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In 1008 the notary Guido redacted a *breve* recording the renunciation of property by a certain Raino in favor of the monastery of Farfa (RF no. 476). Cited in this *breve* is a Lombard law (Liutprand 6), which allowed for deathbed donations. This article argues that this citation entailed an implicit legal argument, by the notary Guido and the Farfa monks who benefitted from the transaction, for the validity of Raino's renunciation. When this is set in the context of the larger corpus of late tenth- to early-eleventh-century *brevia* preserved in Farfa's register, what emerges is an ongoing attempt by notaries in the Sabina to find legal solutions that would facilitate transactions to the benefit of the Farfa monastery.

Middle Ages; 10th-11th centuries; Farfa; Lombard law; notarial culture; *breve*.

1. *Introduction*

Citations of law become more frequent in Italian charters of the late tenth and eleventh centuries[1]. This «passion pour la lettre de la loi», as François Bougard has termed it, has been associated with the increased knowledge of law on the part of the notaries who redacted these documents[2]. This is no doubt true, but can we say more about when and why notaries chose to include such citations? Most eleventh-century charters did not include legal citations, even among those redacted by notaries who are known to have included a legal citation in at least one document. What motivated notaries to include legal citations when they did?

This article addresses this question by closely examining the citation of a specific Lombard law (Liutprand 6) in an early-eleventh-century document

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[1] Bougard, *La justice*, pp. 293-294, with extensive examples cited in n. 57.

[2] *Ibidem*, p. 294: «C'est toute la profession qui, d'un coup, se prend de passion pour la lettre de la loi»; also valuable is Vismara, *Leggi*.

preserved in the cartulary of Farfa: a *breve* that records the renunciation of property by a certain Raino (RF no. 476). It argues that in this document the citation of law was an interpretive act, that is, an argument in favor of the applicability of a law in a context not originally anticipated by the legislation in question. What emerges thereby is a case of legal and documentary experimentation from which the monastery of Farfa stood to benefit. In this example the newfound «passion for the letter of the law» was tightly implicated in an ongoing attempt by the monks to facilitate transactions that were to the benefit of their monastery.

2. *Farfa's cartulary, the Raino* breve *(RF no. 476) and its citation of Liutprand 6*

Farfa's early medieval documents survive in the form a cartulary compiled in the late eleventh century by the Farfa monk Gregory of Catino[3]. Today only a few original documents survive from the monastery. Although there is no question that Gregory took an active role as an editor, selecting and omitting and emphasizing materials, it appears that Gregory copied documents carefully and accurately, making only minor grammatical and stylistic changes or errors of transcription[4]. Nevertheless, in particular with respect to the signatures that accompanied documents, which were particularly easy to mistranscribe or accidentally omit, we must be mindful that we are working with copies, not originals.

The document that is the focus of this article was redacted by the notary Guido in 1008 and was entitled by him «hoc breve memoratorium atque refutatorium» (Fig. 1a-b Vatican, lat. 8487, pt. 1, f. 207*rv*)[5]. The document begins with an arenga blessing God who discerns justice from injustice and invoking the power of writing as a solution to the fragility of human memory[6]. It then

[3] *Il Regesto di Farfa* [hereafter RF]; many of these documents were also included by Gregory of Catino in his *Chronicon Farfense*. Both texts survive in their original manuscripts: the cartulary in Vatican, lat. 8487, I-II (available online at the *Digital Vatican Library* < http://digi.vatlib.it/view/MSS_Vat.lat.8487.pt.1 >); *Chronicon Farfense* in Rome, Biblioteca nazionale centrale Vittorio Emanuele II, *Farfense*, Farf. 1.

[4] For discussion with further bibliography, see Costambeys, *Power and Patronage*, pp. 15-19; Brühl, Überlegungen.

[5] RF 3, p. 185, no. 476. The editors, Giorgi and Balzani, mistakenly refer to this as a donation, a confusion likely caused by the reference to Liutprand 6. In Gregory's cartulary the document is to be found in part 1, f. 207*rv*. The text is briefly discussed by Giulio Vismara (see n. 10 below) and Giannino Ferrari (see n. 25 below). A second document related to the same Raino also survives in the Farfa cartulary: RF 4, p. 21, no. 623 (1012). This is entitled a «breve recordationis et obligationis»; in this document Raino obligates himself (*obligo me*) and his heirs not to sell, give or trade or otherwise alienate property held by lease from the monastery. This document appears to refer to the portions of the property that Raino had not renounced to the monastery in 1008.

[6] RF 3, p. 145: «Benedictus deus qui iustitiam ab iniustitia discernit. Quia mens humana in multis rebus vagatur et quod memoriae retinendum est retinere non valet, ideo per exaratas litteras hoc breve memoratorium atque refutatorium factum est».

describes how Raino, son of Fulco, sent a messenger to the monastery of Farfa and to the monastery's *praepositus* John, and John, in turn, sent the monk and presbyter Benedict to visit Raino, who was lying in bed on account of the sickness of his body («propter aegritudinem corporis sui»)[7]. Raino asked to be buried in the monastery (a request that is reported in the first person); Raino then took a staff («virgam») in his hands and renounced («refutavit»), in the presence of witnesses, to [i.e., to the benefit of] the presbyter Benedict and the monastery of Farfa, his claim on certain properties that he (Raino) held by a three-generation emphyteutic lease («per scriptum tertii generis»). The document reports much of this renunciation in the first person. It concludes, «Infra suprascriptos fines, omnia in integrum trado et refuto in suprascripto monasterio cum suprascripta aecclesia, sicuti superius scriptum est»[8]. The text then switches again to the third person: «et sic cum iaceret suprascriptus Raino in lectulo suae infirmitatis et rememoraretur dei misericordiae, pro eo quod domni imperatores constituerunt ut dum langobardus in lectulo iacuerit, si recte loqui poterit, quicquid iudicaverit pro anima sua, stabile debeat permanere»[9]. Thereupon the document includes a penalty clause, «componat» (let him pay), should Raino or his heirs ever attempt to dispute the renunciation. The end of this clause was apparently unreadable when transcribed by Gregory of Catino as he left a blank space of a line and a half in the register. The document concludes with the subscriptions of the witnesses and of the notary Guido.

The law cited in the Raino document is clearly recognizable as Liutprand 6, a piece of legislation promulgated by the Lombard king Liutprand in the first year of his reign (713)[10]. Indeed, a comparison of the citation in the Raino document with Liutprand 6 suggests that the notary, Guido, may even have consulted a written version of the law in redacting the document (related words in italics):

> [Raino *breve*]
> dum *Langobardus in lectulo iacuerit*, si *recte loqui poterit*, quicquid *iudicaverit pro anima sua, stabile debeat permanere.*

[7] RF 3, p. 145: «qualiter Raino filius cuisdam Fulconis mandavit per missum suum ad monasterium sanctae dei genitricis Mariae, et ad domnum Iohannem praepositum, et ipse domnus Iohannes praepositus mandavit Benedictum praesbiterum et monachum ad suprascriptum Rainonem, ad visitandum illum in lectulo ubi iacebat propter aegritudinem corporis sui». (Giorgi/Balzani's edition reads «promissum» but the manuscript clearly reads «per missum», which also makes more sense in the context.

[8] «I hand over and renounce, to the aforementioned monastery, everything in its entirety within the aforementioned boundaries with the aforementioned church, just as it is written above»: RF 3, p. 185, no. 476.

[9] «And thus, since the aforementioned Raino was lying on his sickbed and recalling God's mercy, [this renunciation was valid] on account of what the lord emperors established, that while a Lombard is confined to his bed, if he is able to speak properly, whatever he has decided on behalf of his soul shall remain firmly in effect»: RF 3, p. 185, no. 476.

[10] I see no reason to think, as suggested by Vismara, *Storia*, p. 608, that the notary meant to invoke the provision of Charlemagne's capitulary of 801 regarding the irrevocability of donations made by Lombards for the benefit of their souls (see n. 33 below), rather than Liutprand 6. This text is clearly related to the context, but what is cited in the document is clearly Liutprand 6; if the notary had wished to invoke Charlemagne's capitulary, we may presume he would have cited it.

> [Liutprand 6]
> Si quis *Langobardus*, ut habens casus humanae fragilitatis egrotaverit, quamquam *in lectolo reiaceat*, potestatem habeat, dum vivit et *recte loqui potest, pro anima sua* iudicandi vel dispensandi de rebus suis, quid aut qualiter cui voluerit; et quod *iudicaverit, stabilem debeat permanere*[11].

The citation in the Raino document is attributed to the «domni imperatores» (lord emperors), not to the Lombard king Liutprand. This misattribution is not too surprising given that in early medieval Italy the legislation of the Lombard kings was commonly transmitted in tandem with capitularies issued by Carolingian kings/emperors[12]. In any case, the legislation is accurately identified as royal/imperial (as opposed to ecclesiastical) legislation.

We do not know what specific lawbooks were available in the late tenth-early eleventh-century at the monastery of Farfa (none is listed in the oldest lists of books from Farfa) or what local notaries would have had at hand[13]. There is good reason to believe that the nearby monastery of Sant'Andrea at Monte Soratte had a legal compilation comparable to Cava dei Tirreni, Biblioteca della Badia, 4 (Lombard legislation and Carolingian capitularies), and thus it is not farfetched to assume that the more prosperous monastery of Farfa had a similar legal collection available[14]. This impression is corroborated by the fact that various pieces of Lombard and Carolingian legislation are cited by Farfa's abbots and advocates in court cases; this legislation includes the *Capitulare Veronense de duello iudicali* issued by the two Ottos in 967, a piece of legislation that today survives only as transmitted in eleventh-century *Liber Papiensis* manuscripts[15]. Meanwhile, central Italian notaries may have been using more limited legal collections, although again, the citation of specific laws in private documents redacted in favor of the monastery of Farfa indicates considerable access to written law[16].

[11] *Leges Langobardorum*, p. 109, no. 6; cf. the very similar text found in manuscripts of the so-called *Liber Papiensis*, a compilation (or, more probably, compilations) of the Lombard laws, selections of Carolingian capitularies and later legislation: *Leges Langobardorum*, pp. 406-407: «Si quislibet Longobardus, ut habet casus humanae fragilitatis, egrotaverit, quamquam in lectulo reiaceat, potestatem habeat dum vivit et recte loqui potest pro anima sua iudicandi vel dispensandi de rebus suis, quomodo aut qualiter voluerit: et quod iudicaverit, stabile debeat permanere». Although the earliest of the *Liber Papiensis* manuscripts (Milan, MS O. 53 sup.) dates to the second quarter of the eleventh century (that is, after the Raino *breve*), the earliest evidence for such a compilation of materials dates already to the early eleventh century in the form of the extracts used by Monte Amiata's abbot Winizo in a letter to Count Hildebrand in 1004-1007: Leicht, *Leggi*; regarding this letter see further Maskarinec, *Monastic archives*.

[12] Pohl, *Le leggi longobarde*; Maskarinec, *Legal expertise*, pp. 1059-1060 n. 95.

[13] For Farfa's library holdings see Brugnoli, *La biblioteca*; Brugnoli, *Un elenco cinquecentesco*; Brugnoli, *Catalogus codicum*.

[14] Maskarinec, *Legal expertise*, pp. 1059-1065 and Tab. 1.

[15] *Capitulare Veronense*, in *Constitutiones et acta publica imperatorum et regum*, vol. 1, pp. 27-30, no. 13; this is cited by Farfa's abbot Hugo in a court case from 999: RF 3, p. 149, no. 437.

[16] Citations of law in Farfa documents include Roth. 171 (e.g. RF 3, p. 268, no. 559 [1028]); Liutprand 73 (e.g. RF 4, p. 188, no. 780 [1045]); Liutprand 107 (e.g. RF 4, p. 151, no. 742 [1039]); Capit.1, 98.1 (e.g. RF 3, p. 247, no. 537 [1022? 1024?]); Capit. 1, 158.16 (e.g. RF 4, p. 187, no. 780 [1045]). See further Bougard, cited in n. 1.

Why did Guido include this legal citation in the Raino document? At first glance, the citation of Liutprand 6 document may appear entirely unremarkable — and indeed, so I suggest, it was meant to. Liutprand 6 stipulated the right of a Lombard confined to his bed to dispose of his property as he wished for the benefit of his soul:

> If a Lombard, suffering from human infirmity, falls ill, even though he is confined to his bed he has the power, while he lives and is able to speak properly, of making decisions or disposing of his property for the benefit of his soul, whatever or however to whomever he might wish; and what he decides shall remain firmly in effect[17].

Raino was apparently confined to his bed, and the action he undertook (the renunciation of property) was, from his perspective, clearly done for the benefit of his soul. Yet, as I will demonstrate, upon closer examination the citation requires further explanation. This is because it occurs in the context of a transaction and documentary format – a *breve* that records a renunciation of property by the lessee – not originally foreseen by the legislation in question.

In what follows I will argue that the citation of law in this document was neither purely rhetorical nor confused; it was a conscious and strategic attempt by Guido to apply Liutprand 6 to the case of Raino's renunciation. To do so I will first briefly examine the legislation in question and two examples related to its earlier usage at Farfa. This indicates that Liutprand 6 was understood, in subsequent pieces of related legislation, and by early medieval users of the text at Farfa, as referring, at least primarily, to donations, which, at least by the mid-eighth century (and likely before) were generally expected to take the form of donation charters. Then we will turn to the documentary form of the *breve* and how it was used to record renunciations at Farfa in the late tenth and early eleventh century. As we shall see, Guido's *breve* for Raino may be contextualized within a larger ongoing shift in how renunciations were performed and recorded; this reveals the strategic implications of Guido's citation of Liutprand 6 in the Raino *breve*.

3. *Original intent and subsequent interpretations of Liutprand 6*

Liutprand 6 is often referred to as a law regarding "deathbed donations", and indeed it clearly pertains, at least primarily, to what in English is usually referred to as a gift or donation: the transfer of (or intent to transfer) one's own property (broadly understood) into the hands of another[18]. Yet we should be clear that the text itself does not use any of the typical Latin language of gift-giving (such as *dare, donare, concedere, offerre* or

[17] Trans. (modified) Drew, *The Lombard laws*, p. 146; see Latin cited in text above at n. 11.
[18] For example, Wood, *The proprietary church*, p. 60.

tradere)[19]. Liutprand 6 stipulates that, even if near death, as long as a Lombard is capable of comprehensible speech, anything he "decides" regarding his property or any way he "disposes" of his property («iudicandi vel dispensandi») for the benefit of his soul is to remain in effect[20]. As we shall see below (in §5), this ambiguous language is precisely what Guido exploits in the case of Raino's renunciation.

In its original context, the terminology used by Liutprand 6 is explained by its intended meaning, that when confined to his bed on account of illness a Lombard was permitted to dispose of his property for the benefit of churches and other holy places even if he was unable to carry out any of the customary formalities of gift-giving[21]. In order for a "gift" to be valid, Lombard custom required that the transfer be performed through a public gift-giving process held in the presence of freemen, a ritual known as the *thinx/gairethinx* or *thingatio*, or that it be accompanied by a counter-gift, the *launigild*[22]. Indeed, elsewhere in Liutprand's legislation *donatio* is glossed as a synonym for the distinctly Lombard *thinx*[23]. Liutprand 6 stipulates that what a Lombard decides regarding his property on his deathbed is to remain in effect even if he has not managed to "gift" it, that is, to go through with the formal requirements of *thinx* or *launigild* entailed in giving a gift[24]. Unclear, in terms of the intended meaning of Liutprand 6, is whether it was envisioned as pertaining to pious dispositions other than donations (such as, for example, exchanges)[25].

[19] Wickham, *Compulsory gift exchange*, p. 195 n. 6.

[20] As convincingly suggested by Vismara, this law should be seen in the context of older legislation by Rothari, 176, that prohibited a Lombard suffering from leprosy from alienating or giving away his property (*res suas alienare aut thingare cuilibet personae*); also related is Liutprand 19 (from 721), which prohibited Lombard men under the age of eighteen from alienating their property except in the case of outstanding debts and pious deathbed dispositions: Vismara, *Storia*, p. 211.

[21] For example, with reference to the older literature, see the discussion by Ferrari, *Ricerche*, pp. 150-155, who also summarizes the older historiographical debate regarding whether this law permitted last wills/testaments generally speaking; as Ferrari discusses, Liutprand 6 clearly only permits dispositions to the benefit of churches and other holy places, not any disposition made by a Lombard on his deathbed. For discussion of Liutprand 6 with regard to wills/testaments, see further Vismara, *La successione volontaria*, pp. 131-135; Falaschi, *La successione volontaria*, pp. 229-237.

[22] This requirement is explicitly stipulated in Liutprand 73; see below. Cf. Rothari 172 and Rothari 175. Regarding the continued use of the *launigild* in Lombard Italy into the twelfth century see Wickham, *Compulsory gift exchange*. Regarding the *thinx* see Cortese, *Thinx*.

[23] For example, Liutprand 65: *Leges Langobardorum*, p. 134, no. 65: «de thinx quod est donatio».

[24] Cf. Vismara, *Storia*, p. 211, who concludes that «Il cap. 6 di Liutprando (...) attribuì a colui che si trovasse ammalato la facoltà di *iudicare pro anima* senza dover ricorrere alle formalità richieste per le donazioni»; and Falaschi, *La successione volontaria*, p. 235: «l'unica interpretazione possibile (...) mi pare essere la seguente: il langobardo infermo e confinato nel suo letto che, preoccupato della fragilità della condizione umana, vuol disporre delle cose e/o attribuirle *pro anima sua*, può farlo e quel che ha stabilito avrà carattere di stabilità».

[25] Ferrari, *Ricerche*, pp. 153-154, argues on the basis of the Raino document that the term «iudicare» used in Liutprand 6 was intended to pertain not only to donations, both also to a wider range of transactions. However, I do not think the eleventh-century Raino document can be used to infer the original meaning of Liutprand 6. More convincing is Falaschi, *La successione*

Elsewhere in the Lombard laws *iudicare* is used in the sense of *donare*, and in late-eighth- and early-ninth-century donation charters from Farfa, likely influenced by Liutprand 6, *iudicatum* is used to designate a donation[26].

The intended meaning of Liutprand 6 (713) is further clarified by a later law of Liutprand (726), which eliminated the requirement of a *thinx* or *launigild* for all gifts to churches or holy places. Liutprand 73 stipulates:

> De donatione quae sine launigild aut sine thingatione facta est, menime stare deveat. Quia et sic specialiter in edictum non fuit institutum, tamen usque modo sic est iudicatum: ideo pro errore tollendum hoc scribere in edicti paginam iussimus (…) excepto si in ecclesiam aut in loca sanctorum aut in exeneodochio pro anima sua aliquit quiscumque donaverit, stabile deveat permanere, quia in loga sanctorum aut in exeneodochio nec thinx nec launigild inpedire devit, eo quod pro anima factum est[27].

Whereas Liutprand 6 did not use the terminology of gift-giving, instead stipulating the validity of pious dispositions made by a Lombard while ill even if they did not follow the customary formalities of gift-giving, Liutprand 73 is more specific: a *donatio* to an ecclesiastical institution for the benefit of one's soul is exempt from the requirements of a *thinx* or *launigild*.

Not specified in Liutprand 6 is how *precisely*, in the absence of the ritual ceremonies of the *thinx/thingatione* or the *launigild*, a Lombard confined to his bed was to decide/dispose of his property. Did Liutprand 6 imagine that an oral pronouncement on the part of a dying Lombard sufficed or was some sort of written confirmation expected? This is not the place to enter into debates regarding the relative importance of the written word in early-eighth-century Lombard society[28]; what matters for our purposes is that, as stipulated by another later law of Liutprand (Liutprand 54), donation charters were to be legally recognized as proof of ownership, and, certainly by the mid-eighth century if not before, such donation charters were the expected means by which Liutprand 6 would take effect.

volontaria, pp. 231-232, 236, who argues that donations were the only type of disposition envisioned by the legislator of Liutprand 6.

[26] *Iudicare* in the sense of *donare* is found in Liutprand 102 (728), *Leges Langobardorum*, p. 149: «potestatem habeat ad filiam suam per cartola donationis, si voluerit, usque ad quartam portionem de rebus suis iudicare; si iudicaverit stabilem permaneat»; see also, in a hereditary context, Rothari 225, *Leges Langobardorum*, p. 4: «et antea iudicaverit se vivo res suas proprias (…) habeat cui donaverit». Farfa documents: RF 2, pp. 142-143, no. 172 (796); pp. 157-158, no. 193 (809); p. 189, no. 228 (817); p. 191, no. 232 (817); cited and discussed by Vismara, *Storia*, pp. 601-602 n. 1.

[27] Trans. (modified) Drew, *The Lombard laws*, p. 175: «Concerning the donation (*donatione*) made without a counter-gift (*launigild*) or without the formal alienation procedure (*thingatione*), it ought not to stand at all. Although this had not been specifically established in the edict, nevertheless it has thus been judged up to now. Therefore to remove [the possibility of] error, we have ordered this provision to be recorded onto the page of the edict (…) [This provision applies] except if someone has donated (*donaverit*) something to a church or to a holy place or to a *xenodochion* for the benefit of his soul (*pro anima sua*); then it ought to remain valid, since [when it comes to giving] to holy places or to *xenodochia*, neither *thinx* nor counter-gift (*launigild*) ought to impede what is done for the benefit of one's soul»: *Leges Langobardorum*, p. 137, no. 73.

[28] A good starting place is Everett, *Literacy in Lombard Italy*, pp. 171-177.

As stipulated by Liutprand 54, issued in 724 (that is, prior to Liutprand 73, but after Liutprand 6), a donation charter (*cartola donationis*) was to be recognized as a legally valid document that could be used to counter the claims of those in physical possession of the land, except in cases of possession for over thirty years[29]. This law affirms the right of possession by prescriptive right, yet in doing so it makes clear that donation charters were a recognized legal instrument in the documentary landscape of mid-eighth-century Lombard Italy: the purpose of Liutprand 54 is to recognize and clarify (and limit) the extent of these charters' legal validity[30]. This law's consequence for the application of Liutprand 6 was that it gave explicit legal sanction for donation charters to be the means by which Lombards confined to their beds might dispose of their property.

By the mid-eighth century we can confidently assert that donation charters were the expected form for deathbed dispositions. This is made clear by a law promulgated by the Lombard king Aistulf in 755. This law, Aistulf 12, reiterated the force of Liutprand 6 but dealt specifically with what was apparently a controversial point of interpretation, namely, whether the dispositions permitted by Liutprand 6 include the right to manumit slaves. In doing so Aistulf 12 reiterates the general principle of Liutprand 6 (and Liutprand 73), as understood by Aistulf and his legislators: «si quis Langobardus per cartola, in sanitatem aut egritudinem suam, res suas ordinaverit, et dixerit, eas habere loca venerabilia, et familias, per que res ipsas excoluntur, liberas esse dixerit, ut in ipsis religiosis locis redditum faciant: secundum ipsius statuta reddant omni in tempore iuxta domini sui preceptionem ipsi et filii filiorum illorum»[31]. With respect to the freeing of slaves, Aistulf 12 reasons that: «Si vero aliquid ei in ipso exito suo donaverit aut donare preceperit, stabilis ei ipsa donatio permaneat, quia apostolus Paulus auctoritas maxime ad domesticos fidei beneficium praestare iubit. Et pro launegild inputetur ei servitium suum, eo quod servus non habit, unde aliut launegild ei faciat»[32]. Against those who had (or might) argue that the manumission of slaves was invalid on the grounds that such transactions were lacking a counter-gift (*launigild*), Aistulf 12 states that the service done by a slave constitutes a *launigild*.

[29] *Leges Langobardorum*, pp. 128-129; trans. Drew, *The Lombard laws*, pp. 166-167.
[30] I am grateful to the comments of an anonymous reviewer for clarification on this point.
[31] Trans. (modified) Drew, *The Lombard laws*, p. 233: «if any Lombard, whether in health or in sickness, by charter (*per cartola*) arranged that holy places shall have his property and said that the household servants by whom that property is cultivated are free, so that they may make a return to these same religious places, in accordance with his prescriptions for all time let even the sons of his sons act according to the command of their lord»: *Leges Langobardorum*, pp. 199-200.
[32] Trans. (modified) Drew, *The Lombard laws*, p. 233: «If a lord donates (*donaverit*) anything to [his slave] at the end of his life or orders for it to be donated (*donare preceperit*), that donation (*donatio*) shall remain valid, since that great authority, the apostle Paul, has commanded us to reward our servants for their loyalty. [The slave's] servitude shall be counted as his counter-gift (*launigild*) since as a slave he would not have anything else from which he could give a *launigild* to [his lord]»: *Leges Langobardorum*, p. 200.

For the purposes of this article, however, what is most significant about Aistulf 12 is that, in clarifying some of the parameters of Liutprand, it explicitly indicates the expected form, from a mid-eighth-century perspective, by which a Lombard, whether healthy or sick, would dispose of his property: through charters (*per cartola*) declaring a donation, that is, donation charters. This assumption underpins another piece of legislation, issued by Charlemagne in 801, that was intended to further clarify the meaning of Liutprand 6/Aistulf 12. This text, the first chapter of the so-called *Capitulare Italicum* of 801, is entitled «De cartis donationum faciendis» (Regarding those making charter donations), and specifies that if any Lombard, reflecting on the state of human fragility, wishes to make a donation charter (*cartam donationis*) regarding his properties to whomever he wishes for the welfare of his soul, the resulting donation is to be irrevocable (that is, the individual may not reserve the right to sell or trade the property or, through a new charter, to alienate it again later to a different party)[33].

A brief survey of the documentary evidence from Farfa, as transcribed in Gregory of Catino's cartulary, indicates some, albeit limited, evidence for knowledge of and interest in Liutprand 6/Aistulf 12 prior to the 1008 Raino document. In particular, the evidence indicates that as the later legislation expected, "deathbed dispositions" indeed took the form of donation charters, and that such charters were recognized as having legal force.

We find Aistulf 12 referenced explicitly in the record of an 806 court case[34]. This document describes a dispute between the monastery of Farfa and the guardians of a young boy Leo, regarding a donation made by Leo's father Ragefredus. Ragefredus, we learn, first decided to donate his immoveable property to the monastery, but to reserve the moveable property for his son. Asked by the abbot and the whole congregation of monks if he did not wish to make better provision for his soul, he decided that all immoveable and moveable goods should pass to the monastery. In the court case Ragefredus' decision as to how to dispose of his property is described as a «iudicatum», the language used by Liutprand 6, but Ragefredus' actions are also described with the verbs *donare* and *concedere*, and the document in question is referred to as an «ordinatio vel donatio». The judges («iudices») accept the latter charter of Ragefredus, explicitly referencing and citing Aistulf's law regarding the right of a Lombard to dispose of his properties to holy places through charters («per cartulares»)[35] (although they also decide to apportion half of

[33] *Capitulare Italicum* 1, *Capitularia regum Francorum*, vol. 1, pp. 204-206, no. 98, here p. 205: «Si quis Langobardus statum humanae fragilitatis praecogitans pro salute animae suae de rebus suis cartam donationis cuilibet facere voluerit, non, sicut actenus fieri solebat, ius sibi vendendi, commutandi et per aliam cartam easdem res alienandi reservet».

[34] RF 2, pp. 150-151, no. 183 (806). I follow here the interpretation of the case as discussed by Pohl-Resl, *Legal practice*, pp. 214-215.

[35] RF 2, pp. 150-151, no. 183: «sicut edicti paginam capitulationum domni Haistulphi regis continent. Ut si quis Langobardus in sanitate vel in egritudine per cartulares suos ordinaverit et

the properties to Ragefredus' son according to the laws of Lombard inheritance).

Chronologically closer to the 1008 Raino document is a donation charter from 951[36]. This is a charter by which a certain Gualdo donated certain properties to the monastery. This charter takes the standard form of a donation charter used at Farfa, but the document gives particular emphasis to the fact that the donation was made by Gualdo for the sake of the salvation of his soul and the recompense («mercedem») that he hopes to merit to receive from the Lord on the day of judgment, «quod modo in lectulo meo iaceo et gravem infirmitatem patior»[37]. The severity of Gualdo's illness is again made clear at the end of the document, where it is specified that «Signum manus Gualdonis qui Amico vocatur, et qui propter gravem infirmitatem scribere non potuit, et hanc cartam fieri rogavit»[38]. We may regard the reference to Gualdo's illness on a number of levels: as descriptive, factually reporting the circumstances in question; as rhetorical, lending poignancy to the final document recording Gualdo's hope for eternal salvation; and as strategic, preemptively responding to an objection to the document by Gualdo's heirs (for example on the grounds that it was not signed by Gualdo) by implicitly evoking the legal basis that underpins the transaction, namely, Liutprand 6, the right of individuals confined to their bed to dispose of their properties for the benefit of their souls.

4. *Guido's documentary output: donation charters and* brevia *recording renunciations*

Thus far I have established that Liutprand 6 was understood, by subsequent legislation and ninth-tenth-century users of the law in the environs of Farfa, as pertaining, at least primarily, to charters, and more specifically to donation charters. Moreover, we may note that Liutprand 6 (as well as Liutprand 73 and Ch. 1 of the *Capitulare Italicum*) are cited relatively frequently in late tenth- and eleventh-century *pro anima* donation charters in favor of other central Italian ecclesiastical institutions[39]. That this law was applied to

dixerit eas habere loca venerabilia, sic permanerent. Et nos sic iudicavimus, ut sicut per cartulam feceret, sic haberet ipsum monasterium».

[36] RF 3, pp. 88-89, no. 385 (951); this document was transcribed again later in Farfa's register: RF 5, p. 217, no. 1230 (951).

[37] «Since I now lie in my bed and suffer a grave illness»: RF 3, p. 88, no. 385.

[38] «This is the mark of the hand of Gualdo, who is called Amico, and who on account of his illness could not write, and asked for this charter to be made»: RF 3, p. 89, no. 385.

[39] For example, more detailed citations of Liutprand 6 include donation charters to S. Bartolomeo in Carpineto: Alexandri monachi *Chronicorum liber*, p. 177, no. 29 (1042) and Casauria: Iohannis Berardi *Liber instrumentorum*, vol. 4, p. 2836, no. 1969 (1049, April?). Less precise citations, which do not include reference to the condition of an individual being on his sick bed, are more common and include, for example, Volturno: *Chronicon Vulturnense*, vol. 3, p. 46, no. 194 (994). For citations of Liutprand 73 and Ch. 1 of the *Capitulare Italicum* see Bougard, as

donation charters is neither unexpected nor surprising: donation charters are after all one of the most frequently found types of so-called "private charters" that survive from early medieval Italy[40]. But it is important to emphasize this point because, as already mentioned above, the Raino document of 1008 that cites Liutprand 6 is a *breve* recording a renunciation, not a donation charter. Of course, a skeptical reader might readily interject that the difference between the actions performed (a donation of property and the renunciation of claims to property) is slight: is there really any significance to the fact that Guido cited this law in a renunciation *breve* and not a donation charter?

A quick overview of the corpus of Guido's documentary production (as survives in Farfa's cartulary) indicates, firstly, that Guido was not generally prone to cite law in the documents he redacted, and secondly, that he consistently used the *breve* format for renunciations and charters for donations. I then turn to two further examples of *brevia* recording renunciations redacted by Guido in which Liutprand 6 is referenced. Both of these documents may be paired with donation charters redacted by Guido for the same individuals, arguably at the same point in time; in these donation charters Liutprand 6 is *not* invoked. From this we may conclude that Guido was more prone to invoke Liutprand 6 in cases of renunciation (where the application of the law was less than straightforward) than in cases of donation (where Liutprand 6 clearly applied).

A notary Guido, active in the Sabine region, was responsible for almost forty documents redacted between 999 and 1017 that survive as transcribed in Farfa's cartulary[41]. All of these documents record transactions that benefited the monastery of Farfa. Although Guido appears to have been a fairly common name in the late-tenth/early-eleventh-century Sabina[42], it seems highly likely that these documents were redacted by the same individual[43]. Apart from the Raino document that is the focus of this article and the two further examples discussed below (both relating to Liutprand 6), none of the other surviving documents redacted by Guido include citations of law. This indicates the fairly exceptional nature of these documents.

cited in n. 1; I am currently working on an article related to the frequent citation of these three pieces of legislation.

[40] For an introduction to "private charters" see Nicolaj, *Lezioni*, pp. 133-170; Bougard, *Actes privés*; Bougard, *La justice*, pp. 65-79.

[41] For these documents, see n. 44 below and Tab. 1. A Guido also appears in documents from the mid-1020s to mid-1030s. Because of the gap in time I have not included these in my count. These are five donations – RF 3, pp. 253-254, no. 544 (1024); pp. 260-261, no. 551 (1023); pp. 294-295, no. 590 (1036); pp. 297-298, no. 593 (1037); RF 4, p. 92, no. 688 (1033) – and a single sale: RF 4, pp. 95-96, no. 693 (1035).

[42] See the entries for Guido listed in the index to the RF 1, p. CVI.

[43] What speaks in favor of this interpretation is that, as Antonio Sennis has demonstrated, monasteries often cultivated links with specific notaries; this fits the Farfa evidence where a handful of names (which would appear to correspond to a handful of notaries) appear to have been responsible for most of the documents produced in favor of the monastery in the late tenth and early eleventh century: Sennis, *Documentary practices*, p. 323.

Roughly half of the documents redacted by Guido were charters, which overwhelmingly record donations[44]; the other half are *brevia*, all of which record renunciations (Tab. 1). These two types of documents are clearly distinguishable as such. The donation charters, as would be expected, are documents by which individuals transferred some (or all) of their property to the monastery for the sake of their souls (*pro anima*). Guido's donation charters follow the conventional early medieval format of donation charters and are very similar to the donation charters redacted by other contemporary notaries in the Sabina (as preserved in Farfa's cartulary): after the invocation of God and the date, they take the form *Constat me* [name], and use a formula along the lines of *dedisse et per cartam tradidisse atque concessisse* to describe the donation. Often these charters, after indicating the property in question, also include a formula specifying the basis for the individual's rights to the property in question, such as «sicuti nobis eveniunt a materno vel paterno iure, vel per qualecumque scripti monimen»[45].

The other type of document frequently redacted by Guido were *brevia* recording renunciations (Tab. 1). In contrast to the well-established legal act and documentary type of the donation charter, this was, as will be discussed further below (in §5), a more variable documentary form in the late tenth- to eleventh-century Sabina. Yet there is no question that Guido understood the act of "renunciation" (*refutare*) as quite distinct from that of "donation" (*dare*/*tradere*/*concedere*) – requiring a distinct documentary form. Guido consistently entitles documents that describe an act of renunciation *brevia*. The term *refutare* is never used in Guido's charters (that is, documents, usually donations but also once a sale, that begin with the *Constat me* formula). Conversely, the verb *donare* is never used in documents entitled *brevia*.

The Raino document is a *breve* describing a renunciation. Two further renunciation *brevia* redacted by Guido likewise reference or allude to Liutprand 6. One of these is a «breve rememoratorium atque refutatorium» redacted by Guido in January 1009 (the day is not specified)[46]. This document, which includes the same arenga found in the Raino document, describes how, in the presence of witnesses, Leo, the son of Peter the Deacon, and Leo's wife Mira, for the benefit of their souls and that of their relatives, renounced, in favor of the monastery, certain properties (specifically enumerated) that they held

[44] Donations (including those discussed below): RF 3, pp. 157-158, no. 444 (1001); p. 165, no. 452 (1004); pp. 177-178, no. 468 (1006); pp. 178-179, no. 469 (1005); pp. 180-181, no. 471 (1006); pp. 182-183, no. 473 (1008); p. 184, no. 475 (1007); p. 187, no. 478 (1007); p. 188, no. 479 (1009); pp. 189-190, no. 481 (1009); pp. 192-193, no. 484 (1009); p. 193, no. 485 (1010); RF 4, p. 9, no. 611 (1011); pp. 15-16, no. 617 (1011); pp. 23-24, no. 626 (1012); pp. 27-28, no. 630 (1012); pp. 38-39, no. 640 (1013); pp. 58-59, no. 659 (1012). One charter records a sale: RF 4, p. 29, no. 631 (1012).
[45] «Just as [this property] came to us from maternal or paternal right, or through whatsoever charter»: as in RF 4, p. 9, no. 611.
[46] RF 3, pp. 190-191, no. 482 (1009).

by three-generation emphyteutic lease[47]. After describing Leo's renunciation, the *breve* adds «Qui domni imperatores constituerunt, ut quicquid iudicaverit homo pro anima sua, firmum et stabile debet permanere. Sic namque diffinitum est»[48]. The reference to Liutprand 6 is much more abbreviated than the one found in the Raino document, but is nonetheless clearly identifiable as such. Significantly, neither the legal citation nor the rest of the text of the *breve* makes reference to Leo and Mira as being on their sickbed, an omission that appears to indicate an attempt to extend the application of this law to cases in which the individual was not in immediate danger of death[49]. The document concludes with a penalty clause and the signatures of Leo and Mira and witnesses.

A second document likewise redacted by Guido in January 1009 (again the day is not specified) also pertains to Leo, the son of Peter the Deacon, and his wife Mira[50]. We may presume that Guido redacted both documents at the same point in time. This document is a donation charter to the monastery: Leo and Mira, for the salvation of their souls, donate a property (in the same area as one of the properties included in the renunciation *breve*, likely in close proximity)[51]. This document follows the conventional template of donation charters: «Constat me Leonem filium cuiusdam Petri diaconi, et Miram uxorem meam communiter ab hac die pro redemptione animarum nostrarum concessisse et dedisse et per cartas tradidisse in monasterio sanctae dei genitricis Mariae»[52]. The borders of the property in question, a piece of land and vineyard, are specifically enumerated; thereupon the document stresses the finality of the transaction, including a penalty clause, «de rebus duplam et melioratam» (double and better of these properties), should Leo and Mira or their heirs contest the donation. Not included in the donation charter is any reference to, or invocation of, Liutprand 6[53].

[47] Similar (although not identical) arengas are to be found in other *brevia* by Guido, as well as in *brevia* redacted by other notaries in the Sabina.

[48] «For the lord emperors established that whatever a man decides for the benefit of his soul ought to remain valid and in effect. For thus it was decided»: RF 3, pp. 190-191, no. 482 (1009).

[49] I am grateful to an anonymous reviewer for emphasizing this point.

[50] RF 3, pp. 192-193, no. 484 (1009).

[51] The property donated is described as being «in loco qui nominatur Lafrinianus», which is likewise the description of one of the three properties renounced. Moreover, both properties (that donated and that renounced) are described as being adjacent to property held by two of the same individuals. However, the two properties do not appear to have been adjacent (since both are surrounded on all sides by different properties). I am grateful to an anonymous reviewer for suggesting consideration of this point.

[52] «It is established that I, Leo, son of one Peter the Deacon, together with my wife Mira, from this day, for the redemption of our souls, relinquished and gave and through charters handed over to the monastery of the blessed Mary mother of God»: RF 3, p. 192, no. 484.

[53] In response to the objection that there would have been no need to cite Liutprand 6 in a donation charter and that this (and not the attempt to find an alternate source of authority for the redaction of the *breve*) explains the presence of the citation in the *breve* and its absence in the donation charter, it is worth emphasizing that Liutprand 6 is cited with relative frequency (both very specifically and more generally) in late-tenth- and early-eleventh-century *pro anima* donation charters to ecclesiastical institutions in central Italy: see above n. 39.

A similar situation is to be found in two documents redacted by the notary Guido in March 1011, both pertaining to Dodo, son of Azone. Again, we are presumably dealing with two documents redacted by Guido at the same point in time. One of these is a donation charter according to which Dodo donated properties to the monastery[54]. This document follows the conventional template of donation charters and does not cite or invoke Liutprand 6. The other is a «breve recordationis», which recounts that «Dum esset Dodo filius Azonis iuxta monasterium sanctae dei genitricis Mariae iacens in lectulo infirmitatis suae, donec recte loqui potuit, recogitans dei misericordiam, fecit ad se venire domnum Guidonem abbatem, et pro redemptione et absolutione animae suae refutavit ei ipsam terram quam habebat per scriptum tertii generis a suprascripto monasterio, ad partem sanctam monasterii»[55]. The *breve* then specifies the property and describes Dodo's renunciation in the presence of witnesses[56]. In this document there is no mention of the authority of the "lord emperors" (or other reference to law as such), but the language used by the *breve* is that of Liutprand 6: Dodo is confined to his bed on account of his illness but is able to speak properly, and his action is for the benefit of his soul.

Thus, in January 1009 and again in March 1011, Guido redacted pairs of documents pertaining to the same individual(s). Each time these consisted of a donation charter in which no reference was made to Liutprand 6 and a renunciation document in which Liutprand 6 was referenced. Presumably in both cases the individuals in questions saw their two actions, a donation of property and a renunciation of property, both in favor of the monastery, as closely-related acts of beneficence. In particular, in the case of Leo and Mira, the donation gave the monastery a second piece of land in the same area as one of the properties that the couple renounced. In executing their dispositions, Guido followed the "standard" format of such transactions: a charter for the donations and a *breve* for the renunciations. But in the two *brevia* (as in the 1008 Raino *breve*, although not as extensively or precisely as in that document), Guido invoked Liutprand 6. Why? Understanding the significance of this citation and the legal argument it entailed, I contend, requires stepping back and contextualizing these three *brevia* in the surviving corpus of Guido's *brevia*.

[54] RF 4, p. 9, no. 611 (1011).

[55] «While Dodo, son of Azone, was lying on his sickbed, near to the monastery of the blessed Mary mother of God, [and] while he was able to speak properly, reflecting upon God's mercy, he had the lord abbot Guido come to him, and for the redemption and absolution of his soul, he renounced to [the abbot] the land that he held through a third-generation lease from the aforementioned monastery, for the holy benefit of the monastery»: RF 4, p. 10, no. 612 (1011). This document also contains part of the same arenga included in the Raino and Leo/Mira documents, as well as other renunciation *brevia* redacted by Guido («Benedictus deus qui iustitiam ab iustia discernit»), but not the latter part about the power of writing.

[56] In this instance there is no discernible relationship between the land donated and renounced.

5. *A closer look at Guido's* brevia

The early medieval *breve* or *notitia* was a fairly flexible documentary type that was employed in a range of contexts[57]. In Brunner's classic definition, a *breve* is an evidentiary document, that is, it serves to document the events described, in contrast to charters, such as donation charters, which Brunner deemed probatory documents, that is, documents which enact the transaction in question[58]. This strict distinction is by now dated; upon closer examination a starkly functional division between these two types of documents, charters vs. *brevia*, quickly breaks down. Nevertheless, Brunner's schema does reflect the fact that these documentary types were generally used in different ways and different contexts.

At its most basic, the *breve* was any sort of list or record, but in legal contexts, we may, following Bougard, describe early medieval *brevia* as documents that record how certain "facts" were observed or commitments made in a "public" setting, that is, in the presence of an assembled group of peers who witnessed the events[59]. *Brevia* typically narrate the events in question, often using direct speech to report the claims of the different parties involved. One particularly studied genre of *brevia* (usually termed *notitiae* by the sources) are the records of court cases, but *brevia* also frequently record transactions between private individuals in a public context other than the court. And, as the evidence from Farfa demonstrates, it is often impossible to distinguish firmly between these two contexts.

In the late ninth century the monastery of Farfa was abandoned by its monks; the monastery was re-established in the early tenth century[60]. By the end of the century the monastery's fortunes were again on the rise. This is apparent in the increasing number of documents, as they survive in Farfa's cartulary, attesting to the monks' acquisition of new properties (through donations or sales) or recovery of properties to which the monastery claimed to have title but which were *de facto* in possession of private individuals[61]. Such recoveries of property were effected by a private individual's renuncia-

[57] Nicolaj, *Lezioni*, pp. 180-205; Bartoli Langeli, *Sui "brevi"*; Ansani, *Appunti*.
[58] Brunner, *Carta und Notitia*.
[59] Bougard, *La justice*, pp. 74-75. For discussion of *brevia* at Farfa (and medieval Lazio more generally) see Toubert, *Les structures*, pp. 96-97, 1252-1254, 1256 n. 1, 1280 n. 1, 1307-1308 (discussed below, text related to n. 108).
[60] The classic account remains Schuster, *L'imperiale abbazia*, pp. 89-112, drawing on the *Destructio*, a narrative text penned by Hugo, abbot of Farfa (998-1039), which describes the decline of the monastery in the tenth century: *Chronicon Farfense*, vol. 1, pp. 27-51.
[61] It should be emphasized that "renunciations" were not *per se* a new phenomenon of the tenth century, but that earlier documents, which arguably describe the same phenomenon, do not typically use the term *refutare*, which is so characteristic of these tenth- and eleventh-century documents. For example, a *breve memoratorium* redacted in 821 records how on the orders of an imperial *missus* a certain Teudipertus handed back («retradidit») certain properties: RF 2, p. 207, no. 250; a *notitia brevis memoratorii* from 807 describes how in a court case one party renounced («renuntiaverunt») claims to certain properties: RF 2, pp. 167-168, no. 204.

tion (*refutatio*) of that property. Sometimes such renunciations took place in the context of a court case in which one party was forced to renounce (*refutare*) claims to property; at other times, it was a "voluntary" transaction that occurred outside the court ("voluntary" in the sense that individuals are described as renouncing land by their own volition, which is not to say that these acts were truly purely voluntary and unprompted; we may, of course, presume explicit or implicit encouragement, pressure, or even coercion, on the part of the monks)[62]. In either case the documentary format used by notaries in the Sabina was always the *breve*, and, as we will see below, upon closer examination the distinction between these two types of renunciation (in court and adversarial vs. out of court and voluntary) is anything but clear cut.

Renunciations become especially frequent in Farfa's register from 998 onward during the abbacies of Hugo (998-1009, 1014-1027 and 1036-1039) and Guido (1009-1014 and 1027-1036). On the one hand this gave rise to a recognized documentary type: a *breve* describing a renunciation. That contemporaries regarded this as a recognizable genre is indicated, for example, by the record of a court case from 999 that describes how the monastery's opponents showed the court a «brevem refutatoriam», a document by which a previous abbot of Farfa (John) had supposedly renounced properties belonging to the monastery (but which the monastery's abbot Hugo claimed was a falsified document)[63]. On the other hand, however, as we shall see below, there continued to be considerable variation in how and where renunciations took place and in the way that the resulting *brevia* were redacted. This reflects in part the individual circumstances of each renunciation, but also apparent (as observed by Toubert, discussed below, §8) are larger trends in how renunciations occurred and how they were recorded. These longer-term changes, I will suggest, reflect the desires and needs of the consumers of these documents, and notaries' search for legal solutions to accommodate their wishes.

Seventeen *brevia* describing renunciations redacted by Guido survive in Farfa's cartulary (Tab. 1). Let us consider the first twelve of them together (we will consider the later ones below). These are documents redacted between 999 and February 1012. These documents are entitled along similar but slightly differing lines: *Breve recordationis* or *Breve recordationis seu et refutationis* or *Breve recordationis et notitiam iudicatus/iudicati* or *Breve memoratorium atque refutatorium*. All describe how individuals renounced properties to the monastery in the presence of witnesses. Often this is done by the Lombard ritual of taking a staff (*per fustem/per virgam*).

The earliest of Guido's *brevia* dates to 999[64]. This document takes the form of the record of a court case. It is entitled «Breve recordationis et noti-

[62] For *brevia* recording renunciations in northern Italy see Ansani, *Appunti*, pp. 132-143. In contrast to Sabina notaries' use of the *breve* for voluntary renunciations, Roman notaries used the charter format to record these renunciations; see below, text related to nn. 104-105.
[63] RF 3, pp. 149-151, no. 437 (999), here p. 149.
[64] RF 3, pp. 145-146, no. 432 (999).

tiam iudicatus facio ego Guido notarius de territorio Sabinensi per iussionem Grimarii iudicis». It describes how in the presence of named witnesses, Farfa's advocate Hubert accused certain individuals, Homarius and Azone, of holding land unjustly («iniuste»). They respond: «Vaerum de ipsis rebus aliquando habuimus scriptum, sed nos insimul reddidimus in monasterio sanctae Mariae»[65]. The judge («iudex») Grimarius then judges («iudicavit») that they should renounce the property to the monastery's *praepositus* John and the monastery's advocate Hubert. Homarius and Azone take a stick («fustem») and renounce the property and agree never to lay claim to the property again. The *breve* is signed by the notary Guido. What we have here is an authoritative record, redacted explicitly by order («per iussionem») of the presiding judge, of a renunciation that took place in the presence of that judge and other witnesses.

In contrast to the 999 *breve*, most of Guido's renunciation *brevia* do not present themselves as records of court cases. Yet they nevertheless follow a similar format. For example, a 1006 *breve* is entitled «Breve recordationis seu refutationis ego notarius Guido territorii Sabinensis per iussionem Huberti iudicis et ibi stantium vel residentium idoneorum hominum quorum nomina haec sunt»[66]. After listing these witnesses by name, the *breve* describes how two individuals, Teuza and Liutolfus, came to the monastery and in the presence of the aforementioned witnesses renounced certain properties in favor of the monastery. Finally, the *breve* specifies a penalty should the individuals or their heirs contest the renunciation. The document is signed by witnesses. Although not a trial in the sense that the monastery's advocate did not accuse the individuals and the judge who was present did not "judge" anything, as in the 999 *breve*, this document describes a completed act (a renunciation) that took place in the presence of witnesses, including a judge, and the resulting *breve* is redacted on the authority of that judge.

Stepping back from these two examples, we may note that among the first twelve *brevia* redacted by Guido, all but two describe that they were written by Guido on the orders of a certain judge (*per iussionem* [so-and-so] *iudicis*); the two exceptions are the Raino document and the Leo/Mira document—the very two documents in which Liutprand 6 is explicitly cited[67]. Put another way, in precisely the two cases where the *breve* was *not* redacted on the authority of a judge, Liutprand 6 is invoked.

[65] «We truly had a lease of these properties once, but jointly we have returned it to the monastery»: RF 3, pp. 145-146, no. 432, here p. 145.
[66] RF 3, p. 177, no. 467 (1006).
[67] For the presence of judges in early medieval "private" contracts see further Genuardi, *La presenza*, with discussion of the Farfa material on p. 42. Genuardi concludes, p. 56, that in Lombard regions there was a «nesso fra quella presenza del giudice e la forma della contrattazione per "breve" o "notitia"». See also the remarks of Toubert, *Les structures*, p. 1253 n. 5, who concludes that one of the formal necessities of a "*breve* judiciaire" was the «*iussio* du président du plaid»; see also p. 1279 n. 1 and p. 1280 n. 1 for discussion of subsequent changes (discussed further below, n. 108).

We are now in a position to make sense of the legal argument entailed in the citation of Liutprand 6 in the 1008 Raino *breve*. As understood by Guido, a renunciation was an act that typically derived its authority from a public ceremony presided over by a judge (*iudex*), an individual invested with the authority of "judging" (*iudicare*)[68]; the resulting *breve* recorded this completed act in an authoritative matter, that is, by means of the command (*iussio*) of the judge that it be written. But in the case of Raino, the renunciation took place *without* a presiding judge – and although witnesses were present these did not include a *iudex* – and the resulting document was *not* redacted on the orders of a *iudex*. Thus, both the transaction itself and the document recording it were lacking in judicial authority.

Invoking Liutprand 6 endowed both the transaction and the document with an alternate source of "judicial" authority. For, as the Raino document specifies, citing Liutprand 6, whatever a Lombard man "judges" («iudicaverit») while confined to bed for the sake of his soul «should remain in effect». Typically – so we may imagine Guido arguing – in the case of a renunciation (as in Guido's 999 *breve*), it was a *iudex* who had the authority to judge (*iudicare*); but Liutprand 6 allowed for a Lombard confined to his bed to do so for the sake of his soul.

Guido's "argument" thus took its starting point from the verbal ambiguity (from an eleventh-century perspective) of the legislation in question, which, as discussed above, does not use the language of gift-giving, thus making possible new interpretations that applied it to contexts other than donation[69]. Meanwhile the property in question is referred to by Raino as «terra mea»; it is framed as belonging to Raino, and thus satisfying another prerequisite of Liutprand 6. Notably, however, Guido does not therefore "argue" that Raino's renunciation was a "donation," for the document he produced was a *breve*, not a charter[70]. Presumably it was taken for granted that a donation could only be performed for property that one owned; disposing of property that one leased (and had the right to continue leasing) required a different legal act, renunciation. Instead, Guido frames renunciations as a type of disposition (like donations) that individuals had the right to decide on when on their sickbed.

[68] For the status of the *iudex* see Bougard, *La justice*, pp. 140-158; we should be clear that this was by no means yet a strictly technical or professional term; for the earlier period see Castagnetti, *Note e documenti*.

[69] This is not to dispute the semantic distinction in the Lombard laws between *iudicare* in the sense of *iudicium dare* and *iudicare* in the sense of *disponere pro anima*. However, that does not exclude the possibility that later readers of these texts may have chosen to interpret these terms to allow for slippage between these meanings.

[70] We may contrast this to the approach of some Roman notaries who indeed used the charter format to enact renunciations; see below, text related to nn. 104-105.

6. *Monastic coaxing and the problem of voluntary deathbed renunciations*

Intriguingly, the documents preserved in Farfa's cartulary allow us to identify a hypothetical storyline for Guido's decision to invoke Liutprand 6 in the case of Raino, as well as a legal and documentary trajectory by which it became unnecessary.

In 1003 Guido redacted a «breve recordationis seu refutationis» on the orders of the *iudices* Hubert and Benedict («per iussionem Huberti iudicis et Benedicti iudicis»). This describes a renunciation that took place in the presence of witnesses «ante lectum ubi iacebat domnus Hubertus filius quondam Tebaldi marchionis in infirmitate»[71]. (We may note that even though the individual was on his sickbed and thus the conditions of Liudprand 6 were met, the law was not cited). The monastery's *praepositus* John and other monks remind Hubert that he holds properties that belong to the monastery and urge him to return them to the monastery for the salvation of his soul. Accordingly, Hubert takes hold of a staff («fustem») and renounces them to John. This, we are told, took place at the *castellum Tophia* at the house of the dying Hubert. The document is signed by the *iudex* Hubert and by witnesses.

Together with the Raino *breve* and the later *brevia* for Leo/Mira and Dodo, we begin to see a world in which the monks of Farfa were attentive to those ill and confined to their beds, coaxing them to return properties to the monastery for the salvation of their souls. Frequently renunciations are described as taking place at the monastery of Farfa, but in the case of Hubert son of Teobald and Raino, these individuals were confined to bed at their own homes. Monks went to visit such individuals, taking the opportunity to remind them of monastic properties that the monastery wanted to have returned.

In the case of Hubert son of Teobald (1003), the *iudex* Hubert (who appears elsewhere in the Farfa evidence) was available and, we may presume, accompanied the monks from the monastery to the house of Hubert son of Teobald (or met them there). This allowed for Hubert son of Teobald, although confined to his bed, to "publicly" renounce the properties in front of a judge, and for the renunciation *breve* to be redacted by judicial authority. But in the case of Raino (1008), it seems, a judge was not readily available[72]. In the absence of a judge, Raino could not renounce the properties before a judge, nor could the document be redacted by judicial authority. What were Raino, the presbyter Benedict and the notary Guido to do? The solution they decided on was to invoke Liutprand 6.

[71] «In front of the bed where one Hubert, son of the marquis Teobald, was lying ill»: RF 3, p. 125, no. 415.

[72] Another possible indication of the *ad hoc* nature of this transaction is the break in the text (discussed above, following n. 9), which may indicate that the *breve* was written on a low-quality scrap of parchment, perhaps the only material on hand. This might suggest that the notary, hastening to Raino's deathbed, did not come fully prepared to execute the transaction.

Guido and/or the monks of Farfa seem to have been fairly satisfied with their legal innovation, as is indicated by Guido's decision to invoke Liutprand 6 again (albeit in a less extensive citation) less than a year later in the renunciation *breve* regarding Leo and his wife Mira (1009)[73]. Indeed, in this document, Guido attempted to extend the applicability of Liutprand 6 to cases in which an individual was not in immediate danger of death. Like the Raino document, this *breve* describes itself as «hoc breve rememoratorium atque refutatorium». In contrast with the case of Raino, the *iudex* Hubert was present and witnessed the transaction. However, the resulting *breve* was not redacted on the authority of Hubert. After specifying the penalty clause should Leo and Mira contest the renunciation, the concluding line of the document reads: «Unde hoc breve memoratorium atque refutatorium factum ad partem suprascripti monasterii, michi Guidoni notario scribendum iusserunt, mense et indictione suprascriptis»[74]. Who «they» are is then explained by the first signatory: «Signum manus suprascripti Leonis et Mirae uxoris eius, qui hoc breve refutationis fieri rogaverunt»[75]. (Here we are dealing with a mix of formulas; *brevia* were typically redacted by the order (*iussio*) of someone, while donation charters were typically redacted at the request (*rogare*) of the individuals in question; the donation charter redacted by Guido for Leo and Mira reads: «Signum manus suprascripti Leonis et Mirae uxoris eius, qui una voluntate et consensu cartam istam communiter fieri rogaverunt»[76]). Hence, we may conclude that on the legal basis of Liutprand 6, Guido redacted this renunciation *breve* at the request/order of Leo and Mira, rather than the *iudex* Hubert. Even though he could have used the *iudex* Hubert's judicial authority to legitimize the document, Guido chose to use the renunciators' own will as the impetus for the document instead, suggesting that the new solution based on Liutprand 6 was seen as a solid, and preferable, alternative to judicial authority as the basis for legitimizing a voluntary renunciation by individuals on their sickbed.

As mentioned above, Liutprand 6 is also referenced, but not explicitly invoked as a law, in one further document redacted by Guido[77]. This is the «breve recordationis» redacted by Guido «per iussionem Guimarii iudicis» in 1011, recording the renunciation of Dodo, who is described as being confined to his bed near the monastery of Farfa. The authority of a judge underpins this document, and although an alternative legal basis for the document is implicitly invoked (by referring to Dodo being confined to his bed and being able to

[73] See above, at nn. 46-50.
[74] «Hence they ordered me, the notary Guido, to write this *breve memoratorium atque refutatorium* in favor of the aforementioned monastery in the aforementioned month and indiction»: RF 3, pp. 190-191, no. 482, here p. 191.
[75] «Sign of the hand of the aforementioned Leo and his wife Mira who asked for this *breve refutationis* to be made»: RF 3, pp. 190-191, no. 482, here p. 191.
[76] «Sign of the hand of the aforementioned Leo and his wife Mira who with a single will and consent asked for this charter to be made»: RF 3, pp. 192-193, no. 484, here p. 193.
[77] See above, at n. 55.

speak properly), the document does not rely on the legal authority of legislation (in that it does not refer to the "lord emperors" or otherwise make explicit that these facts satisfy the conditions of a specific law or legal principle).

Beginning with a document in February 1011, however, and including the renunciation *breve* for Dodo in March 1011, Guido's *brevia* recording "voluntary" renunciations manifest a new innovation vis-à-vis Guido's earlier *brevia*[78]. This is the use of an obligation formula (*obligare se*), previously used by Guido only in donation charters, for the penalty clause at the end of the document. Previous *brevia* had at times included a penalty clause expressed along the lines of "If they do this [i.e., contest the renunciation], let them pay"[79]; documents using the obligation formula express this as a self-imposed obligation: "I/we/he/she/they obligate myself/etc. to pay"[80]. Subsequent renunciation *brevia* redacted by Guido all include this obligation formula.

In subsequent *brevia* Guido continued to introduce new language into his preexisting template for voluntary renunciations. In a *breve* redacted (on judicial authority) in October 1011 Guido describes how the individuals renouncing property came to the monastery «in pactuationem et bonam convenientiam»[81]. This language, not found in any of Guido's earlier *brevia*, continued to be used by Guido in subsequent *brevia*.

Then, for the first time in May 1012 – a document redacted, as the *datatio* specifies, during the pontificate of Pope Benedict VIII (May 1012-1024) – and in four subsequent documents, redacted in July 1012 (twice), 1013 and 1017, Guido began to dispense with the formula *per iussionem* [of so-and-so] *iudicis* (Tab. 1)[82]. These documents are entitled along the lines of *Breve refutationis seu obligationis* or *Breve recordationis et refutationis seu obligationis* or *Breve memoratorium factum qualiter facta est convenientia* (the conclusion to this last document refers to it as «hoc breve refutationis et obligationis»). None of these documents were redacted on the orders of a judge. All describe how individuals came to the monastery and renounced properties to the monastery's abbot or *praepositus* in the presence of witnesses (sometimes including a *iudex*, sometimes not). All include the obligation formula, and many describe the individuals as coming *in pactuationem et convenientiam* and state that the resulting *breve* was redacted at their request.

One of these *brevia* may again be paired with a donation charter made on the same date for the same individual. This is a «Breve refutationis seu obligationis» redacted by Guido in July 1012 for a certain Samson, son of Guizone,

[78] RF 4, pp. 8-9, no. 610 (1011-February); cf. Tab. 1.
[79] For example, RF 3, p. 177, no. 467 (1006): «Et si hoc facerent, componant in suprascripto monasterio, seu ad Hugonem abbatem vel ad eius successores, de auro purissimo libram j».
[80] For example, in the renunciation *breve* for Dodo: RF 4, p. 10, no. 612 (1011): «Insuper obligavit se et suos haeredes componere de argento libras X, si aliquo tempore causaret aut contenderet ipsas res contra idem monasterium per se aut per suppositam vel submissam personam».
[81] RF 4, pp. 26-27, no. 629.
[82] RF 4, p. 110, no. 708 (1012-May); RF 4, pp. 22-23, no. 625 (1012-July); RF 4, p. 24, no. 627 (1012-July); RF 3, pp. 196-197, no. 489 (1023); RF 3, pp. 220-221, no. 509 (1017).

who, it specifies, came «in pactuationem et convenientiam» and, in the presence of witnesses, renounced property to the abbot, Guido[83]. The document is signed by Samson, who is said to have asked («rogavit») for this *breve refutationis* to be made[84], as well as by witnesses and the notary Guido. Likewise dating from July 1012 is a donation charter redacted by Guido by which Samson donated properties to the monastery[85]. This takes the conventional form of a donation charter («Constat me Samsonsem [...] propterea tradimus atque concedimus») and is signed by Samson, who, it specifies, asked (*rogavit*) for this donation charter to be made, along with witnesses and the notary Guido[86].

As the *breve* for Samson indicates, Guido continued to observe a distinction between donation charters and renunciation *brevia*, even after he adopted a new form for the latter. This form, the *breve refutationis et obligationis* could, from his perspective, be redacted on request of the individual in question and did not require the authority of a judge to legitimize the renunciation. With the use of this documentary type, which could be used for all voluntary renunciations, not merely those conducted by individuals on their sickbeds, we may conclude that the invocation of Liutprand 6 became unnecessary – and its preservation in the form of the Raino document in the Farfa register is the chance survival of a legal road not taken.

7. *Notarial trends and the* breve refutationis et obligationis

Guido was not the first to redact a *breve refutationis et obligationis*; to understand the significance of this form and its evolution, it is necessary to step back and observe its adoption by other notaries in the Sabina. As already noted by Toubert, discussed below (§8), a distinct shift is noticeable in the early 1010s, but we already see notaries experimenting with the form earlier.

Most notaries only appear a handful of times in the material preserved in Farfa's cartulary. Here I focus on two notaries for whom, as for Guido, there survives a larger corpus of evidence. These are Iobo and Franco, both, like Guido, notaries in the Sabine region.

Iobo appears in twelve surviving Farfa documents ranging from 988 to 1005. The documents are overwhelmingly *brevia* describing renunciations, of which there are ten; the other two documents by Iobo are a donation charter and an exchange charter. Iobo's renunciation *brevia* frequently include some of the features that we have observed in the *brevia* redacted by Guido from 1011 onward (Tab. 2). Already a 990 renunciation *breve* (the first surviving re-

[83] RF 4, p. 24, no. 627 (1012).
[84] RF 4, p. 24, no. 627: «Signum manus suprascripti Samsonis qui hoc breve refutationis fieri rogavit».
[85] RF 4, pp. 23-24, no. 626 (1012). These properties have no discernible relationship to the land renounced.
[86] RF 4, p. 23: «Signum manus suprascripti Samsonis qui hanc cartam donationis fieri rogavit».

nunciation *breve* redacted by Iobo) describes that the party in question came «in pactuationem et convenientiam» and in the presence of judges and other witnesses renounced properties in favor of the monastery[87]. In July 999, Iobo redacted a «breve recordationis seu et obligationis», though this document does not use the obligation formula, and the conclusion to this *breve* specifies that it was redacted on the orders of the *iudex* Grimarius[88]. A «breve memoratorum seu recordationis et obligationis» redacted in October 999 uses the obligation formula and is not said to be redacted on the authority of a judge[89]. From 1000 onward we see much greater standardization in Iobo's renunciation *brevia*; when they are entitled *breve obligationis* they include the obligation formula and often specify that the parties in question came *in pactuationem et convenientiam*. What we see in Iobo's *brevia*, I suggest, is Iobo initially experimenting with different forms, working out what was entailed in them, before settling on a type that he was satisfied with.

In contrast to Iobo, who appears to have been much more prone to try out new forms, Franco, another notary commonly found in the Farfa evidence, was, like Guido, much more conservative in redacting *brevia* that recorded renunciations. Based on the surviving evidence, Franco appears to have been active from 999 to 1035[90]. There survive, by a rough count, approximately 40 donation charters redacted by Franco and 16 *brevia* recording renunciations, as well as a handful of sales and exchanges, and two *brevia* that do not record renunciations[91]. Franco's surviving *brevia* recording renunciations range in date from 999 to 1026 (Tab. 3).

A change is noticeable in these *brevia* in 1011. The earliest *brevia* recording renunciations, redacted in 999, 1009, and 1010 are entitled by Franco *Breve recordationis* or *Breve recordationis et notitiam iudicati*; the single *Breve recordationis* includes the obligation formula[92]. All three specify that they were redacted *per iussionem* [of so-and-so] *iudicis*. Then, for the first time, a renunciation *breve* from May 1011 omitted the formula *per iussionem* [of so-and-so] *iudicis*, although the renunciation was conducted in the presence of a judge who also signed the *breve*[93]. And another *breve* from May 1011 is entitled *Breve recordationis seu obligationis*, uses the obligation formula, and specifies that the individuals came «in pactuationem et convenientiam»

87 RF 3, p. 119, no. 409 (990).
88 RF 3, pp. 147-148, no. 435 (999), here 148: «Unde hoc breve memoratorium atque refutatorium sic factum et diffinitum, michi Ioboni notario domnus Guimarius dativus iudex scribere praecepit in mense et indictione suprascriptis».
89 RF 3, p. 154, no. 440 (999).
90 Here I have included all documents redacted by «Franco dativus et notarius», «Franco notarius» and «Franco iudex», although it is possible, in the case of the last of these subscriptions, attested in one document, RF 3, pp. 207-208, no. 499 (1014), that we are dealing with a different Franco; see below n. 96.
91 These are two *brevia obligationis*: RF 4, p. 21, no. 623 (1012), involving Raino, mentioned above, n. 5, and RF 3, pp. 224-225, no. 513 (1018).
92 RF 3, p. 148, no. 436 (999); RF 4, pp. 3-4, no. 604 (1009); RF 4, p. 6, no. 607 (1010).
93 RF 4, p. 50, no. 632 (1011-May).

(a phrase not used by Franco in the earlier renunciation *brevia*)[94]. Subsequent *brevia* are entitled along varying lines, sometimes using the term *breve obligationis*, sometimes not, but all but one use the obligation formula[95]. They frequently describe how the individuals came *in pactuationem et convenientiam* or that *facta est convenientia*, and/or specify that the *breve* was made at the request of the individual renouncing property. Only a handful use the expression *per iussionem* [of so-and-so]; once this is on the orders of a judge[96]; in another this is on the order of Farfa's abbot[97]; in two others it is on the orders of counts (one of these is on the order of counts, a bishop and judges)[98].

At a very similar time as Guido, then, there was a shift in how Franco redacted *brevia* recording voluntary renunciations; this involved stressing the amicable nature of the settlement and generally redacting the *breve* on the request of the individual in question, not on the orders of a judge. In the case of Guido, we saw an introduction of the obligation formula beginning in February 1011 and his dispensing with the *per iussionem* [of so-and-so] *iudicis* formula in May 1012. In the case of Franco, a change is noticeable already in May 1011, when Franco began dispensing with the formula *per iussionem* [of so-and-so] *iudicis*.

From a legal perspective, the basis for the *breve refutationis et obligationis* is readily to be found in the terminology used in these documents, in particular by their reference to individuals coming to the monastery *in pactuationem et convenientiam*. Explicitly permissible, according to a law of Liutprand (Liutprand 91), were contractual agreements made by consent of both of the parties in question (as long as they were not against the law and did not pertain to questions of succession), even if this contract did not fall into the categories (such as donations) recognized by Lombard or Roman law[99]. Liutprand 91 (727) stipulates that scribes were required to compose charters either according to Lombard or Roman law but allowed that «si quiscumque de lege sua subdiscendere voluerit et pactionis aut convenentias inter se fecerent, et ambe partis consenserent, isto non inpotetur contra legem, quia ambe partis volontariae faciunt»[100]. Thus, according to the terms of Liutprand 91, individuals might come to an amicable agreement that was legally binding,

[94] RF 4, pp. 12-13, no. 615 (1011-May).
[95] This is RF 3, pp. 254-255, no. 545 (1024), which is the record of a complex court case involving many individuals.
[96] RF 3, pp. 207-208, no. 499 (1014).
[97] RF 3, pp. 219-220, no. 508 (1017).
[98] RF 3, pp. 254-255, no. 545 (1024); RF 3, pp. 289-290, no. 584 (1026).
[99] *Leges Langobardorum*, pp. 144-145, no. 91; discussed by Caprioli, *Per Liutprando 91*; Kosto, *Convenientia*, p. 26; Everett, *Literacy*, pp. 173-175; De Angelis, *"De lege sua subdiscendere"*. As discussed by De Angelis this law is cited in a handful of north Italian documents, and one from Fermo, from the second half of the eleventh century.
[100] Trans. (modified) Drew, *The Lombard laws*, pp. 183-184: «if anyone chose to diverge from his law, and they [such people] made a pact or agreement among themselves, and both parties consent, it shall not for this be accused of being against the law, since both do it voluntarily»: *Leges Langobardorum*, p. 145, no. 91.

creating an obligation for one or both of the parties involved: a *breve obligationis* was a record of that obligation. Indeed, in a 1086 «breve promissionis et obligationis et renuctiationis et refutationis atque convenientie» from Fermo, in which a group of individuals agreed to renounce their claims to a property claimed by the bishop, Liutprand 91 is explicitly cited as the legal basis for the agreement[101]. Prior to the eleventh century the obligation formula had been used in charters in which individuals voluntarily entered into a contract that entailed an obligation on their part. Notaries now adopted it for a new type of voluntary contract, a voluntary renunciation.

Again, it should be emphasized that, as reflected in Iobo's *brevia*, this documentary form was still being worked out in the late tenth century. This fits well with the evidence, highlighted by Nicolaj, that indicates renewed interest in the legal concept of the *pactum* among late-tenth- and early-eleventh-century notaries in Rome[102]. For example, the arenga to the 998 record of a court case redacted in Rome, by a Roman notary but involving the monastery of Farfa (and preserved in Farfa's cartulary) elaborates: «Omne vero pactum quod homines faciunt, placitum vocatur: placitum vero dictum est eo quod ambobus partibus placeat»[103]. Significant too is that Roman notaries likewise began to adopt the language of the *pactum* and *convenientia* in recording voluntary renunciations.

Roman notaries of the tenth-eleventh century, unlike their counterparts in the Sabina, used charters, not *brevia*, to record renunciations. Two surviving renunciation charters, however, both redacted by the Roman notary John, vary in the language they use in describing these renunciations. One of these, redacted by John in 999, specifies how a certain Roman noblewoman, Teodora, and her sons renounced (*refutasse*) properties in favor of the monastery of Farfa[104]. In the second, a renunciation document redacted in October 1011 for the noblewoman Stefania, John used a hybrid format: this document begins as a charter «Certum est me» but concludes by describing itself as a «breve memoratorium et refutationis» written at the order of the *dativus iudex* John[105]. This document also describes Stefania as coming «in convenientiam et in amicalem pactuationem». In both examples, the individ-

[101] *Liber iurium*, pp. 78-80, no. 43, cited in De Angelis, *"De lege sua subdiscendere"*.
[102] Nicolaj, *Cultura e prassi*, p. 49.
[103] «Truly every pact (*pactum*) that people make is called a *placitum*; what is pleasing to both parties is rightly called a *placitum*»: RF 3, pp. 141-143, no. 428 (998), here pp. 141-142. The same arenga is also included in RF 4, pp. 24-26 (1012), no. 628, here p. 24.
[104] RF 3, pp. 154-155, no. 441 (999): «Certum est nos Theodoram nobilissimam foeminam (...) decessisse nec non et in omnibus deliberasse et diffinisse atque refutasse, nullo nos cogente neque contradicente aut vim faciente, sed propria, spontaneaque nostra voluntate». This charter is said to have been redacted at the request of Theodora and her sons.
[105] RF 3, pp. 195-196, no. 488 (1011-October): «Certum est me Stephaniam nobilissimam feminam (...) decessisse nec non et in omnibus deliberasse et diffinisse ac refutasse, nullo me cogente neque contradicente aut vim faciente, sed propria spontaneaque et mea voluntate (...). Unde hoc breve memoratorium, et refutationis scriptum, michi Iohanni, nutu dei sanctae romanae aecclesiae scrinario, domnus Iohannes, domini gratia, dativus iudex scribere praecepit».

uals in question undertook, ostensibly voluntarily, to renounce property, an act of munificence, which they presumably saw as analogous to a donation. The difference in these documents is a slight shift in the terminology used, which reflects, I argue, a new legal and conceptual underpinning of a voluntary renunciation, namely, that it was a *pactum* and *conven(i)entia*. This is also reflected by an unusually prolix arenga to a renunciation charter redacted by another Roman notary, Leo, in 1005[106]. This charter, which records how a certain Benedict renounced rights to certain properties in exchange for a hundred pounds of gold, begins, «Licet in bona fide solius verbi optineat conventio firmitatem, oportet tamen ea quae inter partes conveniunt scripturae testimonio roborari»[107].

8. *Conclusions: legal sophistication and the breakdown of public justice*

In his magisterial and unsurpassed study of medieval Lazio, Toubert briefly discussed the changes in the form of the *brevia* in the early eleventh century[108]. He argued that this documentary change — from the *breve recordationis sive refutationis* redacted on juridical authority, to the *breve obligationis* agreed upon by the parties in question — was indicative of the appropriation of justice by monasteries like Farfa, a shift from the late-tenth- and early-eleventh-century public system of justice, of assemblies presided over by *missi* and counts, to the castral courts of the mid-eleventh century.

According to Toubert, until ca. 1010, the documentary type in use at Farfa remained the *breve recordationis sive refutationis* established by a notary in favor of the winning party on the formal command (*iussio*) of the territorial judges and the *boni homines*[109]. But «le vent tourne dans les années 1010», and the last of this "traditional" type of *breve*, according to Toubert, are four examples redacted in 1011 (all of which, we may note, were redacted by Guido)[110]. The key date for Toubert is 1012: the crisis prompted by the death of Pope Sergius IV, the failed attempt by the Crescentii to control the choice of a new pope, and the family's subsequently weakened power in the city and the Sabine region. Thereafter, Toubert noted, transactions that are termed

[106] RF 3, pp. 179-180, no. 470 (1005).
[107] «It is permissible that a *conventio* receive stability by a good-faith word alone, but all the same it is fitting that those things that are agreed upon between parties be strengthened by the testimony of writing»: RF 3, p. 179. A similar arenga is used in another document redacted by a different Roman notary, Benedict, in 1015: RF 3, pp. 210-211, no. 502.
[108] Toubert, *Les structures*, pp. 1307-1308, 1280 n. 1 and, more generally, for the appropriation of public justice, pp. 1274-1303; see also the comments by Wickham, *Justice*, pp. 222-232; Sergi, *L'esercizio*, pp. 313-345.
[109] Toubert, *Les structures*, p. 1307: «Jusque vers 1010, l'acte final en usage dans les jeunes juridictions castrales est demeuré le *breve recordationis sive refutationis* établi par un notaire en faveur de la partie gagnante sur l'injonction formelle (*jussio*) des juges territoriaux et des *boni homines*».
[110] Toubert, *Les structures*, p. 1307 and n. 2.

voluntary or amicable become more frequent, in particular the *breve obligationis*: in these transactions judges are relegated to the status of spectators and privileged witnesses and no longer must issue an order (*iussio*) authorizing the court notary to draft a *breve*. In short, although judges and notaries (increasingly assimilated to each other) were ever more in demand for their role in authenticating more or less "private acts", they had, Toubert argues, less authority than before. From Toubert's perspective, then, the *breve obligationis* was indicative of an erosion in the authority of the judges; the rise in these supposedly "voluntary" agreements reflected the breakdown of the traditional system of public justice.

We may agree, generally speaking, with Toubert in his sketch of the documentary changes occurring in the environs of Farfa and the corresponding shift in the role of *iudices* that this entailed. Also convincing is his association of these changes with the monastic take-over of public justice in the course of the eleventh century. But according to Toubert, these changes were symptomatic of the deterioration («dégradation») of judicial culture that went hand in hand with a deterioration in legal knowledge and legal culture at the monastery of Farfa (and elsewhere in medieval Lazio)[111]. Notaries and judges, Toubert argued, had only a very summary knowledge of Lombard/Carolingian legislation, which they invoked only for rhetorical purposes[112]; these crumbs («bribes») of juridical culture were never relevantly applied to diversified cases.

I have argued, however, for a very different assessment of the legal knowledge and know-how involved in the citation of Liutprand 6 in the Raino *breve*. Here a very specific law, accurately quoted, was used to make a complex legal argument, implicit but distinctly perceptible, in favor of the authority of the document in question. This document was redacted in 1008, that is, precisely at the cusp of the flood of changes observed by Toubert. This suggests a notably different explanation for the shift from the *breve recordationis sive refutationis* to the *breve obligationis*. Rather than being indicative of, and accomplished by, a deterioration in legal/judicial culture, it was justified, and facilitated, by legal sophistication. Let us return once more to the evidence to sketch out this trajectory and its relationship to the rise of castral justice.

When Hugo became abbot of Farfa in 998 he and many of his fellow monks were eager to recover lost monastic properties. This involved going to court, but monks likely also increasingly encouraged individuals, especially, we may presume, while ill, to voluntarily renounce claims to properties; monks also sought ways to facilitate such voluntary renunciations without the need for a public official. But – and this is what needs to be emphasized in contrast to Toubert – the monks wanted this to be done *legally*, that is, in accordance with accepted norms and royal/imperial legislation.

[111] Toubert, *Les structures*, pp. 1303-1305.
[112] Toubert's limited examples are listed on pp. 1303-1304 n. 2 (Lombard laws) and p. 1304 n. 1 (Carolingian legislation); they do not include the 1008 Raino document.

Accordingly, the notaries they employed experimented with different solutions, such as the invocation of Liutprand 6 or, what came to be the preferred solution, the *breve obligationis*. As we have seen, this shift was initially gradual; then in 1011 and 1012 it accelerated. Undoubtedly, as Toubert suggested, this must be correlated with the coronation in 1012 of a new pope, Benedict VII, who was favorably disposed to Farfa. As we have seen, a shift is noticeable in Guido's documents precisely in May 1012 when Pope Benedict VIII became pope. But already in 1011 Guido's documents showed signs of adopting the form of a *breve obligationis*, and it was also in 1011 that a change is noticeable in Franco's documents. Again, the point to be made here is that although shifting constellations of power favored the monastery of Farfa, the result was, from a documentary perspective, not an abandonment of legal rules, but the use of legal sophistication to justify a documentary change that facilitated the monastery's attempts to regain control of effectively-alienated property[113].

Late-tenth- and eleventh-century monks and their notaries were, it seems, convinced by the need for their actions and documents to follow "the law". They had differing interpretations as to what that entailed and made different arguments as to what was *legal*. Might a renunciation of land be considered a deathbed disposition of the type approved of by royal/imperial legislation? Might it be considered a pact/agreement voluntarily entered into? Much as the shift to castral justice may seem to us — and likely also seemed to contemporaries — an inherently illegal move to appropriate public justice, it was underpinned at Farfa by an attempt to do so *legally*.

[113] Cf. Wickham, *Justice*, p. 227; Sergi, *L'esercizio*, p. 341.

Table 1. *Brevia* recording reunciations redacted by Guido
RF 3, pp. 145-146, no. 432 (999): Breve recordationis et notitiam iudicatus facio ego Guido notarius de territorio Sabinensi per iussionem Guimarii iudicis
RF 3, p. 125, no. 415 (1003): Breve recordationis seu et refutationis facio ego Guido notarius de territorio Sabinensi per iussionem Huberti iudicis et Benedicti iudicis
RF 3, p. 177, no. 467 (1006): Breve recordationis seu refutationis facio ego notarius Guido territorii Sabinenis per iussionem Huberti iudicis
RF 3, p. 185, no. 476 (1008): hoc breve memoratorium atque refutatorium factum est, qualiter Raino filius cuidam Fulconis (…) pro eo quod domni imperatores constituerunt
RF 3, pp. 190-191, no. 482 (1009): hoc breve rememoratorium atque refutatorium factum est, qualiter ego Leo filius ciusdam Petri diaconi et Mira uxor mea (…) Quia domni imperatores constituerunt (Cf. RF 3, pp. 192-193, no. 484)
RF 4, p. 8, no. 609 (1011-January): Breve ricordationis facio ego Guido notarius territorii Sabinensis per iussionem Guimarii iudicis
RF 3, p. 194, no. 486 (1011-February): Breve recordationis facio ego Guido notarius per iussionem Guimmarii iudicis et Franconis iudicis
RF 4, pp. 8-9, no. 610 (1011-February): Breve recordationis seu notitiam iudicati facio ego Guido notarius territorii Sabinensis, per iussionem domni Guimarii iudicis (…) obligaverunt se
RF 4, p. 10, no. 612 (1011-March): Breve recordationis facio ego Guido notarius per iussionem Guimarii iudicis (…) obligavit se (Cf. RF 4, p. 9, no. 611)
RF 4, pp. 10-11, no. 613 (1011-March): Breve recordationis facio ego Guido notarius per iussionem Guimarii iudicis (…) obligavit se
RF 4, pp. 26-27, no. 629 (1011-October): Breve recordationis seu et refutationis facio ego Guido notarius territorii Sabinensis per iussionem Gaidonis vicecomitis et Guimarii iudicis (…) in pactuationem et bonam convenientiam (…) obligavit se
RF 3, pp. 194-195, no. 487 (1012-February): Breve recordationis seu notitiam iudicatus facio ego Guido notarius per iussionem Guimarii iudicis (…) obligaverunt se
RF 4, p. 110, no. 708 (1012-May): Breve refutationis seu obligationis facio ego Guido notarius territorii Sabinensis quomodo venit Benedictus (…) obligavit se
RF 4, pp. 22-23, no. 625 (1012-July): Breve refutationis seu obligationis facio ego Guido notarius territorii Sabinensis quomodo venit Franco et Burro (…) in pactuationem et convenientiam (…) obligamus nos
RF 4, p. 24, no. 627 (1012-July): Breve refutationis seu obligationis facio ego Guido notarius territorii Sabinensis quomodo venit Samso (…) in pactuationem et convenientiam (…) obligo me (Cf. RF 4, pp. 23-24, no. 626)
RF 3, pp. 196-197, no. 489 (1013): Breve recordationis et refutationis seu obligationis facio ego Guido notarius territorii Sabinensis, quando venit Taxilo et…in pactuationem et convenientiam (…) obligaverunt se
RF 3, pp. 220-221, no. 509 (1017): breve memoratorium factum qualiter facta est convenientia (…) obligaverunt se (…) hoc breve refutationis et obligationis

Table 2. *Brevia* recording renunciations redacted by Iobo
RF 3, p. 119, no. 409 (990): Breve recordationis facio ego Iobo notarius territorii Sabinensis de ipsa refutatione quam fecerunt parentes (…) in pactuationem et convenientiam
RF 3, pp. 120-121, no. 411 (994): Breve recordationis seu et notitiam iudicatus facio ego Iobo notarius de territorio Sabinensi, per iussionem Benedicti vicecomitis domni Crescentii, et per iussionem Franconis iudicis de civitate Castellana, et Roccionis iudicis (…) miserunt se in obligationem
RF 3, pp. 126-127, no. 416 (998): Breve recordationis facio ego Iobo de territorio Sabinensi de ipsa refutatione quam fecit Leo
RF 3, pp. 147-148, no. 435 (999-July): Breve recordationis seu et obligationis facio ego Iobo notarius de territorio Sabinensi de ipsa intentione quam habuit domnus Hugo (…) in convenientiam et in amicabile pactum (…) Unde hoc breve memoratorium atque refutatorium sic factum et diffinitum, michi Ioboni notario domnus Guimarius dativus iudex scribere praecepit
RF 3, p. 154, no. 440 (999-October): Breve memoratorium seu recordationis et obligationis facio ego Iobo notarius de territorio Sabinensi, de ipsa terra (…) obligo me (…) hoc breve refutationis
RF 3, pp. 155-156, no. 442 (1000): Breve recordationis seu et notitiam iudicati et obligationis facio ego Iobo notarius de territorio Sabinensi de ipsa intentione quam habuit domus Hugo (…) in convenientiam et in amicam pacationem [sic] (…) obligavit se
RF 3, pp. 128-129, no. 419 (1003): Breve refutationis seu obligationis, facio ego Iobo notarius de territorio Sabinensi de ipsa refutatione quam fecit Adam (…) in pactuationem et convenientiam (…) obligo me (…) Quia sic factum et diffinitum est per iussionem suprascripti domini Gaidionis vicecomitis et Guimarii iudicis
RF 3, pp. 175, no. 464 (1004): Breve recordationis seu et obligationis facio ego Iobo notarius de territorio Sabinensi de ipsa refutatione quam fecit Samson (…) in amicam convenientiam et in pactuationem (…) obligo me (…) breve istud refutationis
RF 3, pp. 176-177, no. 466 (1004): Breve recordationis facio ego Iobo notarius territorii Sabinensis, per iussionem Huberti iudicis, de ipsa refutatione quam fecerunt Martinus
RF 3, p. 176: No. 465 (1005): Breve recordationis facio ego Iobo notarius territorii Sabinensis de ipsa refutatione quam fecit Sabbo

Table 3. *Brevia* recording renunciations redacted by Franco
RF 3, p. 148, no. 436 (999): Breve recordationis facio ego Franco notarius per iussionem domni Hugonis abbatis et Huberti iudicis (...) obligavit se
RF 4, pp. 3-4, no. 604 (1009): Breve recordationis et notitiam iudicati facio ego Franco dativus et notarius territorii Sabinensis per iussionem domni Ottonis comitis et domni Rainerii episcopi sanctae sedis Sabinensis aecclesiae, et Burrelli vicecomitis et Franconis iudicis
RF 4, p. 6, no. 607 (1010): Breve recordationis et notitiam iudicati facio ego Franco dativus et notarius territorii Sabinensis per iussionem Guidonis vicecomitis et Guimarii iudicis
RF 4, p. 50, no. 632 (1011-May): Breve recordationis seu et refutationis ego Franco dativus et notarius territorii Sabinensis quomodo venit Stephanus
RF 4, pp. 12-13, no. 615 (1011-May): Breve recordationis seu obligationis facio ego Franco dativus et notarius territorii Sabinensis, quomodo venerunt filii (...) in pactuationem et convenientiam (...) obligaverunt se
RF 4, p. 51, no. 653 (1011-June): Breve refutationis facio ego Franco dativus et notarius territorii Sabinensis, quomodo venit Azo (...) in pactuationem et in amicam convenientiam (...) obligamus nos
RF 4, pp. 51-52, no. 654 (1011-July): Breve recordationis et obligationis facio ego Franco dativus et notarius territorii Sabinensis de ipsa refutatione quam fecit Berta (...) in pactum et convenientiam (...) obligo me
RF 3, pp. 202-203, no. 494 (1014): Breve recordationis seu obligationis facio ego Franco dativus et notarius territorii Sabinensis de ipsa refutatione quam fecerunt Siefredus (...) obligaverunt se
RF 3, pp. 207-208, no. 499 (1014): Breve rememoratorium atque refutatorium facio ego Franco iudex territorii Sabinensis per iussionem Huberti iudicis (...) facta est convenientia (...) obligavit se
RF 3, pp. 219-220, no. 508 (1017): Breve refutationis facio ego Franco notarius teritorii Sabinensi, seu et notitiam iudicati per iussionem domni Hugonis abbatis (...) in convenientiam (...) obligaverunt se (...) hoc breve obligationis
RF 3, pp. 226-227, no. 515 (1018): hoc breve memoratorium atque refutatorium factum est (...) obligavit se
RF 3, p. 241, no. 531 (1020): Breve refutationis seu et obligationis facio ego Franco dativus et notarius territorii Sabinensis, quomodo venit Gaido (...) obligaverunt se
RF 3, p. 242, no. 532 (1021): Breve refutationis et obligationis facio ego Franco dativus et notarius territorii Sabinensis (...) in pactuationem et convenientiam (...) obligamus nos
RF 3, pp. 254-255, no. 545 (1024): Breve refutationis seu obligationis facio ego Franco dativus et notarius territorii Sabinensis per iussionem suprascripti Oddonis comitis et Petri comitis et Iohannis aepiscopi et Huberti iudicis et Corbonis iudicis
RF 4, pp. 116-117, no. 714 (1025): Breve recordationis seu obligationis facio ego Franco dativus et notarius territorii Sabinensis quomodo venit Franco (...) in amicam convenientiam (...) obligo me
RF 3, pp. 289-290, no. 584 (1026): Breve recordationis seu refutationis facio ego Franco dativus et notarius territorii Sabinensis per iussionem domni Ottonis et Crescentii insimul comitum (...) per hoc breve obligationis seu refutationis obligaverunt se

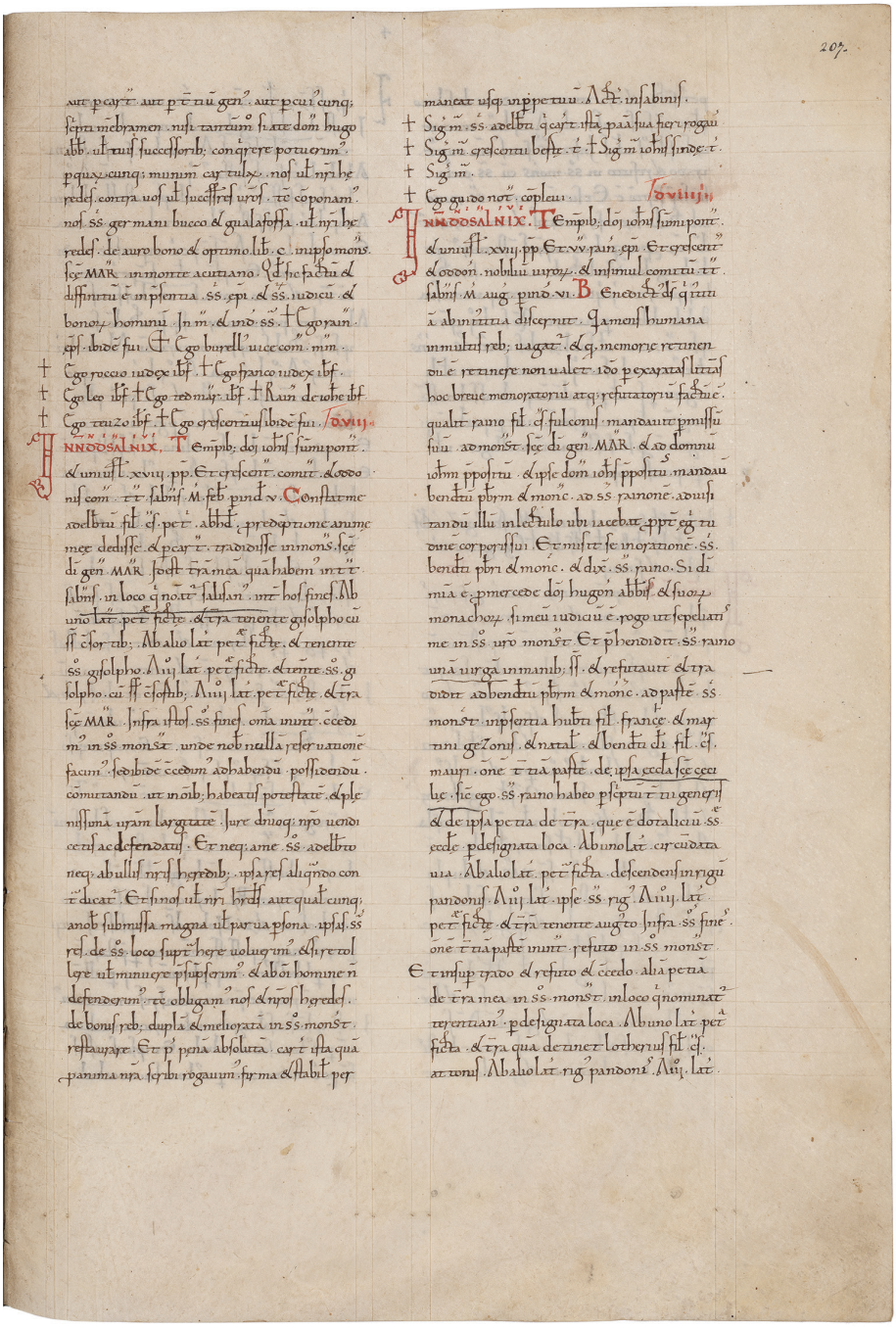
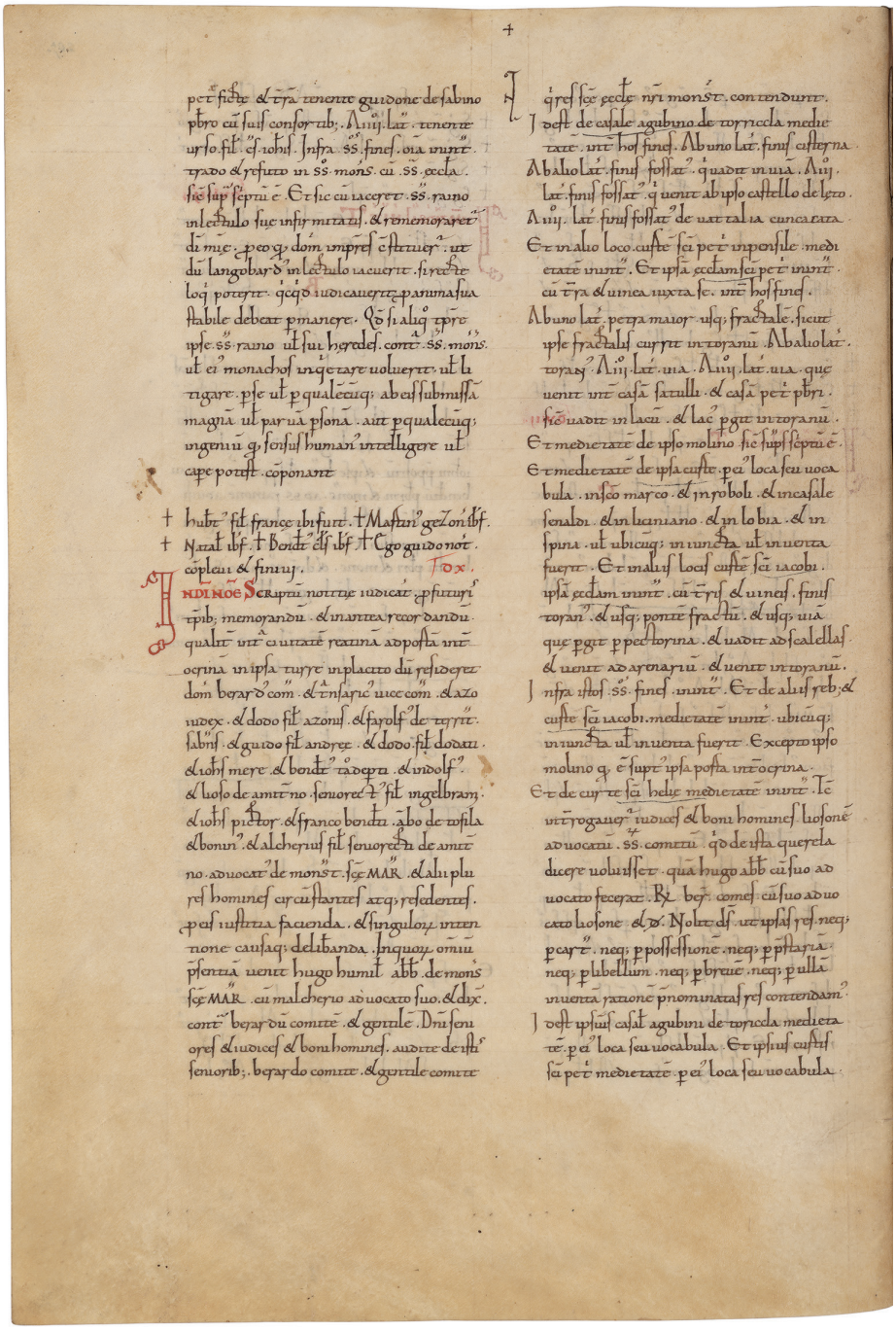


Fig. 1a-b: Raino *breve* (RF no. 476): Vatican, lat. 8487, pt. 1, f. 207*rv* (courtesy of the Biblioteca Apostolica Vaticana, with all rights reserved).



pet̄ fiebe & tra tenente guidone de sabino
pbro cū suis consortib; .Aiij. lat̄ tenente
ursone fil̄ .ē. iohis. Infra ss̄ fines. uia iuntt̄
trado & refuto in ss̄ mons. cū .ss. eccla.
sue sup̄ scptū ē. Et sic cū iaceret .ss. rauno
in lectulo sue infirmitat̄. & rememorarēt̄
dñe mie. peo q; dom̄ impres̄ cstruer̄. ut
du langobard̄ in lectulo iacuerit. si exte
loq̄ potuit. qq̄d audierit. pannus sua
stabile debeat pmanere. Qō si aliq̄ tpre
ipse .ss. rauno ut sui heredes. contr̄ .ss. mons.
ut ei monachos ingerare uoluerit. ut li
tigare. pse ut p qualēcūq; ab ecclesia submissa
magnā ut parūā psonā. aut pqualecūq;
ingeniū q; sensus humān intelligere ut
cape potuit. coponunt

† hubt̄ fil̄ franco ibi fuit. † Martin̄ gezon ibi.
† Natal ibi. † Bonat̄ ēt ibi. † Ego guido not̄.
cōplevi & finiui.

Fox.

NDI NŌE Scripti nostre iudicat̄ ꝓfuturi
tpib; memorandū. & mentes recordandū
qualit̄ nup̄ cū uitat̄ ratina adposita int̄
ocrina in ipsa turre in placito dū resideret
dom̄ berard̄ com̄. & ēnfric̄ uicecom̄. & azo
iudex. & dodo fil̄ azonis. & farolf de tert̄.
sabin̄. & guido fil̄ andree. & dodo fil̄ dodati.
& iohis mere & bonat̄ ādepa. & indolf̄.
& luso de amit̄no senores ꝑ fil̄ ingelbran.
& iohis pictor. & franco bonat̄. abo de ostila
& bonin̄. & alcherius fil̄ senorecti de amit̄
no. aduocat̄ de mons̄ .ss. scē MAR̄. & alii plu
res homines cū cū stantes atq; residentes.
pes iustitia faciendā. & singulos inten
tione causaq; deliberanda. inquoꝝ omiu
pfectā uenit hugo humil̄ abb̄. de mons̄
scē MAR̄. cū malcherio aduocato suo. & dixe.
comit̄ berard̄ comitē. & gentile. Dñi seni
ores & iudices & boni homines. audite de ist̄
seniorib;. berardo comite. & gentile comite

q̄ res scē eccle nr̄i mons̄t. contendunt.
dest de casale agubino de torricla medie
tate. uit̄ hos fines. Ab uno lat̄ finit̄ cisterna
Ab alio lat̄ finit̄ fossat̄. q̄ uadit in uia. Aiij.
lat̄ finit̄ fossat̄. q̄ uenit ab ipso castello de ipso.
Aiij. lat̄ finit̄ fossat̄ de uat̄ tal ia cuncaua
Et in alio loco custe sci pet̄ imponsile medi
tate uinit̄. Et ipsa ecclam sci pet̄ uinit̄
cū tra & uinea iuxta se. uit̄ hos fines.
Ab uno lat̄. petra maior usq; fractale. sicut
ipse fractalis currit in toranu. Ab alio lat̄.
toran̄. Aiij. lat̄. uia. Aiij. lat̄. uia. que
uenit uit̄ casa sacelli. & casa pet̄ pbr̄.
sic uadit in lacu. & lac̄ pgit in toranu.
Et medietat̄ de ipso molino sic sup̄ scptū ē.
Et medietat̄ de ipsa custe. pe. loca seu uoca
bula. in sco marco. & in roboli. & in casale
senaldi. & in luciano. & in lobia. & in
spina. ut ubicūq; in uinea ut in uinea
fuerit. Et in alio loco custe sci iacobi.
ipsa ecclam uinit̄. cū tris & uineis. finit̄
toran̄. & usq; ponte fractu. & usq; uia
que pgit ꝑ pedorina. & uadit ad scaldellas
& uenit ad aquariu. & uenit in toranu.
infra istos .ss. fines uinit̄. Et de aliis reb; &
custe sci iacobi. medietate uinit̄. ubicūq;
in uinea ut in uinea fuerit. Excepto ipso
molino q. ē supr̄ ipsa posta in ocrina.
Et de cur̄te sci bele medietate uinit̄. Te
uit̄ rogauit̄ iudices & boni homines. luson̄e
aduocatu. ss. comitu. qō de ista querela
dicere uoluissent. quā hugo abb̄ cū suo ad
uocato fecerat. Rl̄ bē. comes. cū suo aduo
cato luson̄e. & dx̄. Nolite dñe ut ipsa res neq;
pcar̄t̄. neq; ꝑ possessione. neq; ꝑ pstaria
neq; ꝑ libellum. neq; ꝑ breue. neq; ꝑ ulla
uinea ratione ē pnominata res contendam.
dest ipsius casal̄ agubini de torricla medieta
t̄. p ei loca seu uocabula. Et ipsius cust̄
sci pet̄ medietat̄ p ei loca seu uocabula.

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