



Monastic archives and the law: legal strategies at Farfa and Monte Amiata at the turn of the millennium

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This article investigates two controversies that reveal the deeply intertwined nature of legal strategies and archival practices at the monasteries of Farfa and Monte Amiata around the turn of the millennium. It argues that the protagonists of these cases, abbots knowledgeable in law and the history of their monasteries, pursued markedly historical legal strategies: legal strategies that looked to, manipulated, and, above all, contextualized, archival documents in order to make legal arguments. This sheds light on early medieval monastic legal culture in north-central Italy and provides insights into the rationale for monastic forgeries of documentary materials at Monte Amiata.

Recent decades have done much to destabilize traditional assumptions about early medieval law by examining the Roman roots and lasting impact of the legal pluralism that characterized the Latin west in the period after Rome and before the university.¹ Throughout Europe, the

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¹ A good starting point, with further bibliography, is the recent special issue 'The Transformation of Law in the Late and Post-Roman World', *EME* 21.1 (2019), especially the introduction by Conrad Leyser, pp. 5–11; see also S. Esders, 'Roman Law as an Identity Marker in Post-Roman Gaul (5th–9th Centuries)', in W. Pohl, C. Gantner, C. Grifoni and M. Pollheimer-Mohaupt (eds), *Transformations of Romanness in the Early Middle Ages: Regions and Identities* (Berlin, 2018), pp. 325–44; K. Ubl, *Sinnstiftungen eines Rechtsbuchs: Die Lex Salica im Frankenreich* (Ostfildern, 2017); P. Hoppenbrouwers, 'Leges nationum and Ethnic Personality of Law in Charlemagne's Empire', in J. Duindam, J. Harries, C. Humfress and N. Hurvitz (eds), *Law and Empire: Ideas, Practices, Actors, Rulers and Elites* (Oxford, 2013), pp. 251–74; S. Esders, 'Early Medieval Use of Late Antique Legal Texts: The Case of the *manumissio in ecclesia*', in O. Kano (ed.), *Configuration du texte en histoire* (Nagoya, 2012), pp. 55–66; R.W. Mathisen, 'Peregrini, Barbari, and Cives Romani: Concepts of Citizenship and the Legal Identity of Barbarians in the Later Roman Empire', *American Historical Review* 111.4 (October, 2006), pp. 1011–40; P. Wormald, 'The *Leges Barbarorum*: Law and Ethnicity in the Post-Roman West', in H.-W. Goetz, J. Jarnut and W. Pohl (eds), *Regna and Gentes: The Relationship between Late Antique and Early Medieval Peoples and Kingdoms*, Transformation of the Roman World 13 (Boston, 2003), pp. 21–53. For legal pluralism in the Roman world, see C. Ando, 'Legal Pluralism in Practice', in P. de Plessis, C. Ando and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society* (Oxford, 2016), pp. 283–93.

successor states of the western Roman empire forged new legal codes: these, we have learned, were neither repositories of authentic pre-Roman Germanic traditions nor fanciful display pieces divorced from social reality. Incorporated by Carolingian and Ottonian rulers in their efforts to build and maintain empires, these texts continued to be mobilized and, at least to a certain degree, recognized and enforced as 'the law'. Meanwhile, new collections of canon law became authoritative sources for regulating life in a predominantly Christian west. The result was a diversity of laws and legal ideas whose interaction fostered innovation in legal thought – nowhere more so than in Italy, where the tradition of written law remained especially strong.

At the turn of the millennium this was, in Italy, a legal milieu largely without professionals. Charles Radding has argued that the reworking of Lombard law, spearheaded by palace judges in eleventh-century Pavia, marks the emergence of a new class of legal professionals.² Prior to, and alongside, these new legal professionals, there existed a much wider range of practitioners, ecclesiastical and lay, with varying degrees of legal expertise, who made use of the law.³ Monks, the protagonists of this article, were among these legal practitioners.⁴ Their concerns were most often proprietary and, at least in northern Iberia, as Wendy Davies has demonstrated, monks (and clerics) were more likely than laymen to go to court – as a deliberate strategy of invoking secular authority.⁵ And in Italy, so François Bougard has argued, from the second half of the tenth century onward, monks sought to invoke the

² C.M. Radding, 'Legal Theory and Practice in Eleventh-Century Italy', *Law and History Review* 21 (2003), pp. 377–82 (a response to S. Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review* 21 (2003), pp. 347–66), summarizing and expanding material from C.M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850–1150* (New Haven, 1988).

³ For Italy, see especially C. Wickham, 'Land Disputes and their Social Framework in Lombard and Carolingian Italy, 700–900', in W. Davies and P.J. Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), pp. 105–24 (reprinted in Wickham, *Land and Power: Studies in Italian and European Social History, 400–1200* (London, 1994), pp. 229–56); C. Wickham, 'Justice in the Kingdom of Italy in the Eleventh Century', in *La giustizia nell'alto medioevo, secoli IX–XI* (Spoleto, 1997), pp. 179–255. More generally see the extensive bibliography on early medieval dispute settlement, especially the contributions to Davies and Fouracre, *Settlement of Disputes*; and W.C. Brown and P. Górecki (eds), *Conflict in Medieval Europe: Changing Perspectives on Society and Culture* (Aldershot, 2003).

⁴ For the copying of law manuscripts in monastic contexts, see R. McKitterick, *The Carolingians and the Written Word* (Cambridge, 1995), esp. pp. 46–60, who argues that these law books served practical functions; and for tenth-century interest, for practical purposes, in Visigothic legal material at north Iberian monasteries, see W. Davies, 'Law and the Learned in Northern Iberia in the Early Middle Ages: Some Comparisons with Ireland', in E. Purcell, P. MacCotter, J. Nyhan and J. Sheehan (eds), *Clerics, Kings and Vikings: Essays on Medieval Ireland in Honour of Donnchadh Ó Corráin* (Dublin, 2015), pp. 45–54, at pp. 46–7.

⁵ W. Davies, *Windows on Justice in Northern Iberia, 800–1000* (London, 2016), pp. 186–8.

support of secular authorities through texts cataloguing alleged unlawful deprivations of monastic property.⁶

In the eleventh century monastic (and more generally clerical) culture rubbed up against that of the emerging class of legal professionals ('the judges and notaries of the Italian central bureaucracy, the professionals of the state administration, and the jurists of the Pavia law school, themselves generally judges in the capital')⁷ – that is to say, of 'lawyers'. The monk and future cardinal Peter Damian, in his prologue to the *Life of St Romuald*, written c.1042 (a text that mentions *inter alia* how the emperor Henry II entrusted the monastery of Monte Amiata to a follower of Romuald), laments the prominence of lawyers in Italian society: 'You have . . . men who skillfully plead lawsuits and brawling cases about worldly business with unbroken declamations in the halls of *iudices*; but you have no one who can describe the powers and famous deeds of even one of the saints.'⁸ And Giorgia Vocino and Charles West have recently argued that a text copied around the year 1000 into a ninth-century canon law manuscript (Florence, Biblioteca Medicea Laurenziana, Edili 82, fol. 169r), a decree forbidding imperial or royal judges from marrying, is to be interpreted as a text drafted 'at a monastery intimately connected to the leading circles of Ottonian rule in Italy', most probably Monte Amiata or Farfa.⁹ They argue that this text reflects monastic concern and suspicion vis-à-vis the new emerging class of legal professionals. As Vocino and West suggest, there was likely a fear on the part of the monks of the 'growing prominence, autonomy and indeed power of [this] emerging elite in Italian society'.

The present article extends this investigation to ask if we may identify more specific strategies in the monastic recourse to secular legal authority. Put another way, how may we characterize the juridical culture of these monks? It will come as no surprise that reference to the past (by means

⁶ F. Bougard, *La justice dans le royaume d'Italie de la fin du VIIIe siècle au début du XIe siècle*, Bibliothèque des Ecoles françaises d'Athènes et de Rome 291 (Rome, 1995), pp. 241–2.

⁷ As defined by C. Wickham, 'Lawyers' Time: History and Memory in Tenth- and Eleventh-Century Italy', in H. Mayr-Harting and R.I. Moore (eds), *Studies in Medieval History Presented to R.H.C. Davis* (London, 1985), pp. 53–71; reprinted in *Land and Power*, pp. 275–93, here p. 285.

⁸ *Life of Romuald*, Prologue, trans. C.R. Phipps, 'Saint Peter Damian's "Vita Beati Romualdi": Introduction, Translation and Analysis', Ph.D. dissertation, University of London (1988), p. 34 (modified); ed. G. Tabacco, *Vita beati Romualdi*, *Fonti per la storia d'Italia* 94 (Rome, 1957), p. 109.

⁹ G. Vocino and C. West, "'On the Life and Continence of Judges": The Production and Transmission of Imperial Legislation in Late Ottonian Italy', *Mélanges de l'École française de Rome: Moyen Âge* 131.1 (2019), pp. 87–117, DOI: 10.4000/mefm.4763.

of oral testimony and written documents) was a way of establishing rights.¹⁰ This was a common legal strategy, and monasteries' archival capabilities made such recourse to the past feasible for them.¹¹ Yet the two case studies examined in this article suggest something more. This article argues that monastic legal practitioners at north-central Italian monasteries at the turn of the millennium thought about the law and their monasteries' archival holdings in historically minded terms, and purposefully pursued historically minded legal strategies. This was in contrast to the emerging professional legal culture of 'lawyers' who, so Chris Wickham has argued, valued documents on their own terms and were interested in the history of Italy only inasmuch as its kings and emperors served to establish a chronological ordering of law.¹² Even as the efforts of this new emerging class of legal professionals were transforming law into a specialized, de-historicized discipline, monastics were exploring an alternative legal trajectory that drew on the strength of their institutions as curated repositories of the past – and themselves as the curators of that past.

In 998 the monks at the monastery of Farfa were accused by the presbyters of S. Eustachio of illegally possessing one of the church's properties in Rome. The abbot Hugo appeared in court to defend his monastery, insisting on the monastery's right to be tried by Lombard law, and won the case; a record was made of the proceedings. In the early eleventh century, in the context of an ongoing dispute between the monks at the monastery of S. Salvatore at Monte Amiata and the nearby bishop of Chiusi, regarding the tithes from the monastery's lands, the abbot Winizo composed a petition to the local count in which he laid out the legal justification, hinging on the monastery's imperial past, for his monastery's position.

The protagonists of these two cases are abbots from monasteries in north-central Italy around the turn of the millennium: Hugo of the monastery of Farfa (Lazio) and Winizo of Monte Amiata (Tuscany). The earlier incident survives in the records of court proceedings from 998 (as recopied into Gregory of Catino's late eleventh-century cartulary for Farfa); the latter as a letter, written by Winizo in 1004–7.

¹⁰ See especially the comments by Paul Fouracre in the conclusion to Davies and Fouracre, *Settlement of Disputes*, pp. 207–41, here p. 219, and Wickham, 'Land Disputes'.

¹¹ This point is convincingly made by W.C. Brown, M.J. Costambeys, M.J. Innes and A.J. Kosto (eds), *Documentary Culture and the Laity in the Early Middle Ages* (Cambridge, 2013); see especially M.J. Costambeys, 'The Laity, the Clergy, the Scribes and their Archives: The Documentary Record of Eighth- and Ninth-century Italy', pp. 231–58; and A.C. Sennis, 'Documentary Practices, Archives and Laypeople in Central Italy, Mid Ninth to Eleventh Centuries', pp. 321–35. I am grateful to an anonymous reviewer for drawing my attention to this volume's findings.

¹² Wickham, 'History and Memory', pp. 285–8.

Both texts showcase monks putting their legal expertise to use in defence of their own institution. For both, this is a legal discourse that hinges on the history of their monasteries, crafted from their monastic archival holdings.

In what follows, I begin by introducing, in turn, the two texts, their protagonists and the disputes in which these monks were embroiled (§I–2). I demonstrate that both texts were written from monastic perspectives for broader monastic and lay consumption; differences in genre notwithstanding, both texts were preserved at their respective monastery as part of a legal arsenal for their communities. Their protagonists, learned abbots at prominent imperial monasteries attuned both to contemporary politics and their institutional documentary resources, were active participants in ongoing conflicts over property and tithes. I then turn (§3) to the legal tactics employed by these monks, arguing that both men self-consciously pursued strategies attentive to the letter of the law, and which put a curated document-based history of their monastery at the forefront of their community's future. Next (§4), I demonstrate how this attitude, in which history and law appear as two sides of the same coin, can explain the monastic forgery of documentary materials at Monte Amiata: history emended to fit the law. I conclude (§5) with some observations about the juridical culture of these monks and its relationship to the archival practices at their monasteries.

§I: A letter to Count Hildebrand written by Winizo, abbot of Monte Amiata

The letter written by the abbot Winizo in 1004–7 to Count Hildebrand survives in its original form (Fig. 1).¹³ Presumably one copy of the text was actually sent to the count; what survives is a version (a parchment document) that was subsequently preserved at the medieval monastery of Monte Amiata. The genre of the document, a letter, and the primary intended audience, the count, indicate that Winizo expected its content, which consists largely of citations from legal texts, to be comprehensible and convincing to an individual without specialized legal training.

Winizo's letter regards a dispute between the monastery of Monte Amiata and the bishop of Chiusi over the tithes collected from the

¹³ Siena, Archivio di Stato di Siena, Diplomatico S. Salvatore del Monte Amiata, sec. X (cas. 7). The best and most recent edition is by E. Stagni, in *Lettere originali del Medioevo latino (VII–XI secolo)*, vol. 1, *Italia*, ed. A. Petrucci *et al.* (Pisa, 2004), pp. 33–47.

monastery's properties.¹⁴ As I discuss further below (§4), this was an ongoing dispute. In his letter, Winizo makes reference to an agreement concluded between an earlier bishop of Chiusi, Christian, and Winizo's predecessor, the abbot Peter, that had conceded the tithes to the monastery.¹⁵ Clearly, however, subsequent bishops of Chiusi did not recognize the monastery's claims, and the question would continue to be disputed for centuries after Winizo's abbacy.¹⁶

Winizo's letter is directed to the count Hildebrand to demand that he, the count, step up to his duty of protecting the monastery. The majority of the letter is devoted to convincing him that the monastery's right to the tithes is justified. To do so, Winizo lays out the legislation that, according to him, supports the monastery's claims. Invoked and cited in the text are passages from various Carolingian capitularies, as well as a law of the Lombard king Aistulf.

A remarkable number of original medieval documents survive from Monte Amiata, yet it is worth emphasizing that the monks by no means saved everything. That they made selective choices is indicated by the evidence of repurposed documents, as well as by dorsal notes on documents that indicate periodic attempts to organize their archives.¹⁷ Such a note is to be found on the back of Winizo's letter, in an eleventh-century hand: 'these are the *capitula* of Charles and Pippin and many others; sent to Count Hildebrand'.¹⁸ From this we may conclude that Winizo's letter was later regarded, and perhaps even initially intended, as a repository of relevant legal materials for the monastery.¹⁹ Indeed, I suggest that we may consider it analogous in function to smaller collections of legal materials related to ecclesiastical

¹⁴ For an introduction to the history of monastic tithes, see C.E. Boyd, *Tithes and Parishes in Medieval Italy: The Historical Roots of a Modern Problem* (Ithaca, 1952); G. Constable, *Monastic Tithes: From Their Origins to the Twelfth Century* (Cambridge, 1964; repr. 2008); S. Wood, *The Proprietary Church in the Medieval West* (Oxford, 2006), pp. 459–518.

¹⁵ *Codex diplomaticus Amiatinus: Urkundenbuch der Abtei S. Salvatore am Montamiata*, ed. W. Kurze, 4 vols (Tübingen, 1974–2004) (hereafter CDA), vol. 1, pp. 392–5, no. 186. This document survives as a twelfth-century copy, which the editor, Kurze, postulates is not a faithful transcription of the original, on the grounds that Winizo would have cited it more explicitly if the original had read the same as this later copy. However, there is no clear evidence of forgery in the document itself.

¹⁶ The controversy about tithes was only resolved, in the bishop's favour, in 1705: M. Marrocchi, *Monaci scrittori: San Salvatore al Monte Amiata tra Impero e Papato (secoli VIII–XIII)* (Florence, 2014), p. 175 n. 277.

¹⁷ M.J. Costambeys, 'Archives and Social Change in Italy, c.900–1100: The Evidence of Dispute Notices', in R. Balzaretto and P. Skinner (eds), *Italy and Early Medieval Europe: Papers for Chris Wickham* (Oxford, 2018), pp. 261–73, at pp. 264–5, 268–9.

¹⁸ Ed. Stagni, pp. 36–7: 'hec est capitula karoli & pipini & alii plures / [m]issa ildibrando comiti'.

¹⁹ Here I follow the suggestion of Stagni, *Lettere originali*, p. 35.

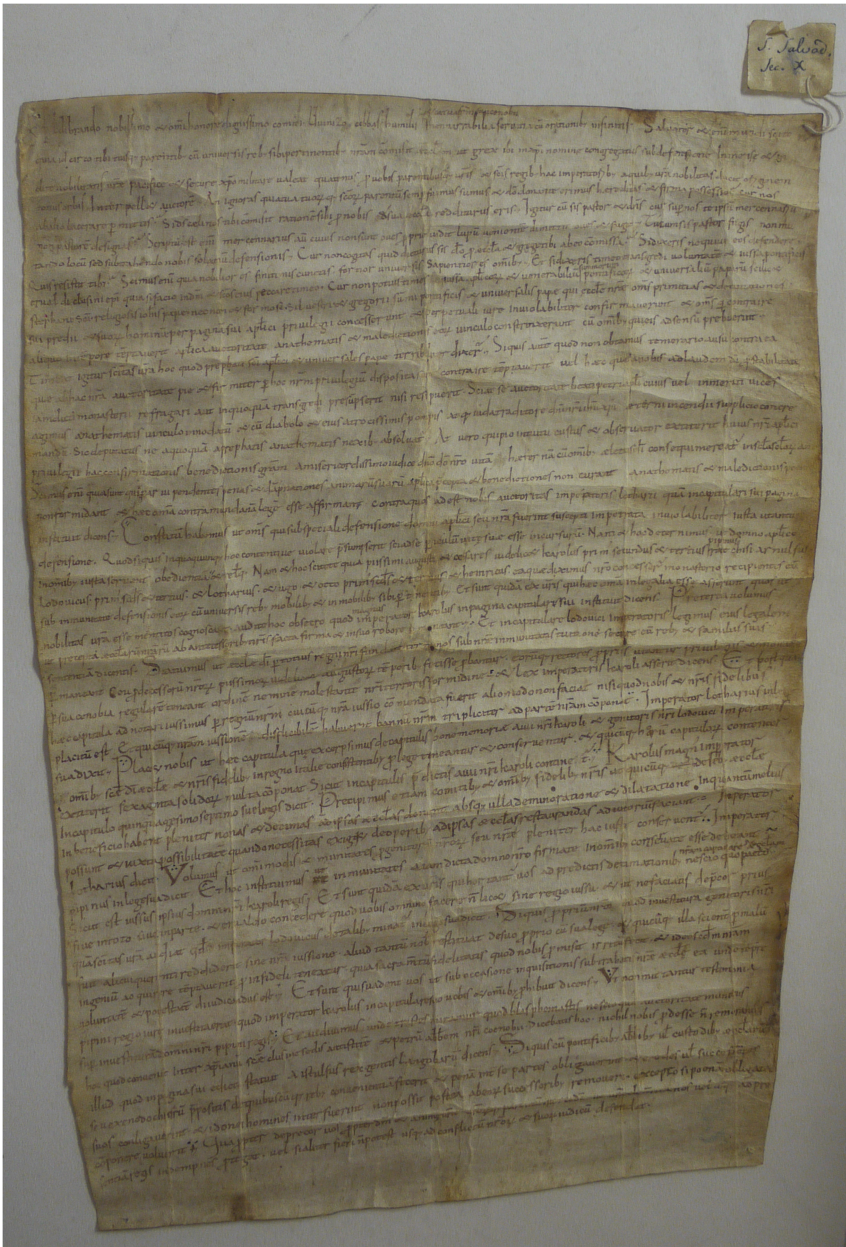


Fig 1 Winizo's letter: Siena, Archivio di Stato di Siena, Diplomatico S. Salvatore del Monte Amiata, sec. X (cas. 7). [Colour figure can be viewed at wileyonlinelibrary.com]

concerns that are to be found in contemporary manuscripts.²⁰ That is, while Winizo's immediate aim in writing his letter was to convince the count, in doing so he also compiled an arsenal of legal material for the monastery. This is revealing in that it positions this specialized legal knowledge as part of the broader administrative tool kit of an eleventh-century monastery.

This impression is corroborated by examining an example of legal material added to two of Monte Amiata's manuscripts. Added, in an eleventh-century hand, to the final pages of an eighth-/ninth-century canon law collection (Vatican, Biblioteca Apostolica Vaticana, Barb. lat. 679) is a selection of texts, extracted from papal letters, church councils and Carolingian capitularies.²¹ These include an excerpt of two chapters from the *Capitulare Italicum* of Pippin, king of Italy (here as elsewhere ascribed to Charlemagne); the first of these chapters is also to be found cited in Winizo's letter.²² This same chapter was added, following a text on dactylonomy, in a section of a lavish, enormous miscellany from Monte Amiata (Florence, Biblioteca Medicea Laurenziana, Amiatino 3) (Fig. 2).²³ This section of the miscellany most probably dates to the time of Henry III, king of Italy from 1039 to 1056 (that is, after Winizo's death). Significantly, none of these three texts can be derived from each other. In the canon law collection, the rubric 'Another chapter (*Al. cap.*) of the blessed emperor Charles' introduces one chapter of the capitulary, followed by 'another (*al.*)' for the following. Winizo's letter presents the text he cites as that which 'the Emperor Charles the Great says in the 57th chapter of his law (*in capitulo quinquagesimo septimo sue legis*)'. In the later miscellany this same text

²⁰ Cf. Bougard, *La justice*, pp. 43–4, who discusses such collections and suggests that Winizo's sources might have included a compilation like the fragmentary collection of capitularies to be found in Vatican, BAV, Reg. lat. 263, fols 227r–30v (tenth century). However, as Bougard admits, these collections would not have sufficed as sources for Winizo's letter.

²¹ Vatican, BAV, Barb. lat. 679 (available online at https://digi.vatlib.it/view/MSS_Barb.lat.679), fols 295v–296v. For an overview of the texts with further bibliography, see H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrscherklasse* (Munich, 1995), pp. 751–4; regarding the manuscript, see further M.M. Gorman, 'Codici manoscritti dalla Badia amiatina nel secolo XI', in M. Marrocchi and C. Prezzolini (eds), *La Toscana nell'alto e pieno medioevo: Fonti e temi storiografici 'territoriali' e 'generalisti'*. In memoria di Wilhelm Kurze. Atti del convegno internazionale di studi, Siena–Abbadia San Salvatore, 6–7 giugno 2003, *Millennio medievale* 68 (Florence, 2007), pp. 15–102, at pp. 43–5.

²² *MGH Capit.* 1, ed. A. Boretius (Hanover, 1883), pp. 209–11, no. 210, chs 6–7, here p. 210, lines 4–11 (Vatican, BAV, Barb. lat. 679, fol. 296v); these chapters are also to be found in the *Liber legis Langobardorum (Liber Papiensis)*: *MGH Leges* 4, ed. F. Bluhme and A. Boretius (Hanover, 1868), p. 499, Charlemagne, nos. 60–1; Winizo's letter includes no. 60 (from the *Liber legis Langobardorum*): see below, n. 89.

²³ Florence, BML, Amiatino 3, fol. 212v; regarding the manuscript, see Gorman, 'Codici manoscritti', pp. 61–5; A.M. Bandini, *Bibliotheca Leopoldina Laurentiana seu Catalogus manuscriptorum*, 3 vols (Florence, 1791–3), vol. 1, pp. 637–94.

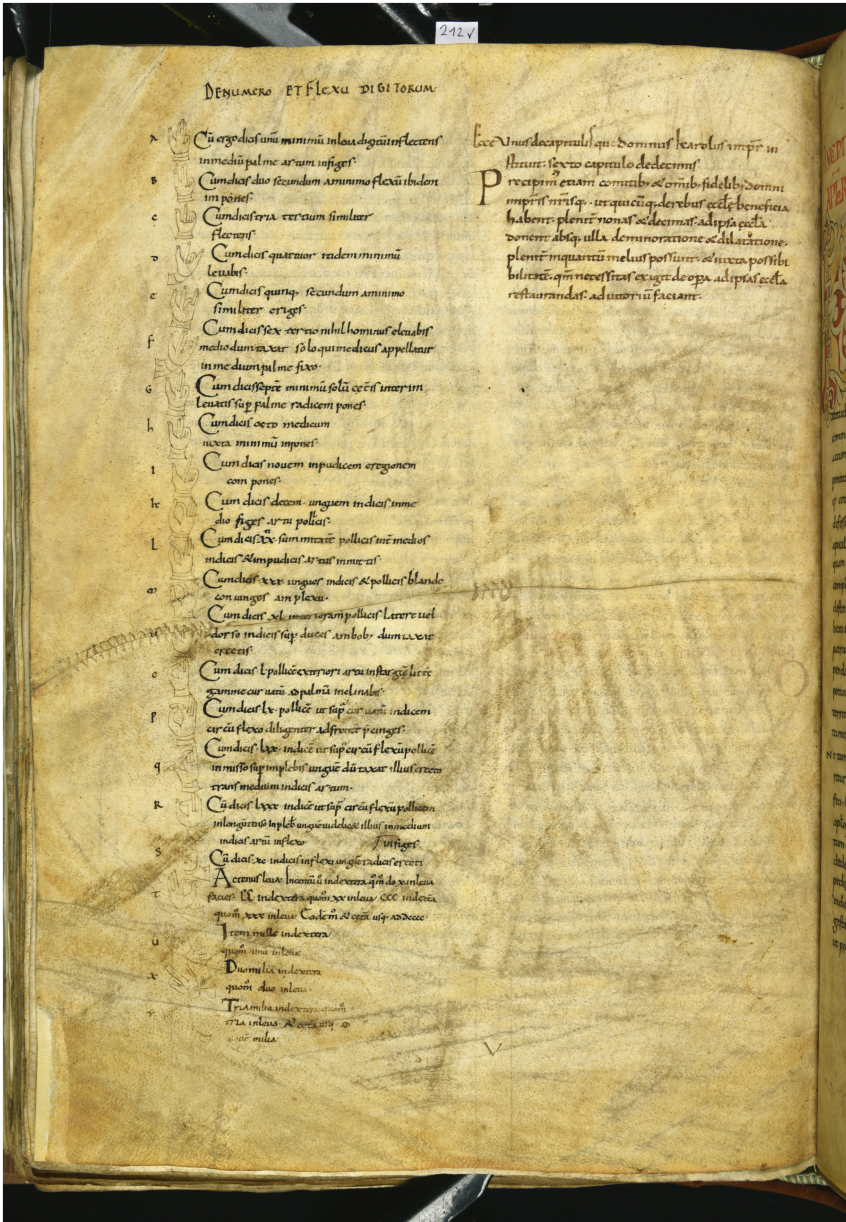


Fig 2 Florence, Biblioteca Medicea Laurenziana, MS. Amiatino 3, fol. 212v. Su concessione del MiBACT. È vietata ogni ulteriore riproduzione con qualsiasi mezzo. [Colour figure can be viewed at wileyonlinelibrary.com]

is entitled 'Here is one of the chapters (*unus de capitulis*) which the emperor lord Charles instituted: the sixth chapter (*sexto capitulo*) regarding tithes.'²⁴ This demonstrates that the monks of Monte Amiata continued to consult legal texts – and record relevant excerpts for future reference.

The abbey of Monte Amiata is located in what is today the region of Tuscany on the slopes of Monte Amiata, not far off the well-travelled via Francigena.²⁵ The monastery traced its origins back to the mid-eighth-century Lombard king Ratchis and throughout the ninth century benefitted from property donations and privileges issued by Carolingian rulers. Charlemagne (probably) and Louis the Pious and Lothar (certainly) granted the monastery imperial protection and immunity.²⁶ In the early eleventh century, Monte Amiata reached the height of its prosperity and influence under the abbot Winizo (abbacy 996–1035). In 1035 he dedicated the monastery's stately Romanesque church that still stands to this day. In terms of its property holdings, the resources of Monte Amiata were extensive (though they were surpassed by those of the nearby monastery of Sant'Antimo).²⁷

Monte Amiata was also a centre of learning. The material and intellectual resources available there (and as we shall see below, at Farfa) make clear that we are dealing with a monastery that both preserved older materials and sought out newer ones; it was a monastery in line with its times. At the back of the canon law collection to which a collection of legal texts was added, an early eleventh-century hand (perhaps during the abbacy of Winizo) also jotted a list of books loaned out by the monastery.²⁸ And available to Winizo (as was already demonstrated by Pier Silverio Leicht in 1907) was a compilation of material very similar to existing *Liber legis Langobardorum* (*Liber*

²⁴ As the title correctly indicates, this text is Chapter 6 of the *Capitulare Italicum*.

²⁵ For an introduction to the history of the monastery through the ages, see M. Marrocchi (ed.), *Profilo storico e materiali supplementari*, vol. 3 of the CDA. For a contextualization of Winizo's abbacy in the monastic politics of the Ottonian era see especially P. Tomei, 'Da Cassino alla Tuscia: disegni politici, idee in movimento. Sulla politica monastica dell'ultima età ottoniana', *Quaderni Storici* 51.2 (2016), pp. 355–82.

²⁶ No diploma issued by Charlemagne survives, but a diploma by him is referenced in the diplomas of Louis the Pious and Lothar: CDA I, p. 137, no. 69 (*deperditum*). Diplomas of Louis the Pious: CDA I, pp. 152–4, no. 77 (816) and pp. 155–66, no. 78 (816). Diploma of Lothar I: CDA I, pp. 244–5, no. 115 (837) = *MGH DK* 3, ed. T. Schieffer (Berlin and Zurich, 1966), pp. 110–11, no. 33. This diploma repeats, for the most part, the content of Louis the Pious's diploma.

²⁷ As discussed by Marrocchi, *Monaci scrittori*, p. 110, the lack of surviving documentation from Sant'Antimo likely gives a misleadingly deflated impression of its importance.

²⁸ Vatican, BAV, Barb. lat. 679, fol. 297r, mentioned above n. 21; discussed by Gorman, 'Codici manoscritti', pp. 38–42.

Papiensis) manuscripts, as well as either a second compilation of materials or loose copies of legislation (or a combination of the two).²⁹

It is more difficult to reconstruct the historical materials available at the monastery because of the subsequent dispersal of its medieval manuscripts. An eleventh-century miscellany includes Cassiodorus' *Historia tripartita*.³⁰ A narrative of Monte Amiata's foundation (fol. 119r–v) was also added to this manuscript.³¹ The first part (fols 1r–172v) of the aforementioned lavish miscellany from Monte Amiata (Florence, BML, Amiatino 3),³² which may have been copied while Winizo was abbot, includes a detailed list of popes and the length of their pontificates (perhaps compiled using the *Liber Pontificalis*), as well as a diagram of rulers and their reigns, including Roman emperors, Lombard kings and Carolingian emperors. Short historical notices are also interspersed. Another list of patriarchs, kings and emperors was added to the flyleaf of the next section of the manuscript (fol. 173r) shortly thereafter, during the reign of Henry III (1039–56). By this time the monastery must have had a copy of the *Liber Pontificalis*, as attested by an excerpt of the text included on the flyleaf.³³

Winizo had a long but varied career as abbot.³⁴ He came to power the same year that Otto III arrived in Italy and was supported by the emperor, as well as Hugo, margrave of Tuscany. Between 1001 and 1002 these two powerful supporters died and there is evidence for another abbot, Giselbert, from 7 March 1004. But Winizo was back in power by late May 1004. As has been argued by Mario Marrocchi, this, combined with Winizo's evident tensions with the local Aldobrandeschi family (of which Count Hildebrand, the addressee of Winizo's letter, was a member), gives the impression of an abbot deposed at the death of his supporters but managing to regain his earlier position with the support of the new emperor Henry II. A second crisis seems to have come for Winizo in 1022, when, perhaps out of reformist zeal, the emperor may have entrusted the monastery to a follower of the pious hermit Romuald.³⁵ Again, however, Winizo apparently made a

²⁹ P.S. Leicht, 'Leggi e capitolari in una querimonia Amiatina dell'anno 1005–1006', *Bullettino senese di storia patria* 14 (1907), pp. 536–57.

³⁰ Vatican, BAV, Barb. lat. 581; see Gorman, 'Codici manoscritti', pp. 48–9.

³¹ Marrocchi, *Monaci scrittori*, pp. 291–303; M. Maskarinec, 'Why Remember Ratchis? Medieval Monastic Memory and the Lombard Past', *Archivio Storico Italiano* 177.1 (2019), pp. 3–57, at pp. 32–8.

³² See above, n. 23.

³³ One leaf of a *Liber Pontificalis* manuscript from the monastery survives (Florence, BML, Plut. 65.35, fol. 3): Gorman, 'Codici manoscritti', p. 71.

³⁴ Marrocchi, *Monaci scrittori*, pp. 133–206. Marrocchi convincingly argues against Kurze's suggestion that there were two different abbots named Winizo, one before and one after 1004.

³⁵ Evidence for this comes especially from Peter Damian's *Life of Romuald*, ch. 65, ed. Tabacco, *Vita beati Romualdi*, pp. 106–8.

comeback. As abbot, then, Winizo operated as a power-broker, negotiating in a complex and changing political minefield. To do so, he drew on personal connections and spiritual capital, as well as his historical and legal expertise.

§2: A commemorative record starring Hugo, abbot of Farfa

The second text I draw on purports to present a less biased view but reveals itself to be an equally one-sided account. The text describes itself as a ‘commemorative record’ (*breve commemoratorium*) written for Farfa by order of the court and narrates a dispute that was settled in court in 998.³⁶ Yet, as Chris Wickham has emphasized in discussing this and similar texts from Farfa, these were records that could be written ‘at monastic behest’ and need to be read as ‘Farfa’s *version*’ of the events in question.³⁷ This particular case is especially atypical of the genre of a court record both in terms of the obvious partiality and the detail with which the events of the case are narrated. That is, this is anything but a routine court document written by and for legal specialists. It is a record made by and for the monks of Farfa.

The original document containing this pro-Farfa court narrative does not survive; it, like most of Farfa’s documentary material, is preserved as transcribed by the late eleventh-/early twelfth-century Farfa monk Gregory of Catino in his extensive and generally, it seems, very reliable cartulary of the monastery’s documents.³⁸ Gregory also made use of it in his monastic chronicle.³⁹ As discussed below, the abbot who features as the protagonist in this case, Hugo, was very attentive to the legal battles waged by the monastery. We may imagine, then, that Hugo was involved in the composition of this text, concerned that future abbots be on their guard (the rationale given in a text

³⁶ Edited by I. Giorgi and U. Balzani, in *Il Regesto di Farfa di Gregorio di Catino* (hereafter RF), 5 vols (Rome, 1879–92), vol. 3, pp. 137–41, no. 426; by C. Manaresi, in *I placiti del Regnum Italiae*, 3 vols, *Fonti per la storia d’Italia* 92, 96, 97 (Rome, 1955–60), vol. 2.1, pp. 367–74, no. 236; and in *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 2.2, *Die Urkunden Otto des III.*, ed. T. Sickel (Hanover, 1893), pp. 699–703, no. 278.

³⁷ Wickham, ‘Justice’, pp. 224 (emphasis in the original), 229.

³⁸ Gregory’s cartulary survives in Gregory’s autograph copy: *Regestum farfense*, in Vatican, BAV, lat. 8487, parts 1–2 (available online at http://digi.vatlib.it/view/MSS_Vat.lat.8487.pt.1). The 998 case is to be found in part 1, fols 189v–191r. For Gregory’s reliability as a copyist, see, with references to the older scholarship, M.J. Costambeys, *Power and Patronage in Early Medieval Italy: Local Society, Italian Politics and the Abbey of Farfa, c.700–900* (Cambridge, 2007), pp. 15–19.

³⁹ *Chronicon farfense di Gregorio di Catino*, ed. U. Balzani, 2 vols (Rome, 1903), vol. 2, pp. 18–24. This manuscript survives in Gregory’s autograph: Rome, Biblioteca nazionale centrale Vittorio Emanuele II, Farfense, Farf.1.

arguably written by Hugo, likewise preserved in Gregory's cartulary and chronicle),⁴⁰ here preserving an account of both the conflict and the tactics that were successfully used to garner a favourable outcome for the monastery.

The monastery of Farfa (in the present-day region of Lazio) takes us to the environs of Rome. Farfa is located c.60 km north-east of Rome on the hill Monte Acuziano (modern Monte S. Martino) by the Farfa River (a tributary of the Tiber).⁴¹ As recounted by later tradition, the monastery of Farfa was established prior to the arrival of the Lombards in Italy. We may say with more certainty that it benefitted from the patronage of Lombard dukes and kings and Carolingian rulers. Charlemagne granted the monastery imperial protection and immunity, and this was confirmed by subsequent rulers, such as Louis the Pious.⁴² Re-established in the early tenth century, Farfa again flourished in the eleventh to early twelfth centuries. As detailed in a diploma issued by Otto I in 967, Farfa's property holdings, particularly in Latium, were formidable.⁴³

The monastery was also evidently a centre of learning and book production.⁴⁴ In the mid-ninth century, a Farfa monk composed a brief history of the monastery, the *Constructio monasterii farfensis*, which describes its foundation and then presents a brief account of subsequent abbots and their abbacies, drawing on the *Liber Pontificalis*

⁴⁰ RF 3, p. 152, no. 439: 'ut his auditis, deinceps caueatur a rectoribus coenobii huius, ne similis proueniat euentus'; regarding this text, see further below, nn. 107–8 and related text.

⁴¹ The bibliography on Farfa is extensive. Key studies include S. Boynton, *Shaping a Monastic Identity: Liturgy and History at the Imperial Abbey of Farfa, 1000–1125* (Ithaca, 2006); Costambeys, *Power and Patronage*; M.E. Stroll, *The Medieval Abbey of Farfa: Target of Papal and Imperial Ambitions* (Leiden, 1997); C.B. McClendon, *The Imperial Abbey of Farfa: Architectural Currents of the Early Middle Ages* (New Haven, 1987); and the classic work by I. A. Schuster, *L'imperiale abbazia di Farfa* (Rome, 1921).

⁴² Diplomas of Charlemagne: RF 2, pp. 107–9, nos. 127–8 (775); *MGH DK I*, ed. E. Mühlbacher (Hanover, 1906), pp. 141–3, nos. 98–9. Diplomas of Louis the Pious: RF 2, pp. 175–7, nos. 216–17 (815); pp. 198–9, no. 242 and pp. 202–3, no. 246 (820) (these last two documents are the same diploma, repeated twice in Farfa's cartulary). Diploma of Lothar and Louis: RF 2, pp. 224–5, no. 272 (824); for the diploma issued by Lothar, see below, n. 82. For discussion, see N. D'Acunto, 'Farfa e l'Impero', in R. Dondarini (ed.), *Farfa, abbazia imperiale: Atti del convegno internazionale, Farfa-Santa Vittoria in Matenano, 25–29 agosto 2003* (Negarine di San Pietro in Cariano, 2006), pp. 131–46.

⁴³ RF 3, pp. 108–14, no. 404 (967); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 1, *Die Urkunden Konrad I., Heinrich I. und Otto I.*, ed. T. Sickel (Hanover, 1879–1884), pp. 454–60, no. 337.

⁴⁴ P. Supino Martini, 'La produzione libraria negli scriptoria delle abbazie di Farfa e di S. Eutizio', *Atti del 9 Congresso internazionale di studi sull'alto medioevo, Spoleto, 27 settembre–2 ottobre 1982* (Spoleto, 1983), pp. 581–607, reprinted in P. Supino Martini, *Scritti romani: Scrittura, libri e cultura a Roma in età medievale*, ed. G. Ancidei et al. (Rome, 2012), pp. 115–40; G. Brugnoli, 'La biblioteca dell'abbazia di Farfa', *Benedictina* 5 (1951), pp. 3–15; *idem*, 'Un elenco cinquecentesco di libri a Farfa', *Benedictina* 5 (1951), pp. 317–18; *idem*, 'Catalogus codicum farfensium', *Benedictina* 6 (1952), pp. 287–303; 7 (1953), pp. 85–120.

as a model.⁴⁵ A brief notice (preserved as transcribed in Gregory's cartulary and chronicle) includes the *Historia Langobardorum* (presumably Paul the Deacon's) and a *Liber historiarum* (perhaps to be identified as Orosius' history) among the texts that the monastery was defrauded of by the usurper abbot Hildebrand in 939.⁴⁶ By the time Gregory of Catino was working in the late eleventh/early twelfth century, the monastery's holdings included Paul the Deacon's Lombard and Roman histories and Cassiodorus' *Historia tripartita*. Moreover, at least two of Farfa's early tenth-century abbots were learned in medicine, another domain doubtless cultivated, like history or law, because of its importance for a monastery's well-being.⁴⁷

Like Winizo, Hugo (abbacy 997–1039) had a troubled tenure as abbot.⁴⁸ By his own account, Hugo had paid the pope to become abbot of Farfa.⁴⁹ He was dismissed by Otto III for simony and then reinstated by the same emperor at the request of the monks in 998.⁵⁰ At issue here was imperial oversight; in his diploma reinstating Hugo, Otto III decreed that in the future the monastery's abbot was to be elected by the community and then presented for imperial approval. Under Hugo and with Otto's support, the monastery prospered in subsequent years, and Hugo also, again by his own account, undertook to reform the monastery along the lines of Cluny.⁵¹ But Hugo's troubles as abbot were not over. Twice more he (voluntarily or involuntarily is unclear) ceased being abbot; twice, he again returned to power.⁵² Hugo was determined to succeed.

Throughout his career Hugo was involved in numerous disputes regarding Farfa's properties and privileges. Like Winizo, he was also the author of texts related to his monastery.⁵³ Hugo's works included a text describing the reform of Farfa (preserved in Gregory's chronicle), two accounts of an extended dispute with the Crescentii (one preserved in

⁴⁵ *Constructio monasterii farfensis*, ed. Balzani, in *Chronicon farfense*, vol. 1, pp. 3–23.

⁴⁶ RF 3, p. 84, no. 379; *Chronicon farfense*, ed. Balzani, vol. 1, pp. 325–6; Supino Martini, 'La produzione libraria', p. 594.

⁴⁷ The evidence comes from Hugo's *Destructio monasterii farfensis*, discussed below, and a tenth-century document transcribed by Gregory, both ed. Balzani, in *Chronicon farfense*, vol. 1, p. 36 and p. 36 n. 3, respectively, with discussion by Balzani.

⁴⁸ The comparison is made by Marrocchi, *Monaci scrittori*, pp. 160–2.

⁴⁹ Hugo reports this in a number of texts, including the *Relatio constitutionis domni Hugonis*, ed. Balzani, in *Chronicon farfense*, vol. 1, pp. 55–8; vol. 2, pp. 75–8. (Balzani's edition includes the same text twice, once among other texts authored by Hugo, once in the context of Gregory's chronicle, which is the only surviving source of the text.) Hugo's simoniac election is also referred to in the diploma of Otto III in which he reinstated Hugo; see the following note.

⁵⁰ RF 4, p. 102, no. 700 (998); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 2.2, *Die Urkunden Otto des III.*, pp. 696–7, no. 276.

⁵¹ The most detailed account of this is, again, the *Relatio*, see above, n. 49.

⁵² These two hiatuses in his abbacy are usually dated to 1009–14 and 1027–36.

⁵³ For an overview of these texts, see Schuster, *L'imperiale abbazia di Farfa*, pp. 179–80.

Gregory's chronicle, the other included in the latter part of Gregory's cartulary, which was copied by Gregory's continuator Todino), as well as a brief history of the monastery, the *Destruction of the Monastery of Farfa*, which continues the earlier mid-ninth-century account of its history (unusually, this text is preserved independently of Gregory).⁵⁴ In these texts Hugo outlines his vision of Farfa as a newly reformed monastery recovering from a century of difficulties and deserving of support in its struggles against its opponents.

Farfa's commemorative record from 998 regards a property dispute, between the monastery of Farfa and the church of S. Eustachio in Rome.⁵⁵ As described by the text, the presbyters of S. Eustachio lodged a protest (to the pope and emperor) regarding two churches and their accompanying properties in Rome, located in the Alexandrian baths in the Campus Martius. Because of the presbyters' complaints, the abbot Hugo was brought to court; the commemorative record describes the subsequent proceedings. Much of the case has to do with Hugo's insistence on the monastery's right to be tried by Lombard rather than Roman law. Specifically invoked, by Hugo's Lombard advocate Hubert (who is also known from a handful of other cases involving Farfa),⁵⁶ is one piece of legislation, a law of the Lombard king Aistulf.

Farfa's dispute with the church of S. Eustachio was only one of the many altercations in which we know Hugo was involved. An ongoing issue at the monastery of Farfa was the validity of written contracts made by previous abbots of the monastery. In his *Destruction of the Monastery of Farfa*, Hugo relates how during the abbacy of John, Otto I forced one of the claimants to the abbacy, Hildebrand, to resign and by imperial order annulled all of Hildebrand's charters (*scripta*) with respect to the monastery's possessions, on the grounds that Hildebrand had never been abbot since he had never actually held power, nor been elected by the monks, nor been confirmed by any emperor, and also, Hugo explains, 'since he [Hildebrand] was deposed legally (*legaliter*) by that most holy emperor by this order'.⁵⁷ The validity of Hildebrand's decrees was still a contested issue at the

⁵⁴ These texts are edited by Balzani in his edition of the *Chronicon farfense: Relatio*, see above, n. 49; *Exceptio relationum domni Hugonis abbatis de monasterii farfensis diminutione*, vol. 1, pp. 61–70; vol. 2, pp. 78–86; *Querimonium domni Hugonis abbatis ad imperatorem de castro tribuco et bucciniano*, vol. 1, pp. 73–7 = RF 5, pp. 252–4, no. 1279; *Destructio monasterii farfensis*, vol. 1, pp. 27–51. This last text is edited from a mid-sixteenth-century copy, Vatican, BAV, lat. 6216. These texts are also edited by L.C. Bethmann, *Hugonis Opuscula*, MGH SS II (Hanover, 1854) (*Historiae aevi Salici*), pp. 530–44.

⁵⁵ This and comparable cases are discussed in depth in G. Chiodi, 'Roma e il diritto romano: Consulenze di giudici e strategie di avvocati dal X al XII secolo', in *Roma fra Oriente e Occidente (19–24 aprile 2001)*, *Settimane* 49 (Spoleto, 2002), pp. 1141–1246, at pp. 1162–85.

⁵⁶ Chiodi, 'Roma', pp. 1165–6. The earliest of these dates from 994, the last from 1012.

⁵⁷ Hugo, *Destructio*, ed. Balzani, in *Chronicon farfense*, vol. 1, pp. 45–6.

time Hugo was writing: Hugo admonishes those ‘who still want to defend his [Hildebrand’s] *scripta*’ that they should pay heed to his (Hugo’s) words. Meanwhile, the validity of another property document from the time of Otto I was at stake in a property dispute between the monastery of Farfa and the monastery of SS. Cosma e Damiano in *Mica Aurea* in Rome, discussed below (in §5).

Hugo’s most long-lasting and difficult conflict was with members of the Crescentii family regarding two fortified settlements (*castelli*). In two texts written in the late 1020s, Hugo describes the events related to this violent dispute in depth; one of these texts is directed to the emperor Conrad II to solicit his support.⁵⁸ On account of the complexity of this dispute, the subject merits fuller treatment elsewhere, but for my present purpose it suffices to remark that in both texts, Hugo’s discussion of the controversy makes reference to the legality of certain procedures and documents. This makes clear Hugo’s proactive role in the monastery’s conflicts and his profile as a legal expert in his own right.

In the 998 dispute with S. Eustachio, Hugo was represented and advised by an advocate; this was in accordance with Carolingian legislation.⁵⁹ Nevertheless, as the events of the case and Hugo’s own writings make clear, Hugo was anything but an out-of-the-loop observer of the monastery’s conflicts. Meanwhile, if Winizo did have a legal adviser, he clearly did not think it to his advantage to draw attention to it. Monasteries faced constant challenges, old and new, as they attempted to assert control over tenuous or ambitious claims to properties and privileges. Shrewd monks were aware of this, taking steps to shore up their monasteries’ claims, and in actual conflicts, taking the lead in defending them before the law.

To summarize:

The protagonists of these texts are two monks, Winizo and Hugo, at the monasteries of Monte Amiata and Farfa. At the turn of the millennium, these were sizeable monasteries, endowed with imperial privileges and, at least theoretically, with considerable land and resources at their disposal.⁶⁰ Winizo and Hugo were forceful abbots closely involved in the administration of their monasteries, and deeply entangled in, and dependent on, regional and imperial politics. Their concerns were common for medieval monasteries whose wealth derived above all from landowning and eventually, in many cases, also tithes.

⁵⁸ These texts are the *Exceptio* and the *Querimonium*, cited above, n. 54.

⁵⁹ See Bougard, *La justice*, pp. 264–9; C. West, ‘The Significance of the Carolingian Advocate’, *EME* 17 (2009), pp. 186–206.

⁶⁰ For the profile of such monasteries, see more generally M. de Jong, ‘Carolingian Monasticism: The Power of Prayer’, in R. McKitterick (ed.), *The New Cambridge Medieval History*, vol. 2 (Cambridge, 1995), pp. 622–53.

Winizo and Hugo were not legal professionals, but they were ambitious, learned individuals, each of whom sought to assert the pre-eminence of his monastery, not least by penning texts in support of its claims. They were knowledgeable about the past texts and attuned to the contemporary world, attempting to steer their respective houses through unpredictable politics by exploiting every trick available to enterprising individuals and institutions – including a keen attentiveness to the implications of their monastery's archival holdings and mastery of, and creativity in navigating, secular law.

The two texts discussed here stand in a different relation to the events and protagonists described. But both are written from monastic perspectives, and although they make use of legal knowledge, these are texts pointedly written by and for individuals without specialized legal training. Moreover, both were subsequently preserved by the monks at their respective monasteries, providing their communities with a record of past events but also relevant materials and strategies for the future. They showcase a monastic milieu in which a dose of legal knowledge and know-how was key to the smooth functioning of a successful community – and was preserved for subsequent generations.

One further example from a lesser-known monastery may serve to flesh out the contours of this monastic culture: the late tenth-century chronicle of Benedict, a monk at the monastery of S. Andrea at Monte Soratte, located c.15 km to the east of Farfa, across the Tiber (in the present-day region of Lazio).⁶¹ This was a monastery that, as recounted by Benedict's chronicle, traced its lineage to the earlier monastery of S. Silvestro, located on top of the nearby hill of Monte Soratte. Like Monte Amiata and Farfa, Monte Soratte was a monastery whose property claims and privileges depended on historical claims about donations made by kings and emperors of bygone centuries. Like Winizo and Hugo, the monk Benedict was familiar with a range of historical, hagiographical and legal sources.⁶² In particular Benedict likely had available to him a compilation or compilations of the Lombard laws and Carolingian capitularies, as well as later pieces of legislation (either on loose sheets or included in a compilation).⁶³

⁶¹ Ed. G. Zucchetti, *Il 'Chronicon' di Benedetto*, *Fonti per la storia d'Italia* 55 (Rome, 1920). In what follows, I draw on M. Maskarinec, 'Legal Expertise at a Late-Tenth-Century Monastery in Central Italy, or Disputing Property Donations and the History of Law in Benedict of Monte Soratte's Chronicle', *Speculum* 94.4 (2019), pp. 1033–69.

⁶² Historical materials used in the chronicle include Bede's chronicle, the *Royal Frankish Annals*, and Einhard's *Life of Charlemagne* (though not the *Liber Pontificalis*). For Benedict's materials, see, more extensively, Zucchetti, *Il Chronicon di Benedetto*, pp. xxii–xxiii.

⁶³ Maskarinec, 'Legal Expertise', pp. 1061–4.

Benedict's chronicle, preserved by a single manuscript (Vatican, BAV, Chigi. F.IV.75, fols 1r–58v), narrates the history of the monastery of Monte Soratte folded into a 'world' chronicle.⁶⁴ This text was written for internal consumption, providing Monte Soratte's monks with an introduction to the history relevant to their monastery, and, like Winizo's letter, with a legal arsenal for potential conflicts with other monasteries, ecclesiastics or laymen. Included in this rudimentary history lesson is material specific to the monastery (such as descriptions of its property holdings), a basic overview of rulers in Rome and Italy and their successes and failures, a brief history of law-giving, and references to specific laws relevant to Monte Soratte's property claims. Moreover, at a later point, the chronicle was bound together with a collection of texts, primarily legal materials, that in all likelihood was also written there (Vatican, BAV, Chigi. F.IV.75, fols 59r–109v). This contributes to the impression that the monks of Monte Soratte, as at Farfa and Monte Amiata, regarded historical and legal materials as analogous and interrelated bodies of knowledge, and preserved both as relevant to the needs of their monastery.

Embedded in the chronicle itself is also the legal and historiographical rationale for an ambitious property claim over a piece of land that, according to Benedict, had been donated to the monastery by the mid-eighth-century Lombard king Ratchis: an estate in the territory of Spoleto.⁶⁵ Faced with a potential legal objection to the legality of Ratchis's donation to Monte Soratte (a law of Ratchis's successor Aistulf that annulled donations made by Ratchis after Aistulf's accession), Benedict adjusted the historiographical narrative (in order to claim that Ratchis's donation had taken place before Aistulf came to power).⁶⁶ The profile of Benedict that emerges from a close reading of his chronicle, then, is of a monk, possibly an abbot, who, like Winizo and Hugo, was actively involved in his monastery's affairs and looking to harness its historical, legal and documentary resources to secure its prosperity in a changing and uncertain world.

⁶⁴ Manuscript available online at http://digi.vatlib.it/view/MSS_Chig.F.IV.75. For further discussion and bibliography about the manuscript, see Maskarinec, 'Legal Expertise', pp. 1060–2.

⁶⁵ See more fully Maskarinec, 'Legal Expertise', pp. 1038–50.

⁶⁶ *The Lombard Laws*, trans. K. Fischer Drew (Philadelphia, 1973), p. 228; *Leges Aistulfi* 1, ed. Bluhme, *MGH Leges* 4, p. 196; Benedict, *Chronicle*, ed. Zucchetti, pp. 67–8. For further discussion of the circumstances surrounding the abdication of Ratchis, the accession of Aistulf, and subsequent monastic memories of these events, see Maskarinec, 'Why Remember Ratchis?'

§3: The strategies

In his *Destruction of the Monastery of Farfa*, very favourably inclined towards the Ottonians, Hugo describes Otto I and Otto II as bringing about law and justice (*legem et iustitiam*) throughout all of Italy.⁶⁷ This reflects how, in Italy, Ottonian rulers successfully framed themselves as lawgivers, continuing the practices of Lombard and Carolingian rulers. This took the form of capitularies (decrees) issued by Ottonian rulers for Italy and the *placita* (public court cases) that they held.⁶⁸

This Ottonian attentiveness to law seems to have fostered even greater attention to the ‘letter of the law’⁶⁹ among Italian practitioners. This is evidenced by the citation of specific laws in legal documents and the production of manuscript compilations of Lombard laws put together with (differing) collections of Carolingian capitularies, above all the so-called *Liber legis Langobardorum* (*Liber Papiensis*).⁷⁰ It is also evidenced by our monks’ engagement with, and knowledge of, the law. All three abbots make use of legal reasoning and legal arguments as strategies to resolve their disputes. The starting point for all three is a shared conviction that secular law has force and that legal details matter.

When Hugo is first brought before the emperor and pope he does not resist or attempt to convince the court that the presbyters’ claims should not be investigated. Instead, Hugo begins by asking for a delay until he has his *iudices* and advocate at hand to advise him. Although in the intervals between court hearings informal discussion between the parties may have taken place, the court is presented as the only authoritative forum for resolving the conflict. When the court decides in favour of the monastery of Farfa, the emperor’s representative orders that the charter with which the presbyters had been litigating be cut in half and that the presbyters should, if they again initiate litigation against the monastery, be required to pay ten pounds of the best gold, half for the king and half for the monastery.⁷¹ As it turned out, in 1011 the presbyters of S. Eustachio did again protest against the monastery’s

⁶⁷ Hugo, *Destructio*, ed. Balzani, in *Chronicon farfense*, vol. 1, p. 45 (Otto I and II), p. 47 (Otto II).

⁶⁸ See S. Patzold, ‘Capitularies in the Ottonian Realm’, *EME* 27 (2019), pp. 112–32 at p. 113. Patzold also convincingly makes the case for the copying of capitularies as evidence for the interest and use made of them in the Ottonian period, thereby challenging the traditional view of the Ottonian rulers as uninterested in written law except in Italy.

⁶⁹ Bougard, *La justice*, pp. 292–6.

⁷⁰ Radding, *Origins*, pp. 81–2; T. Gobbitt, *The Liber Papiensis in the Long Eleventh Century: Manuscripts, Materiality and Mise-en-Page* (Leeds, forthcoming).

⁷¹ For the legally mandated destruction of documents see Sennis, ‘Documentary Culture’, pp. 329–30; and more extensively, A.C. Sennis, ‘Destroying Documents in the Early Middle Ages’, in J.A. Jarrett and A.S. McKinley (eds), *Problems and Possibilities of Early Medieval Charters* (Turnhout, 2013), pp. 151–70, at pp. 156–9.

possession of these properties.⁷² Significantly they did so while Hugo had ceased being abbot and Guido had taken charge; although we do not know what specifically prompted this turn of events, we may surmise that in the context of changed political circumstances at the monastery of Farfa (and the region more generally), the presbyters saw an opportunity to reopen the case. As described by the record of this case (similarly preserved in Gregory of Catino's cartulary), Guido was brought to court; yet when presented with the earlier *breve*, the judges agreed that there was no reason to revoke 'the judgment that once and for all (*semel*) had been so carefully and so prudently decided (*tam diligenter tamque consulte diffinitum*) and above all had been so securely and inviolably settled (*tam firmiter et inuiolabiliter terminatum*) by order of the king and the pope.

Of course, the Farfa case is the record of a court case; that law is presented as authoritative is unsurprising. More telling is the degree to which Winizo chooses to bring law to bear on his controversy: by taking a legal approach to convincing the count of his monastery's right to the tithes. The starting point of Winizo's letter is that law matters; Winizo takes for granted that the count will consider legal arguments relevant and potentially compelling.

Winizo begins the letter by framing the relationship between the monastery and the count as a divinely ordered, hereditary relationship: God has entrusted the monastery to the family of the count (*Salvator . . . tibi tuisque parentibus . . . nostram commisit aecclesiam*). Yet we should be clear that Winizo was working to negotiate the relationship between the monastery and the count – with an eye toward the new king of Italy, Henry II. Only in the course of the eleventh century would the count's family, the Aldobrandeschi, come to dominate the region more exclusively, and when in the later part of the century the family attempted to become *the* exclusive patrons of the monastery, the monks vehemently resisted their control.⁷³

Winizo uses the language of possession to describe Hildebrand's relationship to the monastery but his emphasis is on the responsibility that comes with it: the count is responsible, like a good shepherd, for protecting the religious house. At the Last Judgement the count will have to account for the monastery before God; for this reason, he should carefully consider his course of action. Winizo then proceeds to

⁷² RF 4, pp. 13–15, no. 616 (1011).

⁷³ C. Wickham, 'Paesaggi sepolti: Insediamento e incastellamento sull'Amiata, 750–1250', in M. Ascheri and W. Kurze (eds), *L'Amiata nel medioevo: Atti del convegno internazionale di studi storici, Abbazia San Salvatore, 29 maggio–1 giugno 1986* (Rome, 1989), pp. 101–37, at pp. 124–8; Marocchi, *Monaci scrittori*, p. 172.

detail the legislation and documents that, according to Winizo, support Monte Amiata's claims.

The first point to notice here is that for Winizo, the same set of legislation and legal documents that is valid on earth is valid in the heavenly court. Or, put another way, what Winizo imagines is an ecclesiastically defined world order underpinned by earthly legislation: God rules the world like a judge, but the criteria for his judgements are the same as those valid in an earthly court. 'Law' is the set of materials that should, theoretically, regulate life on earth, but most certainly will be used in the court of the Last Judgement. Winizo thus imagines 'law' to be universally and perpetually valid.

But what, more specifically, for Winizo, is 'law'? Throughout the letter, Winizo references or cites various types of documents: papal privileges, imperial diplomas, capitularies, edicts and 'laws'. The vocabulary he uses is very precise and demonstrates a differentiation between these materials in terms of their format or the authority by which they are issued. Anyone with authority, whether ecclesiastical or lay, can issue orders (*iussa*, or in their written form *praecepta*).⁷⁴ Likewise, anyone with authority can grant *privilegia*, specific privileges. Only kings and emperors, however, issue edicts (*edicta*)⁷⁵ and capitularies (*capitularia*),⁷⁶ which in their compiled form, namely in the *Liber legis Langobardorum* (*Liber Papiensis*), are known individually as a 'law' (*lex*).⁷⁷ The point here is that although Winizo recognizes and indeed emphasizes ecclesiastical and more specifically, papal authority, ecclesiastical authorities do *not* issue laws. 'Law' is the prerogative of secular rulers.

Winizo begins by invoking God and the authority of the popes and the apostle Peter, of whom the popes are the successors; ecclesiastical authority takes precedence in his letter. But, as he explains, it is secular authority that gives legal force to ecclesiastical decrees in this world. Winizo advises the count that if he fears to transgress the orders of the bishop of Chiusi (who claimed the tithes for himself), he should call to

⁷⁴ This term occurs with reference to bishops of Chiusi, popes and emperors.

⁷⁵ The term only occurs once, with reference to the Lombard king Aistulf: 'quod in pagina sui edicti statuit Aistulfus rex gentis Langobardum'; the implication is that Lombard kings issue edicts, Carolingian emperors issue capitularies.

⁷⁶ Winizo consistently uses *capitulare* when referring to capitularies and once uses *capitulum* to refer to a chapter in the *Liber Papiensis* (see above, n. 22). His precise terminology is in contrast to the usage of these terms within the capitularies themselves, regarding which see further Patzold, 'Capitularies', p. 115.

⁷⁷ As demonstrated by Leicht, apart from one exception, Winizo uses 'law' (*lex*) when referring to a piece of legislation found in the *Liber legis langobardorum*, 'capitulary' (*capitulare*) when referring to legislation not present there: Leicht, 'Leggi', pp. 31–3.

mind the many popes who have confirmed, so Winizo asserts, the monastery's rights. Yet Winizo then continues:

we know that there are those who, considering the punishment and damnation of their souls to be of little weight, do not attend to apostolic *praecepta* and benedictions, do not fear the punishment of anathemas and maledictions, and affirm all these things to be counter to worldly law (*contra mundanam legem*); against them we may adduce the authority of the emperor Lothar, which he established on a page of his capitulary (*in capitulari sui pagina*), saying, 'For we have established that all who were received under the particular protection of our apostolic lord, or ours, should enjoy what they were granted inviolably, under lawful (*iusta*) protection. If anyone should presume to violate this directive in any way, let him know that he puts his own life in danger. For we decree this too so that they may preserve just obedience to the apostolic lord in all things',⁷⁸ and so on.

Here Winizo confronts the potential argument that ecclesiastical directives are not valid, at least not in an earthly court, because they are counter to worldly law. In response, Winizo does *not* argue that ecclesiastical decrees have the force of law; instead, his argument is that papal decrees should be respected even by the worldly minded because there is imperial legislation that directs that it should be. Specific papal privileges to the monastery, then, like its rights to the tithes, have the force of law – secular law – insomuch as they are underpinned by secular legislation; and it is the spectre of worldly punishment attached to secular law, not anathemas and maledictions, that Winizo expects will keep malefactors in check.

In addition to taking for granted that secular legislation has the force of law, both monks take a similar strategy in drawing on precise passages to make their case. Not only does this tactic demonstrate their close familiarity with the law, it also reveals a strong belief in its precise letter. Legal details matter. In Winizo's text, each citation of law (Lombard laws and Carolingian capitularies) begins with an especially prominent capital letter (which is not the case for the one citation of a papal privilege) and all citations are marked by what we may call 'quotation marks' (Fig. 3).⁷⁹ For each piece of legislation, Winizo also makes a point of specifying who issued it and, as we have seen, at one

⁷⁸ *MGH Capit.* 1, p. 323, no. 161, §1.

⁷⁹ According to Stagni, *Lettere originali*, p. 35, one cannot exclude the possibility that these marks were a later addition.

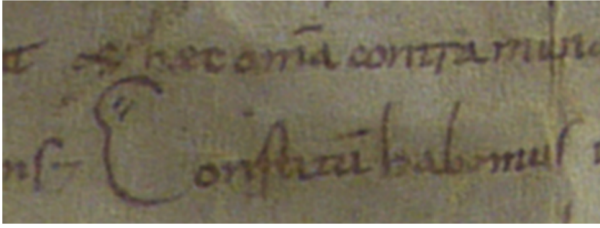


Fig 3 Winizo's letter, detail. [Colour figure can be viewed at wileyonlinelibrary.com]

point even specifies the precise chapter of a law in the *Liber legis Langobardorum* (*Liber Papiensis*).⁸⁰ This declaration assumes that it was at least plausible that someone reading what he had written could consult a codex to check Winizo's citation.

In Farfa's dispute, a specific law of Aistulf is invoked. As in Winizo's letter, it is important that this law is being cited correctly. Hugo's advocate, Hubert, displays to the court the text of Aistulf that he declares relevant to the case; and subsequently, once he has been appointed the judge in this case, Hubert insists of the same text, 'I will not judge unless I hold the text (*scriptum*) in my hands.' Thereby Hubert emphasizes that proper judgement requires adhering to the letter of the law. We may note that for Hubert, demonstrating that the basis for his verdict is the 'law', not partiality, is a matter of particular concern because he had previously been serving in the same case as Hugo's advocate. After no *iudex* familiar with Lombard legislation is to be found in the city, the emperor's representative Leo orders Hubert to swear on the gospels that he will pass judgement truthfully and instals him as *iudex*. By displaying the legal basis for his decision, Hugo affirms his commitment to rendering judgement fairly, that is, according to the precise text of specific laws.

Both Hugo and Winizo are attentive to the law and to particular laws. Additionally, though their precise strategies in bringing this legislation to bear on their disputes vary, both position the history of their monasteries at the crux of the debate.

In the case of Farfa, what is at stake is the application of Lombard law. The outcome of the dispute rests primarily upon Hugo and Hubert's attempt to reframe the property dispute in terms of possession rather than rent. The presbyters of S. Eustachio claim that they are the rightful owners of the properties in question and had leased them temporarily to Farfa. Since the terms of the lease have expired the

⁸⁰ See above, n. 22.

properties should revert to the church. But Hugo and Hubert insist that whether or not the monastery had paid rent is irrelevant; what matters is whether the monastery has been holding the land for at least forty years, in accordance with the law of Aistulf that specified that in disputes between holy places the right to continued possession is established by it being in their hands for a period of forty years.⁸¹

Aistulf's law is a Lombard law. In order to wield it against the presbyters of S. Eustachio, Hugo and Hubert must insist on the monastery's right to be judged according to Lombard legislation. This occupies the greater part of the trial. When brought to court and offered a Roman advocate, Hugo insists, 'God does not wish that the affairs of our monastery should ever live under Roman law, but rather under Lombard law (*sub lege langobarda*), on account of which I do not want a Roman advocate.' Leo, the emperor's representative, informs Hugo that he, Hugo, has no choice but to comply, but the abbot resists, saying that he will not relinquish his claim unless the directive comes from the emperor himself. A delay is granted and Hugo returns to court with his advocate, Hubert.

Hubert likewise insists that 'we wish to defend ourselves according to Lombard law because for a hundred years and more the affairs of our monastery have been defended through Lombard law, and we have royal *praecepta* to that effect'. Leo, unsure how to proceed, consults the emperor, who decides that if the monks can prove 'through documents (*scripta*), oath or witnesses' that the monastery was defended under the law of the Lombards in the past, he will uphold this prerogative. In response, the abbot and his advocate bring forth a confirmation by the emperor Lothar specifying the monastery's right to live under Lombard law. A copy of this diploma is preserved in Gregory of Catino's cartulary.⁸² It describes how Farfa's abbot Ingoald had presented to the emperor Louis *praecepta* issued by Lombard kings demonstrating that the monastery had always been under the protection and defence of those kings; in turn, the emperor Lothar now confirms to the abbot Sichard (Ingoald's successor) the monastery's properties and the privileges conceded by earlier rulers. The diploma also establishes that the monastery should be under imperial protection and not subject to papal or other secular jurisdiction, but should be immune and free.

The issue is still not resolved because those from the side of S. Eustachio contest the validity of the document. Hubert declares his willingness to swear an oath and also proceed with a duel (a tactic that

⁸¹ Aistulf 18; trans. Drew, p. 236.

⁸² RF 2, pp. 233–8, no. 282 (840); *MGH DK* 3, pp. 146–53, no. 51; see also RF 2, pp. 224–5, no. 272.

had not been mentioned previously by the emperor, but which was sanctioned in certain circumstances by a capitulary issued by Otto I and Otto II),⁸³ and offers witnesses to prove that the document is not falsified. But some of the presbyters do not want to accept these terms. At this point Leo himself steps in and declares that he knows for certain that the monastery of Farfa has always been under imperial protection and is under Lombard law. Accordingly, Aistulf's law becomes relevant to the case.

At the forefront of Hugo's strategy, then, is the history of the monastery. It is Farfa's imperial past, in the form of the documented rights the monastery has been granted by earlier emperors, that is the clinching factor in determining its legal status. Historical circumstances, as can be established by documents, oaths or witnesses, create the legal preconditions for the application of law. What should be emphasized is that this is a shrewd and deliberate *strategy*. Hugo strives for this case to be tried by Lombard law because this renders Aistulf's law on possession applicable to the case; he did not categorically oppose the application of Roman law to monastic controversies involving Farfa. In another case in which Hugo was involved and in which he again insists on the application of Lombard law, he does not object when the judges apply what is described as a decree of the emperor Justinian in the monastery's favour.⁸⁴

Whereas for Hugo procedural manoeuvring concerning the applicability of Lombard law takes centre stage, Winizo's approach hinges more upon the interpretation of law.⁸⁵ Throughout his letter, Winizo invokes specific laws in response to objections that, so Winizo claims, his opponents have made against the monastery's case. As we have already seen above, the first of these legal citations addresses the argument that ecclesiastical directives are not valid because they run counter to worldly law. In response Winizo argues that papal decrees should be respected because there is imperial legislation that says so. The legislation in question is a capitulary of the emperor Lothar.⁸⁶ Next, Winizo reminds the count that Monte Amiata has been granted the tithes and imperial immunity by a number of Lombard, Carolingian and Ottonian kings. But, so Winizo continues, 'there are

⁸³ *Capitulare Veronense de duello iudicali*, ed. L. Weiland, *MGH Const.* 1 (Hanover, 1893), pp. 27–30, no. 13.

⁸⁴ This is the case involving SS. Cosma e Damiano; see further below (§5). Also, in another, earlier case in which Hubert represented the monastery of Farfa, Hubert does not object to the application of Roman law (in the monastery's favour): RF 3, pp. 120–1, no. 411 (994).

⁸⁵ Here I disagree with Radding, *Origins*, p. 83, who writes, 'Nor did the querimonia actually develop any argument beyond the bare citations of law . . . The thought clearly was that the laws spoke for themselves, without need for argument or interpretation.'

⁸⁶ See above, n. 78.

those of you who assert that all these things are illegal (*inlegalia*).⁸⁷ So that the count may recognize that his opponents are lying (*mentitos*), Winizo cites a number of Carolingian capitularies. What is at stake, we may surmise from these citations, is both the continued validity of privileges granted by earlier rulers and the legal implications of imperial grants of immunity.

Winizo cites two capitularies that decree the force of previous imperial concessions granted to churches, then two that stipulate punishment for those who do not follow imperial laws.⁸⁸ These capitularies outline a case for the continued validity of grants to the monastery by earlier emperors. Then Winizo cites a text that states the obligation of laymen (such as counts) who have church possessions as a benefice to surrender to churches the tithes owed to them;⁸⁹ this is followed by two capitularies regarding the continued validity of immunities.⁹⁰ These three pieces of legislation address the scenario of an ecclesiastical institution (such as Monte Amiata) that claimed imperial protection and was thus answerable only to the king or emperor, not to any lesser authority. Winizo's reasoning, then, is that because Monte Amiata has in the past answered and, by legal right, continues to answer to the emperor, the count does not have the right to withhold that which was granted to the monastery by imperial authority (i.e., tithes). This second thrust of his argument is especially significant because the bishop of Chiusi could likewise have claimed that imperial legislation defending the rights of churches supported his right to the tithes. Winizo has

⁸⁷ Here I disagree with Marrocchi, *Monaci scrittori*, p. 174, who has recently interpreted this passage as alluding to the fact that many of the charters in question had been 'emended' by the monks of Monte Amiata; that is, that the monastery's opponents suspected (rightly) that the monks had tampered with the documentation in question. However, this does not accord with the meaning of *inlegalis* as found in other contemporary sources. For example, the term *inlegalis* is to be found in a diploma of Otto I in which he donates to a church a convent that had previously belonged to two individuals because 'Conrad and Eberhard who previously were seen to possess it, were judged disinherited and *illegales*': *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 1, *Die Urkunden Konrad I., Heinrich I. und Otto I.*, pp. 445–6, no. 331 (966). Another example of the term comes from the writings of Rather of Verona (d. 974), who refers to adultery as a marriage that is *inlegalis*: *PL* 136, col. 534 ('*Illegale conjugium nominat adulterium*'). In contrast, in a Farfa case in which a document is proven to be falsified, the terminology used is *falsus*: *RF* 4, pp. 56–8, no. 658. Accordingly, I follow Leicht, 'Leggi', pp. 39–40, in regarding this as a challenge not to the authenticity but to the legal validity of the documents.

⁸⁸ Mordek, *Bibliotheca capitularium*, p. 1016, no. 1; *MGH Capit.* 2, ed. A. Boretius and V. Krause (Hanover, 1890–7), p. 92, no. 216, § 2; *Liber Papiensis, additio prima, capitula extra Librum Papiensem vagantia*, no. 19, *MGH Leges* 4, p. 587; *Liber Papiensis*, Lothar I, no. 73, *MGH Leges* 4, p. 552.

⁸⁹ *Liber Papiensis*, Charlemagne, no. 60, *MGH Leges* 4, p. 499.

⁹⁰ *Liber Papiensis*, Lothar, no. 16, *MGH Leges* 4, p. 542; *Liber Papiensis*, Pippin, no. 18, *MGH Leges* 4, p. 518.

developed a counter-argument to this proposition on the basis of the monastery's imperial immunity.

Next, Winizo addresses the possibility that the count himself might seize the tithes and grant them to the bishop; Winizo emphasizes that the count does not have the authority to do this without a royal command (*sine regio iussu*), basing himself on a law that protected imperial possessions – again the emphasis is on Monte Amiata's imperial immunity. Furthermore, Winizo argues against the legality of an inquest being held to settle the dispute (discussed below). Finally, at the end of his letter, Winizo makes reference to the agreement made between Christian, the earlier bishop of Chiusi, and Winizo's predecessor, the abbot Peter. Again, Winizo addresses those who consider this agreement to be of no worth (*hoc nihil nobis prodesse*). As suggested by Leicht, Winizo's opponents could have made this argument by means of a law (of Lothar) that allowed for bishops and abbots to annul donations (*precaria*) made irrationally by their predecessors.⁹¹ In response, Winizo cites a law of Aistulf to the effect that the agreements between ecclesiastical institutions are binding.

In sum, Winizo's letter presents a case for why certain types of documents and procedures per se should or should not be regarded as legally binding. Winizo has done so by selecting laws relevant to specific issues; in other words, he is interpreting the law to make a series of legal arguments. Again, as in the case of Farfa's abbot Hugo, this is a strategy that hinges on the monastery's past documented by its archival holdings. Because of the monastery's imperial status and the privileges granted to the monastery by earlier emperors, the count cannot legally withhold or seize the tithes.

§4: Monastic 'forgery' and the law at Monte Amiata

Just as we may characterize these practitioners of law as individuals insistent embedded in their social contexts – Winizo and Hugo act and write as monks representing their monasteries – so too we may characterize the attitude to law revealed by these monks as an insistent socially embedded, historicizing approach to law. Both monks pursue legal strategies, whether related to the application or interpretation of law, that hinge on the history of their monasteries, as established by written documents preserved in their archives. Law matters and is to be taken seriously, and yet there is a great awareness that it is the product of the same rulers who have determined the

⁹¹ *Liber Papiensis*, Lothar, no. 21, *MGH Leges* 4, p. 543 ('De precariis'); Leicht, 'Leggi', p. 41.

trajectories of the larger contours of history. In this legal discourse, history and law appear as two sides of the same coin. Interpretations of history affect interpretations of law and vice versa. A potential corollary to this legal strategy, then, was, when necessary, the emendation of a monastery's documents.

Scholarship has long remarked on the frequency and skill with which the monks of Monte Amiata forged documents.⁹² As argued by Marrocchi, the monks had, from the late ninth century onward, been systematically editing their imperial diplomas to support their claim to the tithes. The monks emended the diploma issued by Louis II in the mid-ninth century to influence Guido's decision in 892 to issue a diploma to the monastery that, among its provisions, granted the tithes to the monastery.⁹³ But a diploma subsequently issued by Arnulf in 896 did not include this provision, so the monks emended the original not long thereafter.⁹⁴ The same was done to a diploma of Berengar (915).⁹⁵ Subsequent diplomas by Otto I in 962 and Otto III in 996 did include the provision.⁹⁶

These efforts continued under Winizo's abbacy – now specifically tailored to the legal arguments the abbot was crafting. In his letter to Count Hildebrand, in discussing the possibility of an inquest, Winizo, referring to the bishop of Chiusi, writes,

There are also those who seek to persuade you that under the pretext of investigation you should carry off those things belonging to our church that were invested by royal right (*regio iure*) since the time of

⁹² Marrocchi, *Monaci scrittori*, p. 111, citing H. Bresslau (from *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 4, *Die Urkunden Konrads II.*, ed. H. Bresslau (Hanover and Leipzig, 1909), p. 103); S. Roebert, 'Herrscherurkunden des 9. und 10. Jahrhunderts für das Kloster San Salvatore al Monte Amiata: Eine Bestandsaufnahme', in A. Ghignoli, W. Huschner and M.U. Jaros (eds), *Europäische Herrscher und die Toskana im Spiegel der urkundlichen Überlieferung* (Leipzig, 2016), pp. 37–54.

⁹³ Diploma of Louis II: CDA 1, pp. 279–82, no. 132 (printing W. Hagemann's unfinished edition); newer edn by K. Wanner, *MGH DK 4* (Munich, 1994), pp. 205–8, no. 71. For discussion, see Marrocchi, *Monaci scrittori*, pp. 115–24, and also Wanner's commentary; cf. Roebert, 'Herrscherurkunden', pp. 41–5. Diploma of Guido: CDA 1, pp. 354–5, no. 168; ed. L. Schiaparelli, *I diplomi di Guido e di Lamberto*, *Fonti per la storia d'Italia* 36 (Rome, 1906), p. 44, no. 18.

⁹⁴ Original: CDA 1, pp. 358–60, no. 170; ed. P. Kehr, *MGH Die Urkunden der deutschen Karolinger*, vol. 3.3, *Die Urkunden Arnolfs* (Berlin, 1940), p. 211, no. 140. Falsified: CDA 1, pp. 360–2, no. 171; ed. Kehr, *MGH Die Urkunden der deutschen Karolinger*, vol. 3.3, *Die Urkunden Arnolfs*, p. 292, no. 189.

⁹⁵ Original CDA 1, pp. 398–9, no. 189; ed. Schiaparelli, *I diplomi di Berengario I*, p. 276, no. 108. Falsified CDA 1, pp. 400–1, no. 190; ed. Schiaparelli, *I diplomi di Berengario I*, p. 389 no. 111.

⁹⁶ Diploma of Otto I: CDA 2, pp. 3–4, no. 200 (962); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 1, *Die Urkunden Konrad I., Heinrich I. und Otto I.*, pp. 328–9, no. 237. Diploma of Otto III: CDA 2, pp. 34–5, no. 212 (996); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 2.2, *Die Urkunden Otto des III.*, pp. 611–12, no. 202.

Pippin, which the emperor Charles in his capitulary prohibits for you and everyone else, saying, ‘That testimonies should not be permitted against our lord king Pippin’s investiture.’⁹⁷

The text in question, a chapter of Charlemagne’s *Capitulare missorum* (803), prohibited formal depositions by witnesses, and thus inquests (fact-finding missions that involved gathering witness testimony), in cases of property-owning dating from the time of Charlemagne’s father Pippin.⁹⁸ The text is not to be found in surviving versions of the *Liber legis Langobardorum* (*Liber Papiensis*); Winizo must have encountered it in his other legal compendia (the chapter is included in other early medieval collections of Carolingian capitularies) and recognized it as a potentially useful text. Its legal appeal for Winizo is clear; it forestalls a process through which the monastery might be stripped of its claim to the tithes.

But the legal force of this statement hinges on a grant by Pippin to the monastery; no such diploma survives. It appears that Winizo proffered this legal argument, then revised an earlier part of his letter, since for this argument to have force, the monastery needed to be in possession of a grant from Pippin. Added, as an interlinear insertion, to the list of rulers who had issued diplomas to the monastery is the name Pippin (Fig. 4).⁹⁹ Moreover, dating to the abbacy of Winizo is a new and elaborate version of a forged diploma of Louis II that cites Pippin among the earlier rulers whose grants to the monastery the diploma confirms.¹⁰⁰ The monastery’s past was thereby emended to fit Winizo’s legal strategy.

Of course, the desire to fit history to legal exigencies was by no means the only rationale for the monastic forgery of documentary material, but what this example again demonstrates is the degree to which Winizo thought about history and law together. It is worth emphasizing here that it was not enough for Winizo simply to forge a document issued

⁹⁷ *MGH Capit.* 1, p. 115, no. 40, ch. 9; my translation follows that of K. Kroeschell, *Deutsche Rechtsgeschichte*, vol. 1, *Bis 1250*, 11th edn (Cologne, 1999), p. 80.

⁹⁸ H. Brunner, *Die Entstehung der Schwurgerichte* (Berlin, 1871), p. 88; regarding the juridical inquest in Italy see further Bougard, *La justice*, pp. 194–203; J.R. Davis, *Charlemagne’s Practice of Empire* (Cambridge, 2015), pp. 260–78.

⁹⁹ This is usually understood as a reference to Pippin, king of Italy (not Charlemagne’s father Pippin), but there is no textual reason this must be so; the rulers in question are certainly not cited in strictly chronological order: ‘Charles the first, second, and third, Pippin, Ratchis, Arnulf, Louis the first, second, and third, and Lothar, and Hugo, and Otto the first, second, and third, and Henry.’

¹⁰⁰ CDA 1, pp. 282–4, no. 134 (printing Hagemann’s unfinished edition); newer edn by Wanner, *MGH DK* 4, pp. 208–9, no. 72. For discussion, see Roebert, ‘Herrscherurkunden’, p. 45. This too is usually understood as a reference to Pippin of Italy, but again there is no textual reason that this must be so.

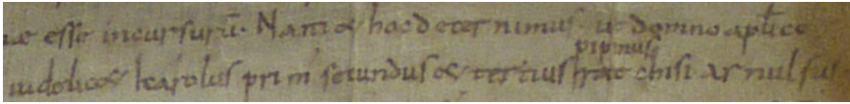


Fig 4 Winizo's letter, detail. [Colour figure can be viewed at wileyonlinelibrary.com]

by some recognized ruler stating that the tithes belonged to the monastery; to respond to the specific issue of an inquest, Winizo took recourse to a capitulary of Charlemagne that then required him to have a grant from Pippin in particular. The issue of tithes depended on a history of continued royal and imperial support leaving no loopholes for the bishop of Chiusi or the count to exploit. Where that history had gaps that could become legal loopholes, those gaps had to be filled in. This invites us to scrutinize the material from Monte Amiata, and other monasteries, more closely, bringing to bear on it a legal perspective. Winizo's was a legal strategy dependent on the history of the monastery and thus he made efforts to bring the two into line with each other – by adjusting archival materials accordingly.

Where does that leave us? We might conclude that, at least for Winizo, history could be massaged through documentary interventions, but law was not so malleable. Or, more positively, that both history and law were part of the administrative tool kit of Italian monasteries at the turn of the millennium, and monks thought hard and creatively – and in tandem – about both their legal strategies and the contents of their archives. It has been commonplace to describe medieval monasteries as repositories of memory and to take for granted that monasteries preserved and forged documentary materials, but we should be clear that monks' deliberate choice as to what to preserve (and discard) and what to forge was, at least in these examples, motivated by complex legal reasoning. Changes could be subtle, gently tweaking the past to fit into larger legal arguments that these monks knew could have significant consequences for the present.

§5: Conclusions

To return to the question with which I began this article: how then may we characterize the juridical culture of these monks? And how does this relate to the archival practices of these early medieval monasteries?

A late eleventh-century commentary on the *Liber legis Langobardorum* (*Liber Papiensis*) from Pavia, the so-called *Expositio*, reports the opinions of older and newer legal practitioners, sometimes referring to them by name, more generally referring to them as the *antiqui* or, in one

instance, the *moderni*.¹⁰¹ These *antiqui* were men from the mid-eleventh century: the earliest securely identifiable individual mentioned by name is a certain Pavian judge Bonifilius, active 1014–55, that is, a contemporary of Winizo (d. 1035). The *antiqui* are generally referred to as ‘judges (*iudices*)’, but we should be clear that this was by no means yet a strictly technical or professional term: included among the *antiqui* is Lanfrac, who eventually became archbishop of Canterbury.¹⁰² The *antiqui* were a class of urban-based elites who were becoming professionals – and whose efforts were transforming law into a specialized, de-historicized discipline.

As analysed by Radding, the *antiqui* were prone to compare laws and when they found contradictions declared earlier laws abrogated by newer ones. A basic familiarity with chronology mattered to them, at the very least as the prerequisite for performing this simple operation and as ‘tools’ to compare laws and documents.¹⁰³ Yet the *antiqui* were also part of a trajectory rendering the historical interpretation and contextualization of laws and documents less relevant to law. Their guide to law was the *Liber legis Langobardorum (Liber Papiensis)*, compiled by the generation that preceded them, a text that omits legislators’ preambles, rendering law a set of texts without contexts. The next generation, the so-called *moderni*, continued in their footsteps. These *moderni*, in the words of Radding, ‘defended interpretations further removed from the words of the legislator’.¹⁰⁴ The history of Italy’s kings thus became, so Wickham has argued, largely irrelevant to lawyers: ‘the documents, and the structure of law, were good enough on their own’.¹⁰⁵

The *moderni* looked back to the *antiqui* as the forerunners of their discipline; and scholars tracing the emergence of medieval Italian jurisprudence, most notably Charles Radding, have followed suit. This

¹⁰¹ Regarding the *antiqui* and *moderni*, see Radding, *Origins*, pp. 87–112; A. Boretius, in his introduction to the *Liber Papiensis*, *MGH Leges* 4, pp. XCIII–XCVI. For the *Expositio*, see Radding, *Origins*, pp. 125–39. The *Expositio* was edited by Boretius as part of the *Liber Papiensis*: *MGH Leges* 4, pp. 289–585.

¹⁰² As Radding notes, Lanfranc’s biography reported that his father was ‘de ordine illorum qui iura et leges civitatis asseruabant’; but as Radding convincingly argues, this should not be ‘taken as evidence that a distinct judicial caste existed at Pavia in the early eleventh century’: *Origins*, p. 88 n. 3. See also W. Davies, ‘Judges and Judging: Truth and Justice in Northern Iberia on the Eve of the Millennium’, *Journal of Medieval History* 36 (2010), pp. 193–203, at pp. 199–201, whose evidence points to the term *iudex* as a ‘marker of status’; the *iudex* was ‘a person of special status and special skill’, including ecclesiastical office-holders (such as abbots, monks, bishops, priests and deacons) as well as laymen. Regarding Lanfranc, see further M.T. Gibson, *Lanfranc of Bec* (Oxford, 1978); H.E.J. Cowdrey, *Lanfranc: Scholar, Monk, and Archbishop* (Oxford, 2003).

¹⁰³ Wickham, ‘History and Memory’, p. 287.

¹⁰⁴ Radding, *Origins*, p. 87.

¹⁰⁵ Wickham, ‘History and Memory’, p. 288.

article has demonstrated that preceding, and alongside, the *antiqui*, were learned experts of a different type whose use of documents was markedly more complex, more historical, than the straightforward chronological tack taken by the *antiqui*. These were learned monks like Winizo and Hugo who, confronted by a variegated jurisdictional landscape, looked to and manipulated their monasteries' archival resources in order to trace out a trajectory of how their monasteries had reached a status in the present that would be favourable to the legal arguments that they were crafting. In this jurisdictional landscape, the Lombard kings of Italy mattered; and so did the Carolingian and Ottonian emperors. These monks were working backward from their present to mould a past that corresponded with the future they were trying to achieve through litigation.

What is important to stress here is that even as Hugo and Winizo's legal strategies drew on the strength of their monasteries as institutional repositories of documents, this strategy is not to be equated with those archives per se. Archives needed to be maintained and organized. But more than that, Hugo and Winizo's approach involved an active role for those (like themselves) who curated, selected from, reorganized, and reframed the archive: documents pulled out of the archive needed to be framed vis-à-vis other documents and positioned within contexts that made sense – and arguments – out of them. This is what distinguishes their monastic legal approach from that of the new legal professionals.

As one further comparandum, we may briefly consider another example from Hugo's many disputes, here with the monastery of SS. Cosma e Damiano in *Mica Aurea*. A commemorative record from December 999 (again preserved in Gregory of Catino's cartulary and chronicle) reports how this case was adjudicated, like the 998 case, in Rome with imperial involvement.¹⁰⁶ At stake was possession of the dependent monastery (*cella*) of S. Maria in Minione. The commemorative record describes how in court both abbots presented *praecepta*; that of Farfa was (we are told) older and 'more genuine' (*vaeraciora*); the abbot of SS. Cosma e Damiano also presented a charter according to which John, abbot of Farfa (a predecessor of Hugo), had renounced legal claims to the property in the time of Otto I. This Hugo asserts to be a false/forged (*falsum*) document.

¹⁰⁶ RF 3, pp. 149–51, no. 437 (999); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 2.2, *Die Urkunden Otto des III.*, pp. 767–69, no. 339; Manaresi, *I placiti*, 2.1, pp. 437–41, no. 254 and RF 3, pp. 151–2, no. 438 (999); *MGH Die Urkunden der deutschen Könige und Kaiser*, vol. 2.2, *Die Urkunden Otto des III.*, pp. 769–70, no. 340. The case is discussed by Stroll, *Medieval Abbey*, pp. 40–3.

Another text (likewise preserved in Farfa's cartulary and chronicle) elaborates on these documents and the context of this dispute.¹⁰⁷ This text is written in the third person, but as convincingly suggested by its editor, Ugo Balzani, it was likely written by the abbot Hugo c.1030, as a record for his community (perhaps drawing on notes written earlier for use in court).¹⁰⁸ It relates how the abbot John, deposed by Otto II, went to live with his brother, the abbot Azzo, on the Aventine, bringing with him some of the monastery's documents, including a *praeceptum* for S. Maria in Minione and a copy of an earlier lease (see further below). These were stolen and sold to the abbot Sylvester of SS. Cosma e Damiano; using them as an exemplar Abbot Sylvester had a *praeceptum* forged in the name of Hugo, king of Italy (d. 947). By means of this elaborate backstory Hugo explains the origins of the documents presented at court by the monastery of SS. Cosma e Damiano (the *praeceptum* issued by King Hugo and the charter by Farfa's abbot, John), which Hugo claims were forged. Historically contextualizing these documents serves to make sense of and invalidate them.

Moreover, in both the commemorative record of 999 and the text arguably penned by Hugo, the disputed documents are framed vis-à-vis other, older documents that attest to Farfa's ownership of the *cella* and the terms of the lease. The commemorative record begins by relating the history of the disputed property as documented in Farfa's archive: the emperor Charles, we are told, was the first to donate the *cella* to the monastery of Farfa, and his successors confirmed the donation. Later an abbot of Farfa leased (*per emphiteusin cartulam*) the property to the monastery of SS. Cosma e Damiano; when this lease had expired (*cartula expleta*) the abbots of SS. Cosma e Damiano, so we are told, began trying to appropriate the monastery for themselves. Again, the more detailed record of this case elaborates on the circumstances of the initial lease and the subsequent turn of events. It recounts how Campo, abbot of Farfa (936?–962?)¹⁰⁹ signed a three-generation

¹⁰⁷ RF 3, pp. 152–3, no. 439; *Chronicon farfense*, vol. 2, pp. 10–17.

¹⁰⁸ Balzani's discussion is to be found in a footnote in his edition of the text in the *Chronicon farfense*, vol. 2, pp. 10–11 n. 3; cf. Stroll, *Medieval Abbey*, p. 40 who regards this as a text written by Gregory of Catino, but contra Stroll's hypothesis, the core of the text must have been initially written in closer proximity to the events in question: when referring to the foundation of the monastery of SS. Cosma e Damiano (c.936–48), the text specifies that 'still now there survive many who remember this (*et adhuc supersunt plures qui recordantur*)'. Furthermore, neither the framing of the text in the cartulary (where like other documents it is presented as a 'document' copied into the cartulary) nor the language of the text (which, as Balzani remarks, is similar to Hugo's other writings) support this hypothesis. Hugo's authorship of the text is more difficult to ascertain, but the similarities in language and style to other texts penned by Hugo, in particular the *Querimonium*, are striking.

¹⁰⁹ These are the dates proposed by Balzani.

emphyteutic lease (*libellum in tribus personis monachorum succedentibus uno duobus*) with a certain monk Venerandus. This same Venerandus was thereafter chosen to become the abbot of the newly founded monastery of SS. Cosma e Damiano by its founder, Benedict Campaninus. Thereby Hugo (or the otherwise well-informed author of this text) addresses an obvious corollary to his monastery's claims to the property: regardless of the validity of the documents presented by SS. Cosma e Damiano, did the monastery of S. Maria in Minione ever belong to Farfa? And if so, how did it come to be controlled by the abbots of SS. Cosma e Damiano? In response, Hugo not only alludes to the relevant documents, he crafts a story that makes sense of them.

Winizo and Hugo's strategy, then, required close familiarity with and careful curation of their monasteries' archives. At the same time, I suggest, we may also contrast their, and particularly Winizo's, approach to archival content with that found in monastic cartularies, not least that of Gregory of Catino. Historians have long observed that monasteries in Italy were slower (than their counterparts north of the Alps) to transcribe their documents into cartularies (more often than not destroying the documents in the process).¹¹⁰ Stitching documents together, as many historians of cartularies have observed, creates and fixes a narrative.¹¹¹ This differs markedly from the manifold narrative and thus legal possibilities available in an archive composed of loose documents. An example from Monte Amiata, where a cartulary of the monastery's documents was never created, illustrates this clearly.

Dating to the tenth/eleventh century are two elaborate forged diplomas related to Monte Amiata's foundation.¹¹² These forgeries were likely crafted under the direction of Winizo. Both were preserved in Monte Amiata's archive. One is issued in the name of Ratchis, one in the name of Aistulf. In both, the ruler confirms the monastery's properties to the monastery's first abbot Erfo. The rationale for these forgeries is to be found in a law passed by the Lombard king Aistulf, Ratchis's successor, that annulled donations given by Ratchis after he,

¹¹⁰ T. Kölzer, 'Codex libertatis: Überlegungen zur Funktion des Regestum Farfense und anderer Klosterchartulare', *Atti del 9° Congresso internazionale di studi sull'alto medioevo* (Spoleto, 1983), pp. 609–53.

¹¹¹ For a succinct introduction see P.J. Geary, 'Medieval Archivists as Authors: Social Memory and Archival Memory', in F.X. Blouin (ed.), *Archives, Documentation, and Institutions of Social Memory* (Ann Arbor, 2006), pp. 106–13, and more extensively, P.J. Geary, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, 1994); see also A.C. Sennis, 'The Power of Time: Looking at the Past in Medieval Monasteries', in A. Müller and K. Stöber (eds), *Self-Representation of Medieval Religious Communities: The British Isles in Context* (Berlin, 2009), pp. 307–26.

¹¹² Ratchis diploma: Archivio di Stato di Siena, Diplomatico S. Salvatore del Monte Amiata, perg. 742 maggio 15: CDA 1, pp. 10–16, no. 6a†; Aistulf diploma: Archivio di Stato di Siena, Diplomatico S. Salvatore del Monte Amiata, perg. 742: CDA 1, pp. 10–16, no. 6†.

Aistulf, had become king (the same law confronted by Benedict of Monte Soratte, mentioned above).¹¹³ Faced with this legal dilemma, the monks at Monte Amiata tried out different strategies, first forging a diploma in the name of Aistulf and then taking the alternative approach of forging a Ratchis diploma dating prior to the succession controversy.¹¹⁴ Here we see two different narratives of the monastery's foundation being tried out. In the end the monks preferred that of the modified Ratchis diploma; further copies of this diploma are preserved in Monte Amiata's archive. But the monks also preserved in their archives the Aistulf diploma (though they did not keep the original, legally invalid diploma, issued by Ratchis). Different documents might carry different weight in different circumstances and framed in different narratives. Curating an archive, as opposed to compiling a cartulary (or a chronicle), meant leaving the way open for alternative histories and alternative legal arguments.

For Winizo and Hugo, history was more complex, more textured, than a mere chronological list of rulers. It was a past to be found in the margins of their books and in the subtleties of documents, and kept alive in the borders of their properties and the precise tenor of their privileges. This attentiveness to the past resulted in a particular inflection to the way these monks engaged with the law and curated their archives. Theirs was a vision of the future closely tied to the particularities of the past.

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¹¹³ See above, nn. 65–66 and related text.

¹¹⁴ Maskarinec, 'Why Remember Ratchis', pp. 38–45.