist up to the close of the period, with one coming as late as 1098 at the cathedral of Barcelona.[118]

[116] *JRCCM* 251.

[117] *JRCCM* 170. This document was likely issued after 1055. With the original lost, the earliest version comes from the cartulary of the monastery of Santa Maria de Gerri, see Ignasi Puig i Ferreté, *El monestir de Santa Maria de Gerri*, segles XI-XV, 2 vols. (Barcelona, 1992), 4. It is possible that this copy included scribal errors, which has

Also at this end of the spectrum, the less frequent context of the *condiciones strategy* persisted: the use of sanctuary power to strengthen legal claims to property before contention emerged. One example, resembling Ponç Bonfill Marc's assistance to Sant Cugat in the first two stages of the 1032-1033 case, shows a preemptive action from 1049. It occurred just before two brothers issued a challenge against the see of Vic's property claims at Súria, north of Manresa.[119] Those oaths were essential to the cathedral's defense once the affair became contentious, and helped Vic's tenure survive the withdrawal of an opposing party. As this case conformed closely to traditional practice, it is unsurprising to find the use of ritual acceptance of witness oaths reinforced with a citation of measures like *LV* II.3.1 and *LV* II.1.25.[120] The see of Barcelona

made dating events uncertain. The record notes that the parties reached an agreement during the twentieth year of King Robert II. If we take the start date of Robert's sole rule as the basis, this case should have occurred in 1016, as Salrach concluded in the *JRCCM*. Puig provided 1018 as the date, which was supported by Kosto, *Making Agreements*, 39. Internal facts in the document, however, suggest it was likely composed in the middle or end of the eleventh century. The challenge is the confusion over the name of the countess. The man ruling Pallars Jussà in 1016 was Ramon 'Sunyer' III (d. 1047). Yet, the Count Ramon did not have a wife called Valença; the name of the woman appearing with the count as his wife in this document. Salrach allowed for the possibility that the document was made during the rule of Ramon IV (r. 1047-1098), and it is that count who appears in the text. Ramon IV married Valença de Tost in 1055. Given the apperance of Valença, the mention of a *convenientia*, and a documentary structure that was irregular for the second decade of the eleventh century (the record is entirely in the first person voice), I support a date of post 1055.

[118] *JRCCM* 529. This record shows a normal iteration of the *condiciones* strategy, apart from formulaic irregularities. The defeated party remained to hear the witnesses against him. While he did not receive the oath, he formally quitclaimed.

[119] *JRCCM* 304, 305. These records pertain to 14 October 1049 and 21 October 1049 respectively.

[120] *JRCCM* 305. The judges first base their request for witnesses on *LV* II.3.1, demanding that both parties to the case nominate representatives and ratify their positions. Given the procedural flexibility frequently granted to ecclesiastical litigants, it is unsurprising that the word "both" was merely for show. Once Vic offered evidence in the form of a witness oath, it fell to the see's opponents to receive it. When they would not, the judges again drew on the code. Drawing from *LV* II.1.25, they explained, "Secundum preceptum legis que iubet ut si, ordinante iudice, una pars testes adduxerit et dum oportuerit eorum testimonium debere recipi, pars altera de iudicio se, absque iudicis consulto, subtraxerit, liceat iudici prolatos testes accipere et quod ipsi testimonio suo firmaverint illi qui eos protulit sua instancia confirmare et consignare. Nam ei qui fraudulenter sede Vico sustulit producere testem alium omnino erit illicitum. Ideoque, secundum hanc legem, ad opus prelibate Canonice, sicut diximus, prefata omnia consignamus et manibus propriis subscribendo confirmamus, salva iusticia, tali modo si meliorem vocem potuerint invenire per quam causam suam iuste possint reparare."

likewise pursued a similar strategy to defend its Penedès lands.[121] Yet, some houses used the traditional oath structure in more creative ways still. After a previous disagreement, in 1053, Sant Cugat deployed ritual action to turn a past enemy, a man called Alamany (son of Hug de Cervelló), into a future guardian of the monastery.[122] In these various ways, then, supernatural power, derived from oath exactions and supported under the code, remained an accessible tool. This pole of the spectrum reveals the persistence of the synthesis and procedural regularity that had together defined the two broad contexts of the *condiciones* strategy since the ninth century.

Cases at the opposing pole present the converse. For mention of these cases to survive, it was necessary for scribes to record unconventional documentary proceedings with conventional diplomatic forms; this means that examples at this pole are far less prominent in the corpus. The legal value of preserving documents that record events occurring outside the system would have been negligible. The handful of disputes we do have, however, feature a disintegration of the strategy's pairing of codified law and liturgy after a relatively normal opening of tribunal. The first of these cases was also the most overt: Bernat Otger's 1036 rejection of the code and court procedure in favor of the ordeal. He stood recalcitrant before the embattled leaders of the county. His stubbornness was connected to how courts sourced authority; by rejecting the Visigothic Code—the scaffolding upholding comital and episcopal presidencies—he rejected human management of the system. In this extreme articulation of the ordeal, God's overt display of judgment in earthly conflicts had become an alternative to conventional evidence.[123] Even with the mixed results of the ordeal in this case, Bernat had successfully wrested the tribunal from the

[121] *JRCCM* 277.

[122] *JRCCM* 312.

[123] *JRCCM* 256.

path of traditional practice. Bernat's stance neutralized the dangers of comital favor for houses like Sant Cugat, giving the upstart a better chance. It may not be an accident, therefore, that proposing the ordeal most commonly came at lay insistence.

Bernat Otger's perspective was uncommon, but not unique. Although the ordeal was always a rarity in disputing, a handful of cases at this pole of the spectrum reveal an interest in exploring its utility as a probative strategy. Comparing later cases with Bernat's experience is instructive. As we will see below in the evaluation of a case from 1079, proposal of the ordeal sometimes stemmed from mistrust in the system and suspicion between the various participants.[124] Yet, deviation from norms could be more extreme. When circumstances were right, the code, a procedural oath, and the ordeal could all be rejected. A litigant did just this in a dispute from 1100.[125] The commonality among cases at this end of the spectrum is that they demonstrate the complete fragmentation of the loose conceptual unity that all tribunals drawing on sacred space had up to the middle of the century. In these records, the connection between law and liturgy is absent.

The majority of cases after 1035, however, may be plotted somewhere in the middle of these two extremes, making the boundaries of each pole hard to define. Many cases draw on the central principles of the *condiciones* strategy while drifting far from its traditional usage and formulaic language. They feature a simultaneous investment in the traditional practice of oath exaction in consecrated space, while also displaying adaptation to changing socio-political realities. An illuminating example comes from a 1061 *convenientia*. The document shows the

[124] Stephen White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050-1150," in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas Bisson (Philadelphia, 1995), 89-123.

[125] *JRCCM* 545.

interweaving of oaths and attention to inter-personal relationships born of novel forms of social organization. At issue is a break and reestablishment of fidelity. In the wake of a rebellion, an upstart viscount struck an accord with Count Ramon I Guifré of Cerdanya (d. 1068). Replicating gestures commonly seen in the Rite of the Guarantor, the viscount places his hands above the altar when swearing (*super altare sacratum manibus*).[126] Yet, what was sworn at that *porta caeli* differed from that seen in older episodes of the *condiciones* strategy. As Kosto showed, the oaths in *convenientiae* define relationships and future commitments, while the procedural oaths at the heart of many *placita* were about establishing the truth of the past.[127] Such documents show that it was not interest in the power of sacred space that had changed; it was the scope of its application. Its utility had expanded. In this regard, *convenientae* may serve as an endorsement of at least one half of the synthesis that defined the *condiciones* strategy. The document shows that the parties chose an agreement to settle conflict, rather than the court system. Yet, while the court structure and the code are absent, the power of sanctuaries is clear. Much like the *truth* outlined in a procedural oath, Viscount Bernat's obligation to the count was forged at a threshold of Heaven. Echoes of the *condiciones* strategy may be found in this new form of conflict management.

Below I detail three disputes that represent the breadth of this spectrum underscoring the middle and late decades of the century as a time of legal experimentation. The first, dated to 1041, lies close to the spectrum's traditional pole.[128] On the part of the judge, it shows continued

[126] *JRCCM* 341: "Sicut eis iuratum habeo manibus super sacramentali condicione, et ut predictum sacramentum et finem eis teneam et attendam, sine illorum engan, item, mitto eis in pignora modo omnem meam honorem, quam ex predicto comite habeo et in antea habuero."

[127] Kosto, *Making Agreements*, 53-59.

[128] *JRCCM* 272.

interest in the synthetic nature of the strategy. Yet, for litigants it reveals that cooperation within the system could quickly transform into a withdrawal. The second two disputes are rooted at the opposite pole, and see proceedings largely free of judges' direct control. The second of the three, from the year 1079, shows how the system's lost ability to compel trust among the parties (in certain circumstances) led to use of the ordeal. God's direct display offered a path forward, but the suspicion of the winning party resulted in an ambivalent reversion to a more traditional usage of the *condiciones* strategy. The case reveals that not all participants wished to operate under the same disputing framework. The final case study occurred in 1100. This conflict shows a rejection not only of the code, as Bernat Otger expressed (Visigothic law is not even mentioned), but even the appeal to God's judgment in the case. It marks a moment in which both parts of the *condiciones* strategy synthesis fail to affect the outcome.

To best explore these varying points of divergence from tradition on the spectrum, it is useful to keep the judge-centered approach in mind. Even in examples that feature less engaged officials, or do not feature a judge, we may reflect on the consequences of their absent leadership. What is clear in each case, and in others from this period, is that litigants and presidents exerted noticeable agency in proceedings. I argue that the acceptability of creativity and the growing emphasis on mediated settlement afforded these parties more pronounced roles. In cases where judges are less prominent or even absent, these non-jurist voices resonate most profoundly.

5.4.2. Family strife in Urgell, 1041

This case, occurring in April 1041, displays simultaneous change and continuity, a feature of even many traditional points on the spectrum.[129] Each litigating party was well versed in the Visigothic Code and used its strictures both offensively and defensively. Countess Constança (d. 1059) and her son, Ermengol III (d. 1065) presided over the dispute in the comital palace, but left the management of the affair to Judge Sendred of Cerdanya. An assembly, including notable magnates like Arnau Mir de Tost (d. post 1072), stood in support. Five brothers issued suit against their stepbrother, Guitard, over alodial property at Vilaplana. It appears that the two sides shared the same father, a man called Arnau, but that Guitard was the product of an earlier marriage.[130] Guitard's kinsmen accused him of unjustly and violently seizing the alod which belonged to them by inheritance. Standing firm, he responded, "I acquired the alod in a *placitum* against your mother, Riquilda, who was in possession of it." The five disputed Guitard's account, explaining that the property was not their mother's, but rather belonged to their father, who had acquired it from his own parents. Then, a dramatic story took shape as the two sides attempted to counter one another with dueling references to the code and a grief-ridden family history.

The brothers explained that sometime before 1010, Arnau had lost Vilaplana when Count Ermengol I banished him from Urgell as punishment for murder.[131] Yet, when Ermengol decided to allow his return, Arnau paid to receive Vilaplana back from the count as a benefice along with

[129] *JRCCM* 272.

[130] The fact that the five brothers' mother (Riquilda) was still alive at this time, or at least was alive when Guitard took her to court, suggests that Guitard's own mother (Ermengarda) had been an earlier wife of his father.

[131] *JRCCM* 272, "Et postea amisit eum per homicidium quam fecit et fuit egectus de omnem terram Urgelli."

a pardon. At this point, however, Guitard interrupted to interject an omitted detail: "Arnau sold that alod belonging to *my* mother inappropriately, and without her permission or counsel, and thereafter he abandoned her unjustly." Thus, Guitard argued Vilaplana was really his own mother's possession and that upon Arnau's return to Urgell, he had wrongfully cast her aside and taken the land.

Likely expected by his opponents, the detail was met with a ready defense. Explaining their late father's actions against this woman, the five men shifted the tone of Guitard's addition: "Arnau was compelled by necessity. He relinquished the alod because she (your mother, Ermengarda) was cast out as a leper and sent (to live) apart from other people." The document's scribe, a priest called Eico, explained that Guitard responded. Sidestepping this sad detail, Guitard issued a suit against his brothers (*voluit petere fratres suos*). From later context in the document, it is likely that Guitard wanted to use the same legal argument that had likely won him the Vilaplana property against his half-brothers' mother, Riquilda. They were prepared for this, however. Guitard's kinsmen simply declared that more than fifty years had passed.[132]

Missing the trap, Guitard went on to outline a case based on the fact that he had been a child, and therefore legally a minor when the land was sold.[133] Although Eico omitted the details

[132] *JRCCM* 272: "Ad hec respondit Witardus: 'Ego adquisivi eum in placito de potestate matri vestra nomine Richel qui eum retinebat'. Et illi ad hec dixerunt: 'Ipsum alaudem non fuit de matre nostra sed de patre nostro nomine Arnaldus, qui eum adquisivi per vocem parentorum suorum, et postea amisit eum per homicidium quam fecit et fuit egectus de omnem terram Urgelli. Et postea reverti in comitatum et venit ad mercedem comiti Ermengaudi, prolem Borrelli comiti, et reddidi ipsum alaudem in sua potestate per suum beneficium et dimisit ei ipsum homicidium'. Contra hec respondit Witardus: 'Arnaldus vendidit alaudem matris mee in ipsa Rua violenter absque volumptate et consilium matris mee et postea relinquit eam iniuste'. Ad hec responderunt ceteri fratres: 'Necessitate conpulsus relinquit ea quia dispersa erat a lepra et degecta ab aliis hominibus'; propter hoc iam dictus Witardus voluit petere fratres suos propter possesionem patris illorum. Et illi ad hec responderunt: 'Quinquaginta annos habet et amplius hec omnia supradicta factum est'; ad hec proclamat Witardus vocem pupillaria'."

[133] *JRCCM* 272: "Ad hec proclamat Witardus vocem pupillaria." *LV* IV.3.1 outlines the definition of a minor. Even the loss of one parent could trigger this legal designation, should a child be under the age of fifteen. Thus, when

of Guitard's argument, we can imagine that a wardship-based charge given the case history would have required a reliance on *LV* IV.3.4. Arnau had not provided his son and ward (the minor Guitard) a written account of the sold land as this measure required. If no account had ever been made, the present owner—this would have been Riquilda—would owe Guitard full restitution. Had his opponents *not* mentioned the period of time that had passed, this line of reasoning may have worked, as it likely had against his step-mother. Yet, while Guitard remembered the details of *LV* IV.3.4, he either forgot or sought to omit *LV* IV.3.2. This earlier measure within Book IV, Title 3 concerning legal minors set the statute of limitations for wardship cases to fifty years.

In a structure resembling the record for the 1002 Queralt case, the scribe related the judge's participation through the voice of the party that would ultimately win, the five brothers. They explained how Judge Sendred interrupted the combatants, "diligently asking" if the brothers could present evidence against Guitard's wardship case. Sendred was particularly interested in whether they could *prove* five decades had elapsed since Arnau's alienation of the property. Predicting what strategy Guitard might use, the brothers had come prepared; they stated that they indeed had "true" witnesses.[134] Likely in Sendred's mind, the declaration of fifty years met a probative threshold, though it had not been one reached by his prompting. Presented with an opportunity to exact a witness oath and settle the debate over the code, he finally

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Arnau cast away Guitard's mother, his father became his legal guardian with certain responsibilities to his minor/ward.

[134] *JRCCM* 272: "Unde nos Wilelmus Arnaldus et Raimundus cum ceteris fratres qui sumus de patri vel matri, predictus iudex nos interrogavit diligenter si possumus probare contra vocem pupillaria ad fratrem nostrum Witard de hec omnia sua, peticionem que quinquaginta annos habeat transactos vocem pupillaria lex sopiri decrevit quinquagenarium numerum. Et nos habemus veridicos testes nomine [...]" The final sentence in this quotation is missing in the text.

assumed initiative in the case. The judge reconvened the court at the church of Sant Pere, within the walls of Urgell. In a direct quotation, we hear the words of the witnesses, swearing the traditional *condiciones sacramentorum* oath at the altar of Sant Andreu. Before the saints and God, they recounted the family's tale in full, establishing greater context.

Ermengarda had accompanied Arnau when the murder forced him from the county. She was also at his side when he returned. Soon, however, she contracted leprosy. The witnesses explained that it was certainly necessity that compelled Arnau to cast Ermengarda from his household. Most importantly, they explained that the requisite time span had elapsed since these events and the end of Guitard's minority.[135] Hearing this oath, Judge Sendred's focus narrowed to *LV* IV.3.2, paraphrasing from the measure: "We decree those years spent in minority ought to be calculated, namely from when the father or mother are known to have been absent, that is, whether the time elapsing since the years of minority add up to the sum of fifty."[136] Listening, the witnesses interjected, reiterating that a half century had indeed passed since Arnau's alienation of Vilaplana, "and we swear to everything, and in every manner, because this is true." Thus, as in traditional episodes of the *condiciones* strategy, measures from the code were interwoven into the oath and presented to God. With this discourse between judge and witness pool completed, all eyes fell on Guitard. Would he receive the oath as requested? It was not to be.

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[135] *JRCCM* 272: "Nos simul in unum damus testimonium iuramus per trinum et unum Deum et super altare Sancti Andree qui est situs infra domum Sancti Petri, nos vidimus et audivimus et de presente eramus quando condam Arnaldus abuit factum ipsum homicidium et ipsum alaudem de ipsa Rua venditum, simul cum uxore sua nomine Ermengarda perdiderunt illorum facultates, et fuit degectus predictus Arnaldus de comitate Orgelli et dum reversus fuit invenit ea degecta per chasum lepra ad hec necessitate conpulsus relinquid ea, et abet quinquaginta annos transactos et amplius que hec omnia facta sunt."

[136] *JRCCM* 272: "Et ego Senderedus iudex reminiscens legem quem precepit in Liber Iudicum 'illos annos in pupillorum accionibus conputandos esse censemus quibus videlicet illorum pater aut mater rem charuisse noscuntur, id est, ut ex eo tempore cum pupillaribus annis usque ad quinquagenarium numerum suma pertendat'."

Eico writes: “And although Guitard ought to have received these proofs, he withdrew without the consent of the judge, and he did not wish to receive them.”[137] Upon Guitard’s departure, Sendred consulted with Countess Constança about how to proceed. On her orders, and in conjunction with the instructions outlined in the code,[138] the judge announced that he was legally permitted to receive these witnesses, since Guitard had abandoned the *placitum* without his permission. Similar to the judge from the 1025 Alp case involving Bonadona,[139] Sendred cited *LV* II.1.25 without acknowledging the measure’s conclusion, the portion of the law that afforded Guitard the right to a later challenge of deceitful witnesses. Ensconcing his actions in this selective, though common, reading of the measure, Judge Sendred moved to receive the oath (*recipio hunc sacramentum*) that Guitard had rejected. The ritual required completion. The court closed by awarding Vilaplana to the five brothers. They had succeeded where their mother Riquilda had failed. Undeterred by either the invocation of God’s power before the altar or Countess Constança’s recognition of his opponents’ victory, Guitard abandoned the proceedings.

This tribunal is representative of cases at the more traditional end of the spectrum during this period. While ultimately the *condiciones* strategy was of questionable success, familiar features are readily apparent. This tribunal presents the various parties operating from a position of legal literacy, a traditional facet of the law evident in *condiciones* cases from preceding decades. As Guitard’s withdrawal reiterates, however, the utility of grounding arguments in the strictures of the code had limits. Knowledge of the system and the ability to navigate its norms

[137] *JRCCM* 272: “Et dum debuit predictus Witardus recipere istas provas extraxit se absque consultu de predicto iudice et noluit eas recipere.”

[138] *JRCCM* 272: “Per iussionem iam dicta comitissa et per legalem preceptum quem continent in Liber Iudicum.”

[139] *JRCCM* 213.

does not automatically imply respect for that system. Litigants could advance legally-grounded positions, only to withdraw when faced with opponents' better-supported positions. Thus, this case reveals interest in the Visigothic Code as an offensive weapon rather than as a compelling source of normative authority, at least when it came to accepting one's own defeat. At a time when citation to the code was becoming less frequent, enforcement was a key part of the problem. Here, neither the countess nor the *condiciones* strategy ensured Guitard's acceptance of his kinsmen's legal position. When faced with the authority of God, Guitard reacted much in the same way as Count Hug's mandatory over Ullastret or Bonadona at Alp. He departed rather than receive the oath. In order to recognize how the strategy faired in this enforcement-poor environment, we must recognize the complicated mixture of investment and rejection within the same litigants. This was evident with Mir Geribert in the county of Barcelona in the 1032-1033 case. However, this tribunal reveals it was also apparent at the opposite corner of the province, in the county of Urgell. In this period of transition, even the cases at the more traditionally structured end of the spectrum, such as this one, reveal the insufficiency of the synthesis of codified law and liturgical action. As Judge Sendred and others in his class must have recognized, it was an inexact solution. There was respect for the law and its longstanding traditions, but that respect was surface deep for some. Moving to the Mediterranean coast, we see a more dramatic point of rupture toward the other pole. It was one born of deep mistrust and suspicion between all parties.

5.4.3. Choosing doorways: the ordeal versus witness oaths

Given the contentious nature of tribunals, a litigant's confidence in opponents was likely never high. Ninth- and tenth-century disputants do, however, appear to have largely trusted court officials and the system they shepherded. Even when trouble arose, judges used the *condiciones*

strategy to open a doorway for God's intervention and thereby ensure continued investment in the legal system. It was about cultivating trust. That trust was in short supply by the late the eleventh century. Withdrawals were one symptom, but later cases reveal how participation in established practices at all had become a source of ambivalence for some litigants. In this dispute from the summer of 1079, one party sought to operate beyond its confines.[140]

This party opened another doorway for God's intervention: the ordeal. Perhaps fearing the unpredictability its use would bring, the opposing side, a monastery, redirected proceedings toward more conventional practice. For his part, the comital president found himself caught in the middle, acceding to each side's demands in turn, but satisfying neither. The court was pulled in two different directions and the judges were of little help. Because of these peculiarities, as an episode of the *condiciones* strategy, this case conforms to the established pattern only in part. The synthetic balance had partially collapsed in favor of heightened interest in supernatural intervention. The court invoked sacred space twice. The first was through the ordeal, while the second was a procedural oath executed at a church altar. As will be seen, the reason for this dual invocation was born of mistrust. Strikingly, neither of the two doorways to God's authority seems to have helped fully restore that trust to the process.

Count Hug II of Empúries became involved in the matter when a woman called Arsenda and her son Bernat rushed to his court tearfully seeking his protection. The lady stood accused of a great wrong against Abbot Guillem of Sant Pere de Rodes. Events had begun the previous day, when Abbot Guillem passed through the village of Llançà. Requiring shelter for the night, the abbot's party asked Arsenda and her son for hospitality. She welcomed the abbot and gave him a

[140] *JRCCM* 422.

place to sleep. Yet, not all was as it seemed. In the dead of night, Arsenda and Bernat gathered men in their service, and together with these accomplices, approached the sleeping cleric. They stole all the gold and silver Guillem had with him.

Awaking the next morning, the abbot realized the wealth was gone. He confronted his hostess immediately, demanding to know if she was aware of the missing funds. Arsenda and her son denied any knowledge of the affair. Abbot Guillem, however, was unsatisfied; he announced plans to organize a tribunal to investigate the matter.[141] With his hosts "terrified and also struck with fear of judgment," and because he was asking them to swear oaths to their innocence (*quod quaerebat jurati esse*), they finally acknowledged the abbot had been robbed. However, they denied committing the crime themselves. Guillem was furious. Because they had plotted against him, he declared them to be unfaithful and treacherous. Counseling Guillem about how to proceed, his companions convinced him to accept restitution (*directum*) from Arsenda. Yet, the lady could not produce the necessary sum. In that case, Guillem told her that he would instead accept all that she had in compensation. Hearing this, Arsenda and her son fled to the court of Count Hug, pleading that he protect them from the restitution payment.[142]

[141] *JRCCM* 422: "Cumque diu requisitum esset furtum, illis quoque negantibus et jurantibus se numquam hoc fecisse nec conscii esse, elegit abbas iudicium facere per quod rem furatam posset investigare."

[142] *JRCCM* 422: "Nam quadam die praedictus abbas venit Lancianum in propria domo Sancti Petri ospitandi causa. At illa praefata Arsendis, cum filio eius praelibato, aliisque hominibus venerunt ad serviendum sibi lectum sternere atque calciamenta solvere quod et fecerunt cum hominibus suis. Illo denique jam pregravi somno dormiendo quia conticinium erat venerunt cum accensis faculis atque candelis et furati sunt ei aurum et argentum quod ferebat secum. Cumque diu requisitum esset furtum, illis quoque negantibus et jurantibus se numquam hoc fecisse nec conscii esse, elegit abbas iudicium facere per quod rem furatam posset investigare. Tunc, perterriti atque timore judicii concussi, recognoverunt se quod quaerebat jurati esse et insuper, quod peius est, obiecerunt ei delestabile crimen quod nefas est dicere. Haec de causa praelatus abbas, nimium iratus, dixit eis baudiam et tradiccionem in hoc quod dixerant et fecerant et facere statuerant de eo habere factum. Idcirco abbas, inquisitis ab eis fideijussoribus ut directum facerent et non adeptis, accepit sibi omne quod eorum invenire potuit in honore Sancti Petri. Sed nec ita directum invenire quivit. At illi deceptores et fraudalores, dicentes se indebite haec mala pati, ad comitis praecellentissimi Ugonis cucurrerunt vestigia postulantes ab eo directum atque justitiam et defensionem."

Moved by Arsenda's and her son's appeal, Hug established a *placitum* and summoned the abbot. Guillem arrived, but doubted the justness of the proceedings. Considering the tribunal unworthy (*quia indignum ducebat*), he demanded full restitution of the stolen sum.[143] Faced with the abbot's suspicion of his court, Hug asked Arsenda if she was able to pay Sant Pere the restitution for her treachery and infidelity (*tradiccione et baudia*). The lady instead begged for mercy, placing herself, her child, and all that she owned under the count's power. Understanding that the abbot mistrusted her and the proceedings, she suggested that she be permitted to undergo the ordeal of hot water in order to exculpate herself of the crime. Should she fail, she offered her person and property to the count. Hug endorsed this test, and ordered the parties to meet at *Villa Cannelis* on the appointed day. The matter would be run by three of the count's judges, and a large assembly gathered to supervise the ordeal.[144] Arsenda plunged her hand into the scalding water. When she removed it, all saw that it was burned.

Three days later, at the order of the judges, Arsenda appeared before the count at the church of Sant Feliu, in the village of Vilajuïga. She showed her hand to the court, and all saw that the wound had not healed. Thus, here in sacred space, it became apparent to the assembly that Arsenda—under divine scrutiny—had failed. Triumphant, but unsatisfied, Abbot Guillem demanded that Hug grant him justice in the matter and give Arsenda, her son, and all their property to him, as had been agreed.[145] However, this outcome did not occur immediately.

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[143] *JRCCM* 422: "At ille, comotus eorum lacrimis, praecepit abbatem ad placitum tendere et qual tulerit restaurare, quia indignum ducebat sic homines Sancti Petri levi culpa a domitius cicere et sua omnia auferre. Coactus enim abbas praedictus et sua omnia reddidit quamvis iniuste et justitiam petivit."

[144] *JRCCM* 422: "Et omnibus circum adstantibus quorum nomina longum est per singula scribere quos in fine huius cedulae reservavimus quonnumerare."

[145] *JRCCM* 422: "Tunc, sigillo judicis, sicut constitutum est, sigillata manu, post tertia die apparuit manus eius busta. Factum est hoc iudicium intus in ecclesia Sancti Faelicis in Villa Iudaica. Tunc abbas, videns quod factum

Because Guillem's doubts had not subsided, he resolved to proceed with care: perhaps the abbot did not trust the ordeal to firmly resolve the matter; maybe the norms surrounding its execution were too ill-defined. Subsequent events, however, suggest it is most likely that the cleric felt that the ordeal did nothing to establish a commitment from the *count*. It does not appear he trusted Hug to stick to his word. He may have had cause for this clear suspicion, given that the count had been sympathetic to his opponents' tears (*comotus eorum lacrimis*). Guillem sought something that would render the outcome permanent. The atypical performance of the ordeal in this case did not include an opportunity for a device that would hold the count accountable. However, a traditional procedural oath in a church would. This is what Guillem desired; the abbot wished to invoke the court to employ the *condiciones* strategy.

Therefore, the abbot and the count traveled together to the church of Sant Geralli in the nearby village of Stagniolo, "in order to legally prove the matter according to the ruling of Judge Ramon Guillem. And in this way the woman and her son would be placed under his authority, along with all that they owned."[146] Judge Ramon Guillem guided the action, calling forth his colleague, Judge Ramon Bonfill, and another man called Ramon Admar. The two men came forward and swore a truncated form of the *condiciones sacramentorum* formula at the altar of Sant Gerald, recounting events thus far and stressing the count's commitment prior to the ordeal. Abbot Guillem and Count Hug themselves had roles in this ritual action. In the only first-person line of the document, Hug committed to the abbot, "I the venerable Count Hug give and place under the control of Sant Pere and Abbot Guillem all that is written above without any reduction

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fuerat et comodo combusta manus apparuit, petiit justitiam a supradicto comite. Ille vero volens satisfacere ipsam fraudatricem cum possessione sua et filii sui in abbatis praedicti potestatem voluit mitere."

[146] *JRCCM* 422: "Fecit legaliter comprobare secundum ordinationem judicis Reimundi Guilielmi quomodo vel qualiter in eius potestatem semedipsam mulierem cum filio suo miserat cum omni possesione eorum."

to be held in perpetuity."[147] With the witnesses' and Hug's words affirmed before God, the matter closed.

At first glance, a comparison of this dispute to more typical examples of the *condiciones* strategy raises hurdles. Rather than a property dispute following the familiar trajectory of standard *placita*, the matter focuses on criminal theft. Moreover, the consequences for Arsenda's defeat were far more severe than Guitard's loss of Vilaplana in the previous case study. Together with her son, the lady faced a future in servitude. Despite these differences, we stand to learn much about a changing judicial landscape through comparing this dispute to more traditional examples featuring supernatural power invoked in sacred space. The conception of truth-finding did not depend on the nature of the wrongdoing. A rare murder case from Barcelona in 1023 is illustrative of diverse use. During those proceedings, the probative tool used to vindicate the *levita* canon was an oath sworn at an altar from the suspect himself, the same tool used in land disputes.[148] Here, Arsenda—the figure who proposed the ordeal—did not first attempt to swear such an exculpatory oath at a church. Her pleading of her innocence the morning after the theft had not swayed Abbot Guillem (*illis quoque negantibus et jurantibus*). Regardless of the count's or the judges' thoughts on the matter, the abbot might not allow the court to seek a more formal version of this means of resolution. It is noteworthy that Arsenda did not join the party eventually swearing at Stagniolo. The event was about Count Hug's responsibility to Sant Pere. With the more traditional path toward exoneration closed to Arsenda, the lady resigned herself to facing God's direct judgment.

[147] *JRCCM* 422: "Ego venerabilis comes Ugo dono atque trado in potestate Sancti Petri et abbatis Guilielmi haec omnia praescripta absque ulla minoratione perpetim abitura."

[148] *JRCCM* 203.

As events like the 1036 tribunal involving Bernat Otger show, the legal culture was changing (even if that change proved uneven and sporadic). Previously ancillary aspects of the law, like the ordeal, had become more plausible. This case may stand as an example of a trend, that, if experienced more broadly, would render the ordeal more attractive to disputants, judges, and presidents alike: the parties to this case mistrusted one another, and therefore—given that among them were those responsible for running courts—mistrusted the system itself. In a climate of deepening suspicion of holders of traditional power, dramatic and publicized displays, such as miraculous healing of burned hands, had become necessary. Unlike witnesses or documentary accounts of the past, a healed or unhealed hand could be seen *in the moment* by all those gathered for an assembly. This could allow vulnerable courts to bypass other forms of proof that were previously accepted with less suspicion.

These issues bear further exploration. One way to examine the effects of mistrust is to consider our judge-first approach to reading these cases. We learn much from the fact that such a method is challenging here. The three judges involved were not responsible for decisions concerning proceedings. The two ritual actions, the ordeal and the procedural oath, were introduced at the suggestion of the litigants and confirmed by the count. The judges, no longer guiding the process, merely fulfilled judicial tasks at the request of the other parties. Judge Ramon Guillem's experience had drifted far from that of predecessors like Bonhom, Sunifred, or Ponç Bonfill Marc. As I posited earlier, judges may have been victims of their own success. In earlier decades, their procedural flexibility in favor of comital allies likely damaged their appearance of impartiality. Ramon Guillem, therefore, was not in a position to intervene between Arsenda, Abbot Guillem, and Count Hug. He could not neutralize their mutual mistrust of one

another, nor that mistrust's caustic effect on legal norms. He was not in control. Turning to our final dispute, we find even more stark consequences when there were no judges whatsoever.

5.4.4. A Doorway closed

A final case study constitutes what is perhaps the most extreme example existing at the deviant pole of the spectrum.[149] In fact, this dispute, dated to the spring of 1100, presents the inverse of traditional uses of the *condiciones* strategy. It still features the cultivation of supernatural authority at a church, but ends with a successful rejection of its inclusion in proceedings. For a litigant who held a vice-grip on the local community, not even God's direct demonstration through the ordeal was welcome as a probative tool. Such individuals did not deny divine authority, but rather, understanding the advantage it afforded opponents, forbade its invocation all together.

Late in April, an assembly of clerics, soldiers (*militum*), peasants, and learned men (*scientes*) gathered before the church of Santa Eugènia de Berga, just south of Vic. In lieu of a count or bishop, and with no judges present, two local notables called Guillem Borrell d'Heures and Pere Miró de Muntanyola attempted to manage the assembly. The absence of a titled lord serving as president for these proceedings, hints at a community lightly touched by traditional forms of political authority. Before the assembly, a local lord named Ramon Bermon and a group of castellans supporting him (*cum meos castellanos*) insisted that one Arbert Salomó and his heirs possessed a holding at Serra that was subject to his *baiulia*, or bailiwick. The *baiulia* was recognition of another's "protection" over a designated property, and a resultant obligation to pay a *receptum* fee for that service. Its use against small-holders like Arbert was an established

[149] *JRCCM* 545.

practice by 1070.[150] Guillem Borrell and his compatriots asked Ramon Bermon if they or any of their men could testify to their assertion concerning Arbert's lands at Serra. These mediators clearly wished to provide some semblance of order to the proceedings. They considered the procedural oath sworn by witnesses (an invocation of the *condiciones* strategy) to offer the best way forward. Ramon Bermon, however, had no witnesses. It did not matter. He would not recognize or be pulled into the traditional structure.[151]

Arbert Salomó found himself in a position resembling Arsenda's in the 1079 theft case. In neglecting to provide basic evidence for the *baiulia* but not backing down, his opponent was denying the court's legitimacy. Thrust onto a defensive footing, the vulnerable defendant ventured proof of his own. Like Arsenda, he requested to undergo the ordeal of hot water. Ramon Bermon may have prevaricated when it came to this proposal, for he seems to have said nothing as the process began: "And thereafter, when mass had been said over his body, Arbert was prepared, so that he might plunge his hand in the cauldron which was bubbling before the door of the church of Santa Eugenia, and the aforementioned plaintiffs did not wish to receive

[150] Bonnassie, *La Catalogne*, II: 597-98; 761, discussed the *baiulia* in terms of a seigneurial enserfment of the eleventh-century peasantry. While the idea arose around the millennium, by the end of the eleventh century, it had assumed an inherently exploitative character. Paul Freedman, *The Origins of Peasant Servitude in Medieval Catalonia* (Cambridge, 1991), 99-103, examined the *baiulia* under similar contexts, but noted that the process of enserfment did not begin in earnest until the twelfth-century, as has been observed by Thomas Bisson, *Tormented Voices: Power, Crisis, and Humanity in Rural Catalonia, 1140-1200* (Cambridge, 1998), 36, 112. For details of how the concept pertained to castle-holding and the obligations that "beneficiaries" owed lords for their protection, see Kosto, *Making Agreements*, 95. The idea of the *baiulia* would become enshrined in the *Usatges* of Barcelona, see Us. 120 "In baiulia vel guarda," *Usatges de Barcelona: el codi a mitjan segle XII*, Joan Bastardas i Parera, ed. (Barcelona, 1991), 132.

[151] *JRCCM* 545: "Et super hoc iudicaverunt Guielmo Borrelli de Edres et Petro Mironi de Montaniola quod Raimundo Bermundi cum suos castellanos se provassent ista baiulia si umquam habuissent seniores Taradel-lensi et unquam non potuerunt dare nullum testimonium."

it."[152] This mention of the mass and its connection to the action that Arbert Salomó was about to undertake is suggestive. The celebration formally invited God's participation, connecting it to Arbert Salomó position in the case. The ordeal, if Arbert would emerge successful, had the potential to neutralize the power imbalance between the disputants. When Ramon Bermon's refusal came, it did so in the manifested presence of God. What is most intriguing is that this channeled authority did not dissuade the plaintiff. Contrary to Arbert's hopes, it could not help him.

In more traditional cases of the *condiciones* strategy, a withdrawing litigant's refusal to participate in the Rite of the Guarantor by receiving an oath did not prevent the advance of that ritual action or the court's acceptance of the oath as proof. Judges strengthened proceedings by doubling down on the synthetic nature of the strategy with (1) a legal justification for accepting witnesses through *LV* 1.II.25 and (2) their own reception as a stand-in for the withdrawn disputant. This pattern is clear in the 1041 dispute between Guitard and his half-brothers over Vilaplana. If this present assembly in 1100 had operated under that mindset, Ramon Bermon would have hit a procedural wall and withdrawn. Thereafter, the court would have followed through with the ordeal or some form of the earlier call for testimony. Neither course of action happened. The two mediators abandoned the ritual in progress. Guillem Borrell and Pere Miró instead urged Arbert Salomó to face the reality of local politics and accept Ramon Bermon's *baiulia* over Serra. The *condiciones* strategy, even a form that made room for the ordeal, was ineffective; in this instance, it could not transform the community belief in sacred space into community legal consensus. Arbert had no choice but to submit.

[152] *JRCCM* 545: "Et postea fuit paratus Arbert per suum corpus quando habuit missa dicta, ut misisset suam manum in ipsa caldaria qui calefiebat ante ostium ecclesie Sancte Eugenie et istos clamantes supradictos noluerunt recipere."

When compared to earlier case studies, this dispute is exceptional. Ramon Bermon did not reject the court over perceived bias as had Bernat de Calabuig, Bonadona, or Mir Geribert. He did not hold back because he favored the ordeal like Bernat Otger. His recalcitrance did not owe to an undercurrent of mistrust as we found in the preceding 1079 case. He would offer no proof for his *baiulia* claim, not even the direct judgment of God. Instead, this castellan demanded the assembly adhere to his will unconditionally. Getting his way in the matter, the court did just that.

Ramon Bermon was in a position to make such a demand, given his stranglehold on local politics and backing by other castellans. Therefore, it is unsurprising that Paul Freedman underscored this case when discussing the rise of a *régime seigneurial* in Catalonia.[153] Yet, there is just as much benefit in recognizing what this case says about the traditional order as there is in what it reveals about novel social organization at the turn of the twelfth century. Despite the court's attempt to exact both a witness oath and the ordeal, the *condiciones* strategy failed when faced with a complete rejection of all procedural norms. The legal use of sacred space—a feature of the region's dispute culture for three centuries—fell before castle-based lordship and its stranglehold on local communities. As a castle-holder of note Ramon Bermon knew the court had no power to compel him. The two sides did not enter into the proceedings as equals. This raises the question of why he would even bother attending. A likely answer is that Ramon Bermon saw a performative opportunity that far surpassed any available to Mir Geribert. Display before the community and the consensus it could garner was the one component of the old system that this lord valued. Arbert Salomó was here for the sole purpose of publicly

[153] Freedman, *The Origins of Peasant Servitude*, 100.

acknowledging the *baiulia*. As the performance unfolded, Ramon's showed the futility of court-based defenses. He was issuing a warning to future opponents, suggesting they abandon hope for a similar reliance on courts. This assembly shows a local world in which a lord had disabled it. When it came to disputing, the doorway to Heaven was closed.

5.5. Conclusion

The actions of Ramon Bermon stand in stark contrast to other episodes of the *condiciones* strategy, surpassing even the recalcitrance of Bernat Otger or Count Hug of Empúries. This 1100 affair over the *baiulia* claim stands as the most extreme example of the deviant pole of the spectrum. Although the case signals change is neither evident in all areas of the province, nor did it always manifest with the same intensity. In this same decade, there were more conventional uses of the *condiciones* strategy. For example in 1091, the cathedral of Barcelona hosted a case that involved the legal use of sacred space. Despite minor irregularities, it was heard before a count and featured the firm leadership of judges.[154] In a case from 1093, the Visigothic Code featured prominently as the court sought to mitigate the danger of a litigant's withdrawal from Sant Pere de Calaf.[155] Finally, 1098 marked a successful use of the *condiciones* strategy at Barcelona. It conveys a sense of procedural normalcy comparable to the more effective uses of the strategy from the ninth or tenth centuries.[156] As Bowman argues when considering the legal system more broadly, it is important to recognize that radical change coexisted alongside continuity.[157] While our pool of evidence is quite small for cases of dramatic change, it is

[154] *JRCCM* 497.

[155] *JRCCM* 505. The measure cited was *LV* II.1.25.

[156] *JRCCM* 529.

[157] Bowman, *Shifting Landmarks*, 7-11.

possible that local power dynamics weighed heavily in determining the efficacy of the *condiciones* strategy in the later eleventh century. Geographic variation is thus likely another defining feature of the spectrum discussed above.

This chapter, together with Chapter 3 and Chapter 4, has explored the circumstances that led to this varied judicial environment at the end of the century. The mistrust displayed by Abbot Guillem in 1079 and the boldness of Ramon Bermon in the face of supernatural pressure were products of a long journey with its origins in the tenth century. Ató and Sunyer's rejection of Judge Joan's letter in 980 stands as an early landmark, leading to the withdrawals of the first three decades of the eleventh century. Yet, as this chapter has sought to show, the 1032-1033 case and its epilogue stand as our clearest view of an important process underway. Judge Ponç Bonfill Marc and Mir Geribert participated in an extended discourse about the mutability of the code, procedural consistency, bias, and clerical privilege in the comital-led legal system. In a world in which community consensus carried implications for enforcement, both men sought to publicize their points with dramatic action before well-attended assemblies. The preceding analysis of that case and the disposition of Bernat Otger in the 1036 dispute over the same properties reveal that while Judge Ponç and Sant Cugat may have won in the short term, it was ultimately Mir whose message had lasting consequences.

The 1032-1033 case its epilogue cannot be seen as the cause of the spectrum's emergence, but they do show a broader transformation accelerating. The counterstrategies of Mir Geribert and Bernat Otger stand as more sophisticated extensions of the responses issued by Bernat de Calabuig, Count Hug of Empúries, and others in the first three decades of the century. The wall each of these earlier litigants had hit when trying to counter the *condiciones* strategy was the pairing of supernatural authority and procedure grounded in the Visigothic Code. By

Bernat Otger's time, a litigant had divorced those halves of the strategy. He rejected the code and wrested procedural control from officials. In the decades after 1036, a period of significant social and political reorganization, declining faith for the power of the code is evident in episodes like the 1079 case. Arsenda and her son considered the ordeal, not a code-based procedural oath, as the only way to avoid enslavement. It is Ramon Bermon's victory at 1100, however, that marks the culmination of this journey. The *condiciones* strategy had not disappeared from the dispute culture of the Province of Narbonne. However, like the broader system of which it was a part, the strategy faced competition from other forms of conflict management and prevention. The era of its greatest influence had ended.

Conclusion

The legal value of sacred space in the Province of Narbonne, 800-1100

The sudden death of Count Ramon Borrell in 1017 ushered in a storm of political uncertainty that his wife and partner, Countess Ermessenda, was left to weather alone. The 1018 dispute over Ullastret was among her first tests. In facing this challenge, Ermessenda was successful. She capably withstood the attempt by Count Hug I of Empúries to goad her into trial by combat. The countess understood that the law was a pillar of comital power and she would not participate in an extrajudicial means of resolution. This case has fostered much discussion for what it tells us about the outset of a period of socio-political crisis between ca. 1020 and 1060, the rise of seigneurial structures, and the prowess of adept female leaders.[1] My study, however, has endeavored to explore a well-known aspect of this case that scholars have often taken for granted.

The countess introduced six witnesses who were prepared to swear in support of her claims. Guided by Judge Ponç Bonfill Marc, they traveled to the cathedral of Girona and there made their oath. Tradition sheds light on the manner of their swearing. As convention dictated, they would have extended by their own hand a draft of the case's documentary record over the altar for saintly inspection. Not only would this make their own knowledge of Ullastret visible to

[1] *JRCCM* 178. For select evaluations of the case, see Ramon Abadal i de Vinyals, "L'abat Oliba i la seva época," in *Dels Visigots als Catalans*, ed. Jaume Sobrequés i Callicó. 3rd ed. 2 vols. (Barcelona, 1989), II: 141-146; Santiago Sobrequés, *Els grans comtes de Barcelona* (Barcelona, 1985), 23-24; Patricia Humphrey, "Ermessenda of Barcelona: The Status of her Authority," in *Queens, Regents and Potentates*, ed. Theresa Vann (Cambridge, 1993), 27-28; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 51-52; Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 107-08, 110-11; Antoni Pladevall, "La comtessa de Barcelona, Ermessenda de Carcassona," *AARS* 109 (2011), 527.

supernatural powers, but so too would they exhibit Ponç's written legal argument in favor of Countess Ermessenda's tenure; a defense rooted in multiple citations from the Visigothic Code. In this way, the witnesses helped in the judge's efforts to synthesize the power of codified law and liturgical ritual in a sacred space. In the preceding chapters, we have explored that synthesis to better explain its value in disputing, its origins, the forces that powered it, and the circumstances of its eventual rupture.

6.1. The *condiciones* strategy

The importance of altars, oaths, and churches in the legal culture of the ecclesiastical Province of Narbonne is clearest in the corpus of testamentary publications and documentary recoveries using the *condiciones sacramentorum* oath structure. Research into such usage has better integrated the region's sources into broader discussions of documents as ritual objects in medieval Europe. While employing unique diplomatic forms, the lands straddling the eastern Pyrenees had more in common with regions to the north than early observers of a persistent *romanité* imagined (see Introduction). As the Ullastret case above illustrates, however, there was another side of such practices in law. This side merits analysis in its own right as a form of synthetic legal thinking about conflict management and prevention: the *condiciones* strategy.

Isolating records that include the use of a church for a dispute, along with select non-contentious legal actions in sanctuaries, illustrates what effect that understandings of sacred space and humans' spiritual commitments had on regional adjudication. The synthesis of codified law and ritual use of altars offered judges and other parties a strategic framework with which to exert greater control over proceedings. This subroutine of law was employed selectively, occurring in only 97 records (17% of cases considered). This infrequent use highlights that, while it was perhaps standard for recoveries and testaments to be performed with

a ritual act, the inclusion of such action in *placita* courts was a choice. A close reading of cases reveals that issues surrounding the sourcing of authorities was central to the decision to implement the *condiciones* strategy, though the political context of insufficient authority at assemblies varied by period and parties involved. Although the number of surviving cases from the three centuries considered is quite small, the records composing this group of disputes make most sense when read in this light. The *condiciones* strategy as an analytical tool does not allow us to define every facet of dispute resolution in the province, but it does illuminate the synthesized intellectual resources that judges, presidents, and some litigants used to ensure the system's workability under challenging circumstances.

To understand the utility and efficacy of the *condiciones* strategy, we must appreciate the importance of place and audience to its invocation. The joint study of *dotalia* and central themes from the *ordines* that were likely available in the region allows us to define a community belief in sacred space: a consensus conception that churches were bridges between Heaven and Earth and, therefore, could be accessed for salvation and other necessities. Transcending boundaries of class, education, and clerical/lay status, this conception had a normative impact on frontier peoples. Remarkable moments, like the 891 dedication of Sant Andreu de Baltarga, show an intense drive to keep the doorway to Heaven open. As Bishop Ingobert discovered, even the *potential* of interrupted service could bring neighboring villagers into conflict.[2] This conception of real sacred space was deeply-held, sophisticated in its scribal articulation, and remarkably stable for three hundred years, and beyond. The various roles judges played at the dedication celebration indicate that they understood the hold local churches had on people worshiping in

[2] *Dotalies* 15.

these spaces. The fact that they observed similar conviction across the social spectrum underscores the attractiveness of worship centers as sources of supplementary authority for assemblies. That recognition, first occurring during the time of the ninth-century reforms, was the likely impetus for the development of the *condiciones* strategy.

Judges did not invent this ritual subroutine from nothing. They re-coded Visigothic practice and early iterations of the *condiciones sacramentorum* oath structure by placing concerted emphasis on the space hosting ritual action. As witnesses held the text of their oath over the altar, they stressed that very edifice as an authority in its own right, divorced from earlier associations with the Gospels and statements of orthodox commitment. In light of the center-periphery dynamic at play between the altar and the enveloping church—a conception seen in the consecration *ordines*, *dotalia*, and various liturgical rites—we can see this narrowed emphasis was meant to focus attention on the place at which the assembly was gathered. The authority invoked there was that of God and his saints. Records of these assemblies feature the inclusion of citations to the code alongside this spiritual invocation at an altar, as seen in the Ullastret case. In this way, judges like Ponç Bonfill Marc converted community consensus about the space into consensus behind a legal position grounded in codified law.

6.2. A judge-centered system

Scholars of the ecclesiastical Province of Narbonne have pieced together the region's post-Carolingian history without the aid of coeval narrative sources, beyond the semi-fantastical *Gesta comitum Barcinonensium et regum Aragoniae*.[3] Much of what we know about significant

[3] Stefano Cingolani and Robert Álvarez Masalias, eds., *Gestes dels comtes de Barcelona i reis d'Arago* (Tarragona, 2012). Given that this text is of a particular twelfth-century milieu, seeking to aggrandize the deeds of the family that had founded the monastery of Ripoll, its relevance for a study of the period in question is limited. For discussions of the biases and objectives of this *gesta*, see Nathaniel Taylor, "Inheritance of Power in the House of Guifred the Hairy: Contemporary Perspectives on the Formation of a Dynasty," in *The Experience of Power in*

events comes from the documentary corpus and supplementary sources.[4] Even in studies of law, the region's counts, bishops, abbots, magnates, and rebels loom large. These players take center stage as presidents and seasoned litigants exerting influence over court outcomes. While such notables, like Countess Ermessenda or Abbot Guitard of Sant Cugat, were indeed formidable personalities at tribunals,[5] their prominence in the literature sometimes overshadows the centrality of judges. Theirs was a class with considerable control over the course of individual proceedings and the system at large. In the preceding chapters, I have highlighted as a through line the various considerations with which judges contended when invoking the *condiciones* strategy. With those stories told, it is necessary to comment on what this judge-centered approach has revealed about these jurists and the legal system under their care.

Of course, judges were not a monolithic class mechanically enforcing static interpretations of Gothic law. They were professionals of varied backgrounds (both clerical and lay; some with humble careers, some serving comital and episcopal elites). While scholars have

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Medieval Europe, 950-1350: Essays in Honor of Thomas N. Bisson, ed. Robert Berkhoffer III, Alan Cooper, and Adam Kosto (Farnham, 2005), 132-35; and Thomas Bisson, "Unheroed Pasts: History and Commemoration in South Frankland before the Albigensian Crusades," *Speculum* 65 (1990), 281-83.

[4] For examples of this approach see: Stefano Cingolani, "L'Abat Oliba, el poder i la paraula," *Acta historica et archaeologia mediaevalia* 31 (2013), 115-62; Adam Kosto, "The Elements of Practical Rulership: Ramon Berenguer I of Barcelona and the Revolt of Mir Geribert," *Viator* 47 (2016), 67-94; Josep Salrach, *L'assassinat de l'arquebisbe Ató (971) i les lluites pel poder en els orígens de Catalunya: Discurs de recepció de Josep Maria Salrach i Marès com a member numerari de la Secció Històrico-Arqueològica, llegit el dia 30 de maig de 2018* (Barcelona, 2018), 5-27; and Rosa Lluch Bramon, "El conflicte de Mir Geribert en el marc de la feudalització del Penedès (1041-1058)," *Anuario de Estudios Medievales* 48 (2018), 793-820. Dolors Bramon, *De quan érem o no musulmans, textos del 713 al 1010: Continuació de l'obra de J.M. Millàs i Vallicrosa* (Barcelona, 2000), however, shows that despite the survival of contemporary narrative sources from authors within the region, there are Islamic sources that discuss the lands today known as Catalonia.

[5] Jeffrey Bowman, "Countess in Court: Elite Women, Creativity, and Power in Northern Iberia, 900-1200," *Journal of Medieval Iberian Studies* 6 (2014), 54-70; and Bowman, *Shifting Landmarks*, 26, 100-115, 126, 173-74,

provided invaluable syntheses of the experiences shared by these men,[6] we stand to learn more from viewing their part in the creation, practice, and ultimate waning of the *condiciones* strategy. These cases show how judges constituted a group of creative legal minds. We frequently find them reflecting on the strengths and weaknesses of the *placita*-based order over the course of three centuries. While they elevated the importance of the Visigothic Code and couched rulings by citing its strictures, they did not shirk from employing external intellectual traditions to fortify positions and cement their control over proceedings. In many disputes, judges were flexible in their responses to challenges.

Sometime at the outset of the ninth century, judges drew on liturgical thought and its reception in the Spanish March to empower the Visigothic Code. The exact moment of this hybridization remains unknown. It is equally unclear if those judges after the earliest generations to use the *condiciones* strategy recognized the liturgical influences of their practice as alien to Gothic law. By the millennium, Bonhom saw the *condiciones* strategy's core ritual as a *ritum* (the Rite of the Guarantor),[7] but did not discuss it in his *Liber iudicum popularis*. By Bonhom's day, the *condiciones* strategy, along with non-strategic uses of the *condiciones sacramentorum* oath structure, were integrated into judicial practice as longstanding custom. As the case against

Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76), I:187-202, II: 540-47, 560-76; Élizabeth Magnou-Nortier, *La société laique et l'Église dans la province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle* (Toulouse, 1974), 263-73; Kosto, *Making Agreements*, 43-52; Bowman, *Shifting Landmarks*, 81-99; Jesús Alturo i Perucho, Joan Bellés, Yolanda García, et al., eds., *Liber iudicum popularis, ordenat pel jutge Bonsom de Barcelona* (Barcelona, 2003), 67-117; Marie Kelleher, "Boundaries of Law: Code and Custom in Early Medieval Catalonia," *Comitatus* 30 (1999), 1-11; and Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 19-43, 194-211.

[7] *JRCCM* 143.

Gombau de Besora in 1000 indicates, the *ritum* was well established, enough to proceed even without judges or presidents.[8] It was a natural feature of Gothic law by that time.

Regardless of how judges may have parsed aspects of the law in their minds, for many, an awareness of the power permeating sacred space was not abstract or distilled through custom. Many had direct ritual experience as priests, deacons, or holders of another clerical office. The judge-priest, Ervig Marc, for example, is notable as a practitioner of the *condiciones* strategy and an exegetically-minded *dotalium* scribe. Others likely encountered *ordines* and liturgical commentaries at one of the regional education centers. Still others directly witnessed the outpourings of pious enthusiasm for spaces of salvation at church dedications. The common denominator, however, is that judges came to understand that churches, their altars, and the community belief in sacred space were sources of dependable power in a world with chronically insufficient political authority to reinforce rulings. Yet, while *dotalia* allow us to conclude that this experience with theophanies was relatively stable, the judicial profession and status of the legal system transformed significantly over the three centuries under review. The *condiciones* strategy affords scholars a lens through which to see changes to the adjudicatory philosophies of important judges, individuals often enveloped in the political storms of the tenth and eleventh centuries.[9]

Ninth- and early tenth-century judges drew on the *condiciones* strategy to ensure that each party observed procedural norms. The respect garnered by invoking preternatural power helped structure tribunals and foster community consensus around the outcome. Judges could control disputes that might otherwise spill beyond the bounds of the *placita* system. The broadly-

[8] *JRCCM* 136.

[9] Kosto, *Making Agreements*, 291, provides a list of the prominent court judges at the turn of the millennium.

held impressions of sacred space renewed confidence in a system previously based on now unavailable royal authority. The quite small number of cases from this early period makes determining just how prevalent this perspective was among judges difficult. However, episodes like that concerning Fonts in 834 or villager rights at Vilamacolum in 913 reveal that there was at least an influential cadre vested in adherence to balanced application of procedural norms, regardless of whether important power-holders were involved.[10] When and where possible, they ensured that litigants of all stripes would follow established rules. The *condiciones* strategy gave them the tool necessary to ensure this. The 898 documentary recovery involving Boso reveals that even when cases were not yet contentious, level-headed judges insisted that litigants act in accordance with the proper order of things (see Chapters 2 and 3).

While the ritual framework of the *condiciones* strategy remained consistent until the emergence of the deviant pole of the spectrum in the later decades of the eleventh century (see Chapter 5), the legal-political landscape of its application was more volatile. The early tenth century saw few opportunities for judges of the traditional mindset to use the strategy to foster an even playing field between disputants. Instead, socio-political vicissitudes in the region fostered closer ties between judges and comital/episcopal elites. An early moment in this development is telling. The 921 episode at Esponellà saw a veiled co-option of the strategy for the bishop of Girona's gain; the supernatural power that judges once used to foster balance was suddenly a tool to enhance imbalance.[11] Yet, more was to come.

After 950, the tenth century reveals a time of accelerating transformation, especially in the period beginning in the 990s, accelerating in the 1020s, and lasting to the 1060s. This time of

[10] For the 834 Fonts case, see *JRCCM* 4. For the 913 Vilamacolum case, see *JRCCM* 59.

[11] *JRCCM* 64.

change bore implications for the *placita*-based order, the partiality of judges, and the circumstances of the *condiciones* strategy's use.[12] The actions of many judges during the decades straddling the millennium show that the tone of the comital courts was in a state of flux. As the counts, bishops, and other representatives of the old political order faced political resistance, judges rallied to the rulers with whom they shared a vested interest in preserving their power in the established legal order. As the cases of Chapters 4 and 5 indicate, jurists helped the comital descendants of Guifré the Hairy cement alliances with religious institutions. The close relationship of prominent judges to the comital houses affected how courts used the *condiciones* strategy. Unlike the 921 Esponellà case, several uses of the strategy a century later were not exercises of documentary subterfuge; they were overt demonstrations of elite power. Such displays did not go without a response from embattled disputants.

Litigants increasingly balked at uneven uses of the *condiciones* strategy. As the example of Sunifred (a court judge serving Count Bernat Tallaferro) illustrates, the same official applied very different procedural standards depending on who was party to the dispute and whether the stakes of the case affected Count Bernat's aims. Sunifred navigated the 1018 affair at Vilanant without issue (see Introduction). He carefully evaluated the evidence of each side, satisfying the

[12] Pierre Bonnassie, "Du Rhône à la Galice: Genèse et modalités du régime feudal," in *Structures féodales et féodalisme dans l'Occident méditerranéen, Xe-XIIIe siècles. Bilan et perspectives de recherché. École française de Rome, 10-13, octobre 1978* (Paris, 1980), 19-23, places especial emphasis on the period stretching from 1020 to 1060. Here Bonnassie markes the fall of a distinct public order (of Carolingian origin) into one defined by *le régime feudal*: "Cet équilibre socio-politique se rompt au cours de la crise qui marque la période 1020-1060 et qui constitue la phase centrale de la genèse du système féodal catalan" (quotation at 21). Many scholars have since grappled with the scope and dating scheme of this transformative period. As a sample: Josep Salrach, "Entre l'estat antic i el feudal. Mutacions socials i dinàmica politico-militar a l'Occident carolingi i als comtats Catalans," in *Symposium Internacional sobre els orígens de Catalunya (Segles VIII-IX)* (1991) I: 191-252, sees many of these features as having earlier origins, while Gaspar Feliu i Montfort "Societat i economia," in *Symposium internacional*, I: 81-115, challenges many of Bonnassie's conclusions about the tenth century social and economic paradigm. Kosto, *Making Agreements*, 52, nuances Bonnassie's dating structure by noting the importance of emerging monetary penalties in documents beginning in the 990s. Bowman, *Shifting Landmarks*, 7-11, argues that change, while recognizable, should not distract us from noting continuity where it existed.

procedural rights of both parties. The very next year, however, Bernat de Calabuig angrily withdrew at the 1019 Bàscara case when the same Judge Sunifred allowed the see of Girona to switch out witnesses at their pleasure and afforded the cathedral's representatives exclusive access to the altar. The court ignored Bernat's own proofs.[13] From the perspective of a castellan like Bernat, the normative power of sacred space was becoming a tool to insulate the court system from the consequences of biased dealings on the part of comital presidents, their favored litigants, and their retained judges. Sunifred's philosophy differed between these two disputes; this had everything to do with who was participating. It was procedural bias on the part of a judge that generated Bernat's withdrawal, not any petulance on the part of a defeated lord.

The problem worsened over the 1020s. Numerous cases from this decade show similar reactions by outraged litigants and the stiffening of comital approaches to disputes involving ecclesiastical partners. By the outset of the 1032-1033 case, a judge like Ponç Bonfill Marc held a legal philosophy distinct from that held by ninth- and early tenth-century counterparts. The prevailing theme that arises from the study of Ponç's strategic chain is that this jurist believed that procedure, citation to the law, and invocation of sacred space were each flexible as long as litigants recognized the tribunal's legitimacy and participated within the bounds of the system.

Mir Geribert's counter-argument, however, appears to have won out in the end. If the code and procedural routines were mutable in the hands of judges, then justice for non-favored litigants was effectively beyond reach when comital interests were jeopardized. Investment in the *placita*-based system was not an automatic avenue for justice, let alone success for one like Baron Mir. As Bernat Otger's rupture of the synthesis underlying the *condiciones* strategy and

[13] For the 1018 Vilanant case, see *JRCCM* 175. For the 1019 Bàscara case, see *JRCCM* 185.

the emergence of the spectrum indicate, it is this second interpretation that grew in popularity. The generations of judges working between 980 and 1040 relied on the *condiciones* strategy to help protect a system suffering from incremental decline. While they worked to combat individual withdrawals, they did little to address the underlying causes of such recalcitrance: their own partiality and selective application of procedural norms. The *condiciones* strategy had been envisioned as a tool to foster the impression that the *placita* court was a neutral playing ground vested with divinely sanctioned authority. In the hands of judges like Joan, Ervig Marc, Bonhom, Ponç Bonfill Marc, and Sunifred, however, the force of that tool was repurposed to help the powerful accrue even greater advantage. In this sense, these officials had a part in hastening the decline of the code-based system that justified their profession.

6.3. Law, liturgy, and historians

It is a reality of the documentary corpus that the ritual details featured in dispute cases are terse, offering scholars only a small window into how judges, working with clerical supervisors (Ervig Marc's Moses and Aaron duo),[14] organized groups of participants within the church, how they positioned witnesses and litigants at/around the altar, and where the losing side's reception took place. We gain a sense that these spaces weighed on the imaginations of assembly-goers, yet *placita* documents provide a mere impression. What is more, formulaic language and scribal idiosyncrasies often act as a prism distorting the clarity of our view. To fully appreciate Bonhom's Rite of the Guarantor and to understand the strategic thinking behind its performance, it is necessary to draw on context derived from liturgical sources. Legal historians working on the *leges*, disputing, and documentary practices have generally overlooked such materials.

[14] *Dotalies* 108.

Whether they are traditionally conceived *ordines*, or non-textual remains like church architecture, murals, altar frontals, relic containers, liturgical instruments, etc., the sources more commonly invoked in liturgical scholarship and art history studies have a place in investigations of law and disputing.

The lack of descriptive detail about the Rite of the Guarantor in dispute records involving use of the *condiciones* strategy is unsurprising. The concerns of historians were not those of tribunal scribes. The importance of the space was likely considered a given; consensus did not require emphasis. The joint analysis of *ordines* and the *dotalia* corpus provides the detail missing from disputes. These liturgical sources show that by bringing tribunal assemblies into churches, judges capitalized on a complex spatial geography with zones of ever greater sacrality leading to the altar. While *ordines* define that geography, *dotalia* reveal the chief emotions and investments communities read into that landscape. These were places where humans could gather and seek entry into the kingdom of Heaven for themselves and their kin. Fear of damnation and hope of crossing the *porta celi* to commune with Christ after death were powerful enough for people to band together to fund, build, and endow churches. Community belief in sacred space thus had a normative role in the religious culture of the region. Judges saw and repurposed that anxiety-based consensus to galvanize rulings. It is largely non-legal sources that provide these details and allow a heuristic like the *condiciones* strategy to enhance our awareness of law.

In some ways, the Province of Narbonne is especially ripe for such source association. The lands of Catalonia, in particular, are remarkable for the survival of so many *dotalia* alongside a broad range of other documentary sources. Yet, other regions of Europe have their own unique source collections, legal traditions, and opportunities to apply liturgical works to an

understanding of law within particular cultural and political frameworks. This exploration of law, liturgy, and sacred space may serve as a model.

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Appendix A. Cases of the *condiciones* strategy

App.A.1. Frequency and case list

Date range	782-849	850-899	**Ninth century total**	900-949	950-999	**Tenth century total**	1000-1049	1050-1100	**Eleventh century total**	Total for entire period
All judicial cases	14	34	**48**	27	64	**91**	173	250	**423**	562
Disputes featuring the *condiciones* strategy (with percentages of above column)	6 (43%)	13 (38%)	**19 (40%)**	5 (18%)	12 (19%)	**17 (19%)**	39 (23%)	22 (9%)	**61 (14%)**	97 (17%)

Figure App.A.1—The frequency of the *condiciones* strategy

- All case numbers below refer to the record's place in Josep Salrach i Marès et al. eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomatic, segles IX-XI* (Barcelona, 2018), (*JRCCM*) unless otherwise specified. The additional cases come from Cros-Mayrevielle, *Histoire du comté et de la vicomté de Carcassonne* (Paris, 1846); Paul Ourliac and Anne-Marie Magnou, eds., *Cartulaire de l'abbaye de Lézat*, 2 vols. (Paris, 1984-87); Gaspar Feliu i Montfort and Josep Salrach i Marés, eds., *Els pergamins de l'Arxiu Comtal de Barcelona de Ramon Borrell a Ramon Berenguer I*, 3 vols. (Barcelona, 1999).
- Of the 97 cases noted, 68 (70%) include direct language taken in full or in part from the *condiciones sacramentorum* formula. Such cases are underlined in the list below. Those that do not include formulaic language, and are not underlined, are instances in which scribes place ritual action in their own words.
- Non-contentious uses of the *condiciones* strategy are denoted by the symbol "⸸". There are 11 such instances. See the Introduction for a full discussion of the classification of these

episodes and what distinguishes them from documentary recoveries and testamentary publications.

Cros-Mayrevielle 2 (782); Cros-Mayrevielle 3 (791); ⸸2 (15 Dec 817); 4 (11 Sep 834); 6 (21 Aug 842—7 & 8 provide additional aspects of the tribunal); 9 (6 Feb 843); 13 (5 Jun 858); 15 (15 & 22 Mar 865); 16 (18 Aug 868); 18 (25 Mar 874); 21 (18 Jan 876); 22 (30 Jan 876—continuation of 21); ⸸25 (28 Jan 879); ⸸26 (29 Jan 879); ⸸27 (10 Feb 879); ⸸28 (Feb 879); ⸸33 (27 May 886); ⸸43 (28 May 898); ⸸44 (30 May 898); ⸸49 (Jul. 2, 901); 58 (1 Mar 913); 59 (6 May 913); 64 (25 Feb 921); ⸸68 (8 Apr 930); 79 (*bis*, 2 Apr 962); 90 (7 May 980); 93 (28 Jun 984); 100 (17 Oct 987); 102 (1 Dec 987); 119 (1 Jan 992); 123 (18 Dec 993); 125 (17 Nov 994); 127 (17 Jun 995); 129 (28 Jul 996); 130 (27 Nov. 996); 132 (30 Nov 997); 136 (28 Feb 1000); ⸸137 (20 Mar 1000); 139 (28 Sep 1000); 141 (10 May 1001); 143 (3 Jul 1002); 170 (7 May 1016); 175 (24 Feb 1018); 178 (26 Aug 1018); 179 (29 Aug 1018); 185 (21 Jul 1019); 193 (31 Mar 1022); 203 (16 Mar 1023); 204 (28 May1023); 207 (1 Nov 1024); 211 (16 Jun 1024/5); 213 (9 Aug 1025); 216 (4 Dec 1026); *Lézat* 410 (1026); 222 (6 May 1028); 223 (1 Sep 1028); 225 (13 Mar 1029); 228 (23 Aug 1029); 231 (16 Oct 1030); 234 (18 Apr 1031); 241 (28 Jun 1032); 242 (3 Jul 1032); 244 (20 Jul 1032); 246 (18 Mar. 1033); 251 (10 Jun 1034); 256 (19 Jul 1036); 262 (26 Apr 1039); 268 (24 Sep 1040); 272 (2 Apr 1041); ⸸277 (23 Apr 1042); 285 (7 Aug 1043); 290 (9 Feb 1045); 296 (11 Aug 1046); ⸸304 (14 Oct 1049); ⸸305 (21 Oct 1049); 308 (5 Oct 1051); 312 (8 Jun 1053); 315 (31 Dec 1054); Condes3-505 (ca. 1057); 337 (2 Oct 1060); 339 (1040×1060); 341 (22 Jun 1061); 349 (1 Apr 1063); 350 (1 Apr 1063); 374 (15 Feb 1067); 366 (12 Jul 1065); 413 (4 Jul 1075×1077); 421 (5 Jun 1079); 422 (29 Oct 1079); 494 (30 Jun 1091); 497 (13 Aug 1091); 501 (5 Oct 1092); 505 (5 Dec 1093); 529 (11 Mar 1098); 542 (4 Jan 1100); 545 (27 Apr 1100); 551 (22 Dec 1100).

App.A.2. Citations for principal case studies[1]

JRCCM 2 (817)—*CC* 5, doc. 7.

Josep M. Salrach i Marès, *El procés de formació nacional de Catalunya (segles VIII-IX)*, 2 vols. (Barcelona, 1978), I: 145-46; Gabriel Roura, *Girona carolíngia: Comtes, vescomtes i bisbes (del 785 a l'any 1000)* (Girona, 1988), 31; Lluís To Figueras, "La Girona carolíngia i feudal (segles VIII-XI)," in *El govern de la ciutat (I): de la Gerunda romana (segle I aC) a la Girona borbònica (segle XVIII)* (Girona, 2011), 95; and Josep M. Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 40, 71, 97-98.

JRCCM 4 (834)—*CC* 2, "Els diplomes Carolingis," doc. 12.

Salrach, *Justícia i poder*, 50.

JRCCM 6, 7, 8 (842)—*CC* 5, docs. 19, 20, 21.

Élisabeth Magnou-Nortier, *La société laïque et l'Église dans la province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle* (Toulouse, 1974), 84; and Salrach, *Justícia i poder*, 48-51.

JRCCM 9 (843)—*CC* 6, doc. 26.

Roger Collins, "*Sicut lex Gothroum continet*: Law and Charters in Ninth- and Tenth-Century León and Catalonia," *The English Historical Review* 100 (1985), 492-94; and Pierre Ponsich, "Saint-André d'Eixalada et la naissance de l'abbaye de Saint-Germain de Cuixà (840-879)," *Les cahiers de Saint-Michel de Cuxa* 11 (1980), 18.

JRCCM 15 (865)—*CC* 6, doc. 56.

[1] Note to Reader: this section of Appendix A is a work in progress. As this project continues, I will add entries for each case considered.

Magnou-Nortier, *La société laïque*, 263-67; Salrach, *Justícia i poder*, 51.

JRCCM 43, 44 (898)—*CC* 4, doc. 34.

Jonathan Jarrett, "Pathways of Power in Late-Carolingian Catalonia" (Ph.D. Diss., University of London, 2005), 50-53; Jonathan Jarrett, "Ceremony, Charters and Social Memory: Property Transfer Ritual in Early Medieval Catalonia," *Social History* 44 (2019), 283-91; and Salrach, *Justícia i poder*, 200-02.

JRCCM 47 (900)—*CC* 5, doc. 104.

Salrach, *Justícia i poder*, 81-82.

JRCCM 50 (903)—*CC* 5, doc. 113.

Salrach, *Justícia i poder*, 81-82.

JRCCM 59 (913)—*CC* 5, doc. 143.

María Isabel Simó Rodríguez, "Aportación a la documentación condal catalana (siglo X)," in *Miscelánea de estudios dedicados al professor Antonio Marín Ocete* (Granada, 1974), II: 1021-1023; and Salrach, *Justícia i poder*, 40, 53 n. 10, 89-91, 140.

JRCCM 64 & 65 (921)—*CC* 5, doc. 171 & 172.

Pierre Bonnassie, *La Catalogne du milieu du Xe à la fin du XIe siècle: croissance et mutations d'une société*, 2 vols. (Toulouse, 1975-76), I: 202, n. 286.

JRCCM 70 (938)—*CC* 4, doc. 443.

Jaume Gibert i Arissa, "Reconeixement dels límits del terme d'Artés al segle X," *Miscel·lània d'estudis Bagencs* 1 (1981), 144-47; and Salrach, *Justícia i poder*, 40, 93.

JRCCM 85 (977)—*CC* 4, doc. 1229.

Bonnassie, *La Catalogne*, I: 113; Jonathan Jarrett, *Rulers and Ruled in Frontier Catalonia, 880-1010* (Woodbridge, 2010), 155; and Salrach, *Justícia i poder*, 40, 108-11.

JRCCM 102 (987)—*CC* 4, doc.1526.

Jonathan Jarrett, "Power over Past and Future: Abbess Emma and the Nunnery of Sant Joan de les Abadesses," *Early Medieval Europe* 12 (2003), 240-41; Jarrett, *Rulers and Ruled*, 61; Salrach, *Justícia i poder*, 106-07; and Jonathan Jarrett, "La fundació de Sant Joan en el context de l'establiment dels comtats catalans," in *El monestir de Sant Joan: Primer cenobi femení dels comtats catalans (887-1017)*, ed. Irene Brugués, Xavier Costa, and Coloma Boada, trans. Xavier Costa (Barcelona, 2019), 86-89.

JRCCM 123 (993)—*CC* 6, doc. 620.

Salrach, *Justícia i poder*, 100-102.

JRCCM 129 (996)—*CC* 4, doc. 1736.

Jarrett, *Rulers and Ruled*, 149-50; Jonathan Jarrett, "Love Stories in Charter Evidence," *A Corner of Tenth-Century Europe: Early Medievalist's Thoughts and Ponderings* (blog), 13 August 2008, https://tenthmedieval.wordpress.com/2008/08/13/love-stories-in-charter-evidence/.

JRCCM 132 (997)—*CC* 8, doc. 873.

Kosto, "Oliba, Peacemaker," in *Actes del congrés internacional Gerbert d'Orlhac i el seu temps: Catalunya i Europa a la fi del Ir mil·lenni*, ed. Immaculada Ollich i Castanyer (Vic, 1999), 140; Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), 51; Jeffrey Bowman, *Shifting Landmarks: Property, Proof, and Dispute in Catalonia in the Year 1000* (Ithaca, 2004), 175; Jonathan Jarrett, "Pathways of Power," 290-308; Salrach, *Justícia i poder*, 58-60; Josep Camprubí Sensada, "El patrimoni immobile conegut del comte Oliba, el futur abat i bisbe, i la confusion historiogràfica que ha provocat," *Ausa* 29 (2019), 24; and

Josep Camprubí Sensada, "Why did the Abbot-Bishop Oliba Enter Religious Life?" *The Journal of Medieval Monastic Studies* 8 (2019), 66.

JRCCM 136 (1000)—*CC* 4, doc. 1506.

Salrach, *Justícia i poder*, 135-41.

JRCCM 137 (1000)—CC 4, doc. 1840.

Jarrett, "Ceremony, Charters, and Social Memory," 282-88.

JRCCM 139 (1000)—*CC* 4, doc. 1864.

Jarrett, *Rulers and Ruled*, 152-53.

JRCCM 143 (1002)

Bonnassie, *La Catalogne*, I: 196; Cebria Baraut, ed., "Els documents, dels anys 981-1010, de l'Arxiu Capitular de la Seu d'Urgell," *Urgellia* 3 (Montserrat, 1980), doc. 278 (at 107-09); Albert Benet i Clarà, *La Família Gurb-Queralt 956-1276. Senyors de Sallent, Olò, Avinyó, Manlleu, Voltregà, Queralt i Santa Coloma de Queralt* (Sallent, 1993), 45-49; Kosto, *Making Agreements*, 60-61; and Jonathan Jarrett, "Winner's Preservation," *A Corner of Tenth-Century Europe: Early Medievalist's Thoughts and Ponderings*, accessed Aug. 2020. https://tenthmedieval.wordpress.com/tag/sendred-de-gurb/#i5,

JRCCM 161 & 169 (1013, 1016)

Bowman, Shifting Landmarks, 190-91; José Enrique Ruiz-Domènec, *Quan els vescomtes de Barcelona eren: Història, crònic i documents d'una família catalane dels segles X, XI i XII* (Barcelona, 2006), 75-80; and Salrach, *Justícia i poder*, 224-26.

JRCCM 179 (1018)—Josep Maria Marquès, *Cartoral, dit de Carlemany, del bisbe de Girona (segles IX-XIV)*, 2 vols. (Barcelona, 1993), 77.

Ramon d'Abadal i de Vinyals, "L'Abat Oliba i la seva època," in *Dels Visigots als Catalans*, ed. Jaume Sobrequés i Callicó, 2 vols. (Barcelona, repr. 1989), II: 216-19; Santiago Sobrequés i Vidal, *Els grans comtes de Barcelona* (Barcelona, 1985), 23-24; Bonnassie, *La Catalogne*, II: 562; Kosto, *Making Agreements*, 51-52; Bowman, *Shifting Landmarks*, 107-08, 110-11; Salrach, *Justícia i poder*, 216-19; and Jeffrey Bowman, "Countesses in Court: Elite Women, Creativity, and Power in Northern Iberia, 900-1200," *Journal of Medieval Iberian Studies* 6 (2014), 57.

JRCCM 185 (1019)

Lluís To Figueras, "El comte Bernat I de Besalú i el seu testament sacramental," in *Amics de Besalú i el seu comtat. IV Assemblea d'estudis sobre el comtat de Besalú: Camprodon, 1980* (Olot, 1983), 123.

JRCCM 203 (1023)

Kosto, *Making Agreements*, 50.

JRCCM 207 (1024)

Prim Bertran i Roigé, "Ermengol d'Urgell: l'obra d'un bisbe del segle XI," in *La transformació de la frontera al segle XI. Reflexions des de Guissona arran del IX centenari de la consagració de l'església de Santa Maria*, ed. Flocel Sabaté (Lleida, 2000), 116-17.

JRCCM 211 (1024)

Antoni Pladevall, *Ermessenda de Carcassona, comtessa de Barcelona, Girona i d'Osona: Esbós biogràfic en el mil·lenari del seu naixement* (Barcelona, 1975), 51-52; Aurell, *Les noces du comte*, 238; Salrach, *Justícia i poder*, 230; and Adam C. Matthews,

"Within Sacred Boundaries: The Limitations of Saintly Justice in the Province of Narbonne around the year 1000," *Journal of Medieval History* 46 (2020), 7-13.

JRCCM 213, 214 (1025)

Bowman, *Shifting Landmarks*, 175.

JRCCM 241, 242, 244 & 246 (1032-1033)

Bowman, *Shifting Landmarks*, 158-64, 173-74; Bowman, "Infamy and Proof," 111-15; Ruiz-Domènec, *Quan els vescomtes*, 95-96; and Salrach, *Justícia i poder*, 228-31.

JRCCM 256 (1036)

Bonnassie, *La Catalogne*, II: 562; and Salrach, *Justícia i poder*, 231-33.

Appendix B. *Dotalia* counts

Ordeig volume and date range	Vol. 1.1 (800-950)	Vol. 1.2 (951-1000)	Vol. 2.1 (1001-1050)	Vol. 2.2 (1051-1100)	All 296 *dotalia* counted
Number of documents.	48 (67%)	30 (56%)	46 (60%)	45 (50%)	169 (57%)

Figure App.B.1. Instances in which a church has lay founders (irrespective of class).

Ramon Ordeig i Mata, ed., *Les dotalies de les esglésies de Catalunya, segles IX-XII*, 2 vols. (Vic: 1994) (*Dotalies*) **[vol. 1.1]** 2, 3, 4, 5, 6, 7, 9A, 9B, 10, 11A, 11B, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 44, 46, 49, 50, 55, 57, 59, 60, 61, 62, 66 **[vol. 1.2]** 67**,** 68, 70**, 75,** 76, 78, 84, 89A, 89B, 90, 91, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 107, 108, 109, 110, 111, 112, 114, 116 **[vol. 2.1]** 121**,** 124, 125, 129, 130, 133, 137, 138, 140, 141A, 141B, 144A, 144B, 145, 147, 149, 150, 151, 152, 154, 155, 158, 159A, 160, 161, 163, 164A, 164B, 165B, 166, 167, 169, 170, 172, 173, 174, 177, 178, 179, 182, 184, 185, 187, 188A, 188B, 191 **[vol. 2.2]** 193, 194, 198, 199, 201, 202, 203, 204, 205, 207, 209A, 211, 212, 215, 217, 218, 222, 223, 224, 225, 226A, 229, 233, 234, 235, 241, 242, 243, 244, 246, 247, 248, 252, 253, 254, 258, 262, 264, 265, 266, 267, 268A, 271.

Ordeig volume and date range	Vol. 1.1 (800-950)	Vol. 1.2 (951-1000)	Vol. 2.1 (1001-1050)	Vol. 2.2 (1051-1100)	All 296 *dotalia* counted
Number of documents.	27 (38%)	6 (11%)	19 (25%)	20 (22%)	72 (24%)

Fig. App.B.2. (narrowed from Fig. App.B.1) Instances when a scribe explicitly states that a village community built and endowed a church collectively; i.e. Non-magnate/collective action. *Dotalies* **[vol. 1.1]** 2, 4, 5, 7, 10, 13, 15, 16, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 35, 41, 42, 49, 50, 62 **[vol. 1.2]** 76, 84, 97, 102, 110, 116 **[vol. 2.1]** 124, 129, 130, 133, 138, 145, 147, 149, 150, 152, 155, 167, 169, 173, 178, 184, 188A, 188B, 191 **[vol. 2.2]**199, 202, 203, 207, 211, 222, 223, 224, 233, 234, 241, 244, 247, 248, 252, 254, 264, 265, 267, 271.

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	11 (15%)	13 (24%)	7 (9%)	4 (4%)	35 (12%)

Fig. App.B. 3. Instances of a clerical or ecclesiastical institution leading a foundation without significant lay involvement.

Dotalies **[vol. 1.1]** 3, 17, 24, 39, 45, 51, 56, 63, 64, 65 **[vol. 1.2]** 72, 73, 74, 77, 78, 80, 81, 82, 83, 92, 117 **[vol. 2.1]** 123A, 131, 135, 142, 146, 153, 175 **[vol. 2.2]** 216, 221, 263, 273.

Ordeig volume and date range	**Vol. 1.1 (800-950)**	**Vol. 1.2 (951-1000)**	**Vol. 2.1 (1001-1050)**	**Vol. 2.2 (1051-1100)**	**All 296 *dotalia* counted**
Number of documents.	53 (74%)	40 (74%)	24 (31%)	34 (38%)	151 (51%)

Fig. App. B.4. *Dotalia* featuring supernatural anxiety as a prime motivator for construction.[1]

Dotalies **[vol. 1.1]** 1, 2, 3, 4, 5, 6, 7, 9A, 9B, 10, 11A, 11B, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 26, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 49, 50, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66 **[vol. 1.2]** 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 88, 89A, 89B, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 105, 108, 109, 111, 112, 113, 114, 115, 116, 118, 119 **[vol. 2.1]** 122, 123A, 123B, 131, 133, 138, 139, 142, 149, 152, 153, 160, 164A, 164B, 170, 172, 173, 175, 178, 183, 185, 186, 187, 191 **[vol. 2.2]** 192, 197, 202, 203, 207, 209A, 215, 216, 217, 221, 222, 223, 225, 226A, 227, 237, 238, 239, 241, 242, 243, 244, 247, 248, 250, 251A, 258, 261, 262, 266, 268A, 272A, 272B, 276.

[1] I define "supernatural anxiety" as expressed statements concerning a desire for saintly intercession, the remission of sins, fear of hell, a hope for protection from the devil, and a yearning for salvation.

Appendix C. Supplementary material to the 1032-1033 case

App.C.1. Issues of order and dating in the 1032-1033 case

This analysis of the 1032-1033 case comes in the wake of the reconsideration of the dating and order of the records for stages three and four. I adhere to the organization given in Josep Salrach i Marès, *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomatic, segles IX-XI* (*JRCCM*), rather than that provided in the edition of the cartulary itself, by José Rius Serra, *Cartulario de Sant Cugat del Vallès* (*CSCV*). Rius organized all entries chronologically and, when it came to the 1032-1033 dispute, appears to have followed the cartulary compiler's interpretation of the order of stages three and four.[1]

Stage	*CSCV*	*JRCCM*
One	523 (28 Jun. 1032)	241 (28 Jun. 1032)
Two	524 (3 Jul. 1032)	242 (3 Jul. 1032)
Three	529 (30 Jul. 1033)	244 (30 Jul. 1032)
Four	527 (18 Mar. 1033)	246 (18 Mar. 1033)

Figure. App. C.1—Dating schemes for the stages of the 1032-1033 case

[1] Josep Salrach i Marès et al. eds., *Justícia i resolució de conflictes a la Catalunya medieval, col·lecció diplomatic, segles IX-XI* (Barcelona, 2018), 241 (28 Jun. 1032), 242 (3 Jul. 1032), 244 (30 Jul. 1032), 246 (18 Mar. 1033), each lacks an original parchment document. Our earliest source for these four records comes from Sant Cugat's cartulary. For the stages of the case in the cartulary edition, see José Rius Serra, ed. *Cartulario de Sant Cugat del Vallès*, 3 vols. (Barcelona, 1945-47), 523 (28 Jun. 1032), 524 (3 Jul. 1032), 527 (18 Mar. 1033), 529 (30 Jul. 1033). The cartulary itself may in fact be the source of the ordering for *CSCV* 527 (ACA, Monacals, Cartulari de Sant Cugat del Vallès, núm. 320, f. 89v) and *CSCV* 529 (ACA, Monacals, Cartulari de Sant Cugat del Vallès, núm. 323, f. 89v) in the edition. Rius likely took the cartulary compiler's impression of the ordering of these cases as true, and therefore dated the events of 30 July to the year 1033. Josep Salrach i Marès, *Justícia i poder a Catalunya abans de l'any mil* (Barcelona, 2013), 228, originally agreed with the *CSCV* dating scheme presented. Subsequently, in the more recent *JRCCM* edition of these documents, Salrach supported a reversed order. He moved the events of *CSCV* 529/*JRCCM* 244 up by a year, to 1032, making *CSCV* 527/*JRCCM* 246 the final stage in the sequence. Also writing prior to the *JRCCM* edition, Bowman, *Shifting Landmarks*, 158-64; and Bowman, "Infamy and Proof," 111-15, follows the *CSCV* dating scheme. Bowman's works focused chiefly on these two entries, leaving aside the events of *CSCV* 253/*JRCCM* 241 and *CSCV* 254/*JRCCM* 242. In Chapter 5, I trace the course of all four stages, arguing that context from the first two stages allows us to reflect on the potential thinking of the key players and offers support to the dating scheme found in *JRCCM*.

As was conventional, the records are dated by Frankish regnal dates. Prior to *JRCCM*, this caused confusion for *CSCV* 527 (ACA, Monacals, Cartulari de Sant Cugat del Vallès, núm. 320, f. 89v) and *CSCV* 529 (ACA, Monacals, Cartulari de Sant Cugat del Vallès, núm. 323, f. 89v). The scribe of *CSCV* 527, one Bellhom Gerald, dated the record as "*Actum est hoc XV kal. aprilio, a. II. regni Henrici, regis*." Rius Serra correctly converted this to 18 March 1033. Then, advancing through the edition, we find that Ponç Bonfill Marc dated *CSCV* 529 as "*confirmata III. kal. aug. a. II. supradicti regis Henrici*." Rius Serra converted this date as July 30, 1033. If we follow a conception of the year that begins in January, Rius Serra's conversion is accurate. However, the year stipulated in these records are based on regnal dates. Anscari Mundó explained that documents from Catalonia between 1001 and 1180 conform to a fixed turnover day for all regnal years, 24 June.[2] If we establish the beginning of the year in June, then *CSCV* 529 would be dated to 30 July 1032 and antedate *CSCV* 527. With the cartulary compiler working well after 1180, this confusion in the cartulary and the edition is understandable. In *JRCCM*, Salrach reversed the order of *CSCV* 527 (*JRCCM* 246) and *CSCV* 529 (*JRCCM* 244) to reflect our understanding of dating norms for eleventh century documents. Earlier studies of the 1032-1033 dispute were conducted prior to this correction. As my reading of this case reveals, reordering what was the fourth and final stage of the dispute as the third stage (occurring 30 July 1032) has interpretive repercussions, giving Mir Geribert's absence from court and Ponç Bonfill Marc's pronouncements a ring of dramatic finality to them that is missed when we expect the 30 July episode to be coming during the following summer of 1033.

[2] Anscari M. Mundó, "La datació de documents pel rei Robert (996-1031) a Catalunya," *Anuario de Estudios medievales* 4 (1967), 13-34; "El concili de Tarragona de 1180: Dels anys del reis francs als de l'Encarnació," *Analecta sacra Tarraconensia* 67 (1994), xxiii-xliii; and Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge, 2001), xiii.

Key events connected to the 1032-1033 case and its background

Date of Record	Edition of Record	Date Range of Events	Events	Scribe	Use of Sacred Space
Background to the 1032-1033 case					
Unknown. Records lost or fabricated	N/A	Before 840	Alleged precepts of Charlemagne and Louis the Pious. Referenced in *JRCCM* 161, and evidently lost in the sack of Barcelona in 985.	Unknown	No mention
Unknown. Record lost	N/A	936-954?	Sometime during his reign, Louis IV (d. 954) grants a precept to Sant Cugat concerning property at Santa Oliva and Calders in the Penedès. The document is lost in Al-Manṣūr's sack of Barcelona in 985.	Unknown	No mention
Unknown. Record lost or never documented	N/A	unknown	Galí establishes claim at Santa Oliva and Calders. There is no mention of this claim ever being documented.	Unknown	No mention
986	CC II, "Sant Cugat" III (B) & (C)	985-986	Lothair IV (d. 986) confirms the lost precept of Louis IV. Calders is not included and Sant Oliva appears as a later interpolation.	Unknown	No mention
Jul. 1002	*CSCV* 382	Jul. 1002	Sylvester II (d. 1003) grants privilege concerning Santa Oliva and Calders to Sant Cugat.	Papal chancery	No mention
28 Nov. 1010	*CSCV* 431	28 Nov. 1010	The testament of Adalbert (from the viscomital house of Barcelona) is recovered at the church of Sant Pere de Molanta. Tower of Moja (Penedès) is left to Sant Cugat.	Bonhom, *levita*-judge	Will recovery in a church
26 Jul. 1011[3]	*CSCV* 449	26 Jul. 1011	Abbot Guitard contracts Isembert to build a tower at Calders.	Bonhom, *levita*	No mention
29 Jul. 1011	*CSCV* 439	29 Jul. 1011	Adalbert's family disputes his gift of Moja to Sant Cugat at a tribunal before Ramon Borrell and Countess Ermessenda. Judges rule in favor of Abbot Guitard and the monastery. Citations: *LV* IV.2.20	Gerald, subdeacon	No mention
29 Mar. 1013	*CSCV* 451	29 Mar. 1013	Abbot Guitard asks Ramon Borrell and Ermessenda to confirm a privilege from Pope Sylvester II (*CSCV* 382) concerning Santa Oliva and Calders.	PBM,[4] judge	No mention
31 Mar. 1013	*CSCV* 452 *JRCCM* 161	31 Mar. 1013	Adelaida vs. Abbot Guitard. Adelaida advances her son's claim. The land had belonged to his grandfather ancestor, by right of *aprisio*. Ramon Borrell divides, granting a portion to each party.	Bonhom, *levita*	No mention
9 Mar. 1016	*CSCV* 464 *JRCCM* 169	9 Mar. 1016	Adelaida vs. Abbot Guitard. Adelaida reopens dispute from 31 Mar. 1013. Ramon Borrell rules in favor of monastery, granting the monks full possession. Invalidates contract with Isembert.	Unspecified, maybe PBM	No mention
26 Apr. 1017	*CSCV* 464	26 Apr. 1017	Abbot Guitard contracts Boneto Bernat to build a tower and act as *castlà* for the monks.	PBM, cleric and judge	No mention

[3] Salrach dates this to 1011, rather than Rius Serra's date of 1012. See Salrach's discussion, *JRCCM* 169.

[4] PBM = Ponç Bonfill Marc.

Stages of the 1032-1033 case					
Stage 1 28 Jun. 1032	*CSCV* 523 *JRCCM* 241	28 Jun. 1032	PBM exacts oaths from witnesses at the Sant Pere d'Octavià and Santa Maria de Martorell.	PBM, cleric and judge	Exaction of oaths in churches
Stage 2 3 Jul. 1032	*CSCV* 524 *JRCCM* 242	3 Jul. 1032	PBM collects oaths from oath-helpers at Santa Maria de Martorell before 32 *auditores* (priority given to 8 of them) and hears complaint of Mir Geribert based on son's claim via Galí's *aprisio* efforts. Mir *receives* witnesses. PBM acknowledges Mir's right to defame Sant Cugat's witnesses w/in 6 months. Mir withdraws when PBM does not grant him outright possession.	PBM, cleric and judge	Use of *condiciones* strategy in a church.
Stage 3 30 Jul. 1032	*CSCV* 529 *JRCCM* 244	22-30 Jul. 1032	PBM supervises a tribunal session presided over by Countess Ermessenda and BR1. Mir Geribert vs. Abbot Guitard. Documents read out in court and former witnesses called. 8 day recess. Mir shifts strategy back to his son's claim. PBM dismisses Mir's case on account that he has not yet defamed the witnesses. Mir withdraws. Sant Cugat awarded victory.	PBM, cleric and judge	Court convened in church. PBM deploys strategy based on strategy used in stage 2.
Stage 4 18 Mar. 1033	*CSCV* 527 *JRCCM* 246	Autumn 1032—18 Mar. 1033	Before Dec. 1032: Mir vs. Abbot Guitard dispute before unnamed judges. Sant Cugat awarded victory. 31 Dec. 1032: Mir consults PBM in Barcelona and submits concrete accusations against witnesses from Stage 1. He wishes to simultaneously introduce witnesses to advance his son's claim based on Galí's *aprisio*. PBM prohibits this. The judge insists on separate witnesses to substantiate Mir's defamation claims and sets March deadline. Mir withdraws. 18 Mar. 1033: PBM waits for Mir's witnesses to support defamation claims at Santa Maria de Cornellà. Mir fails to appear, and PBM pronounces against him.	Bellhom Gerald	PBM prepared to continue use of *condiciones* strategy with action in a church. Final action on 18 Mar. conducted in a church, as PBM prepared for potential oaths.