

# Legal Expertise at a Late Tenth-Century Monastery in Central Italy, or Disputing Property Donations and the History of Law in Benedict of Monte Soratte's Chronicle

By Maya Maskarinec

The chronicle written by Benedict of Sant'Andrea at Monte Soratte is one of the few narrative histories to survive from tenth-century Italy and has often been mined as a source for reconstructing the ecclesiastical and political history of early medieval Italy. This article argues that the chronicle also offers something more: a largely overlooked source for the legal history of tenth- to eleventh-century central Italy.<sup>1</sup> This discovery sheds light on the purpose and agenda of Benedict's chronicle, the regional competition between monasteries in tenth- and eleventh-century Italy, and the development of legal science before the foundation of the university.

After introducing Benedict's chronicle, in Part 1 of this article I demonstrate that the chronicle's author, the monk Benedict, has embedded in his text the groundwork for an ambitious property claim, which he defends both by legal arguments and by crafting a complex historical narrative. In Part 2 I show how a robust historicizing vision of law, as outlined in his chronicle, underpins Benedict's legal reasoning. Benedict's conception of this law, as a corpus of Lombard, Carolingian, and Ottonian legislation, parallels ongoing efforts, in ninth- to eleventh-century Italy, to organize and systematize law chronologically, as attested (Part 3) by surviving ninth- to eleventh-century manuscripts, not least the collection of law that is bound together with the sole surviving copy of Benedict's *Chronicle* (Vatican City, Biblioteca Apostolica Vaticana, MS Chigi F.IV.75, fols. 1r–58v), as well as eleventh-century manuscripts of the so-called *Liber legis Langobardorum* (*Liber papiensis*).

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<sup>1</sup> Giuseppe Zucchetti noted in the preface to his 1920 edition of Benedict's chronicle that Benedict makes repeated references to law throughout, often in passages that have no direct source: Giuseppe Zucchetti, ed., *Il "Chronicon" di Benedetto e il "Libellus de imperatoria potestate in urbe Roma"*, *Fonti per la Storia d'Italia* 55 (Rome, 1920), xl–xliii. Legal historians have referenced Benedict—for example, Karl Neumeyer, *Die gemeinrechtliche Entwicklung des internationalen Privat- und Strafrechts bis Bartolus*, 2 vols. (Munich, 1901–16), 1:33–34; Giovanni Santini, "Le condizioni dello 'studio del diritto' in Toscana nell'alto medioevo," in *Atti del 5° Congresso internazionale di studi sull'alto medioevo, Lucca, 3–7 ottobre 1971* (Spoleto, 1973), 389–447, at 414—but, to my knowledge, Zucchetti's observation has not been investigated in depth. All citations of Benedict's chronicle refer to Zucchetti's edition.

A close reading of the chronicle thus reveals that Benedict was conversant with specific Lombard and Carolingian laws, comfortable engaging in interpretive legal reasoning, and interested in the history of law. This, together with the evidence that Benedict had access to a legal compilation related to Vat. Chigi F.IV.75, fols. 59r–109v, and Cava dei Tirreni, Biblioteca della Badia, MS 4, suggests a closer relationship between two grand narratives of the tenth to eleventh centuries that are usually presented as largely disconnected: (1) the development of secular legal science, associated primarily with Pavia and legal professionals; and (2) increasing monastic control of the countryside in central Italy.

As we shall see, Benedict's chronicle provides a rare glimpse into how, at a mid-dingly elite monastery in the later tenth to eleventh century, monastics tenaciously cultivated—and integrated—their legal and historiographical resources in a bid to maintain (or increase) their monastery's prestige and property holdings. Yet Benedict's vision of law would be eclipsed by a new model that had come to the fore by the later eleventh century: monasteries continued to invest in maintaining and organizing their documentary and historiographical resources, and defending them by recourse to the law, but embraced a dehistoricizing trend in legal culture.

#### BENEDICT OF MONTE SORATTE'S CHRONICLE

The chronicle of Benedict of Monte Soratte is preserved in a single manuscript, Vat. Chigi F.IV.75 (discussed further in Part 3). The text as we have it is incomplete: it begins and ends mid-sentence. In its surviving form, the chronicle covers the period from the later fourth century up to the mid- to late tenth century; it relates, for the most part, the history of Rome and northern Italy.<sup>2</sup> In the earlier parts of the chronicle, Benedict draws on a range of historiographical and hagiographical sources.<sup>3</sup> The latter part of the chronicle, after the death of Louis the Pious, has no known source. In terms of compositional technique, we may note that Benedict rarely copies long passages from his sources verbatim; for the most part he has chosen brief excerpts from his sources, frequently modifying them slightly.

The chronicle is ascribed to a monk Benedict on account of a passage of the text that has substituted the name Benedict for Gerward (the librarian of Louis the

<sup>2</sup> There is some disagreement or confusion in the scholarship regarding the last secure date in the chronicle. According to Zucchetti, *Il "Chronicon" di Benedetto*, 183; and Harmut Hoffmann, review of Johannes Kunsemüller, *Die Chronik Benedikts von St. Andrea* (Erlangen-Nürnberg, 1963), *Deutsches Archiv für Erforschung des Mittelalters* 20 (1964): 596–97, at 597, the chronicle continues until 972. However, after Benedict reports Otto II's marriage to Theophanu (972), Benedict proceeds to narrate the death of Pope Leo VIII (d. 965) and the beginning of the reign of the new pope, Pope John XIII. This has led some scholars, such as Kunsemüller, *Chronik*, 11, 90; and Paolo Chiesa, "Benedictus sancti Andreae de Soracte mon.," in *La trasmissione dei testi latini del Medioevo: Medieval Latin Texts and Their Transmission*, Te. Tra. 1, ed. Paolo Chiesa and Lucia Castaldi (Florence, 2004), 32–37, at 34, to identify the last secure date in the chronicle as Otto's Italian expedition in 966 after the Romans rebelled against Pope John XIII. The most detailed discussion of the text remains Zucchetti's introduction.

<sup>3</sup> Benedict's sources include Bede's chronicle, Gregory the Great's *Dialogues*, the *Royal Frankish Annals*, Einhard's *Life of Charlemagne*, and hagiographical texts, including the *Life of Saint Barbatius* and the *Translation of Saint Bartholomew*. Most noticeably absent is the *Liber pontificalis*. For a more comprehensive list of sources, see Zucchetti, *Il "Chronicon" di Benedetto*, xxii–xxiii.

Pious) in verses praising Charlemagne.<sup>4</sup> As has often been observed, throughout the chronicle Benedict is most interested in the events, in particular donations and the intervention of holy men, that have strengthened the monasteries of San Silvestro and Sant'Andrea at Monte Soratte. This convincingly demonstrates that Benedict was a monk at the monastery of Sant'Andrea "in Soracte" or "in Flumine."

Sant'Andrea was a monastery near the Tiber river, c. 40 km north of Rome, in the present-day region of Lazio (Fig. 1).<sup>5</sup> The monastery traced its lineage to the earlier monastery of San Silvestro, located on top of the nearby hill of Monte Soratte. As Benedict reports (as do Frankish sources), Charlemagne's brother Carloman spent time at the monasteries (before retiring to Montecassino), and the monasteries at Monte Soratte (like the nearby monastery of Farfa) received imperial privileges from Carolingian rulers.<sup>6</sup> In contrast with Farfa, however, little evidence survives regarding the early medieval monastery of Sant'Andrea, nor did Sant'Andrea's later medieval legacy match the prominence Farfa achieved in the eleventh and twelfth centuries. Yet, as Johannes Kunsemüller argues, it would be a mistake to retroject the later fortunes of these monasteries back into the tenth century; if nothing else, the evidence of Benedict's chronicle indicates that this was a monastery with a well-stocked library.<sup>7</sup>

Scholars have long recognized the importance of Benedict's chronicle for the history of early medieval Italy from Louis the Pious (d. 840) to Otto I (d. 973).<sup>8</sup> In particular, Benedict provides, together with Liudprand of Cremona, our only detailed description of the tumultuous events in Rome in the first half of the tenth century, the period in which members of the Theophylact family, including Alberic, Marozia, Alberic (II), and his son, Pope John XII, dominated the city's politics. Therefore, the chronicle has often been read as a source for the political and ecclesiastical history of Rome, the papacy, and Italy; accordingly, much scholarly concern has related to the historical accuracy of Benedict's depiction of events.<sup>9</sup>

<sup>4</sup> Benedict, *Chronicle*, 124: "Hos tibi versiculos ad laudem, maxime princeps, / Edidit eternam memoriae tua / Benedictus supplex famulus monaque, qui mentem benigna / Egregium extulit nomen ad astra tuum." Einhard, *Life of Charlemagne*, line 26, ed. Oswald Holder-Egger, MGH SS rer. Germ. 25 (Hannover, 1911), xxix: "Gerwardus supplex famulus, qui mente benigna." For a speculative identification of this monk with the monastery's abbot in 1013, see below, Part 1.

<sup>5</sup> Irmgard Maria Voss, *Die Benediktinerabtei S. Andrea in flumine bei Ponzano Romano* (Bonn, 1985); Stefania Cancellieri, *Il complesso monumentale di Sant'Andrea in flumine presso Ponzano Romano: Restauri e studi interdisciplinari* (Rome, 2007).

<sup>6</sup> Benedict, *Chronicle*, 74; *Royal Frankish Annals* 746, ed. Friedrich Kurze, MGH SS rer. Germ. 6 (Hannover, 1895), 7; Einhard, *Life of Charlemagne* 2, MGH SS rer. Germ. 25:4–5; see also Zucchetti, *Il "Chronicon" di Benedetto*, xi–xv.

<sup>7</sup> Kunsemüller, *Chronik*, 68–79, esp. 72.

<sup>8</sup> Ferdinand Gregorovius, *Geschichte der Stadt Rom im Mittelalter: Vom V. bis zum XVI. Jh.* (Stuttgart, 1859–72), discussion of Benedict at 3.7.2. The most current narrative is that of Paolo Brezzi, *Roma e l'impero medioevale, 774–1252*, *Storia di Roma* 10 (Bologna, 1947), which remains heavily indebted to Benedict's chronicle. For a recent study that makes use of a passage from Benedict's chronicle to reconstruct the "topography of power" in tenth-century Rome, see Riccardo Santangeli Valenzani, "Topografia del potere a Roma nel X secolo," in *Three Empires, Three Cities: Identity, Material Culture and Legitimacy in Venice, Ravenna and Rome, 750–1000*, ed. Veronica West-Harling, *Seminari del Centro Interuniversitario per la Storia e l'Archeologia dell'Alto Medioevo* 6 (Turnhout, 2015), 135–58.

<sup>9</sup> In terms of textual criticism this has often taken the form of identifying potential sources for Benedict's account: see Zucchetti, *Il "Chronicon" di Benedetto*, xxxii–xl. Other related concerns have

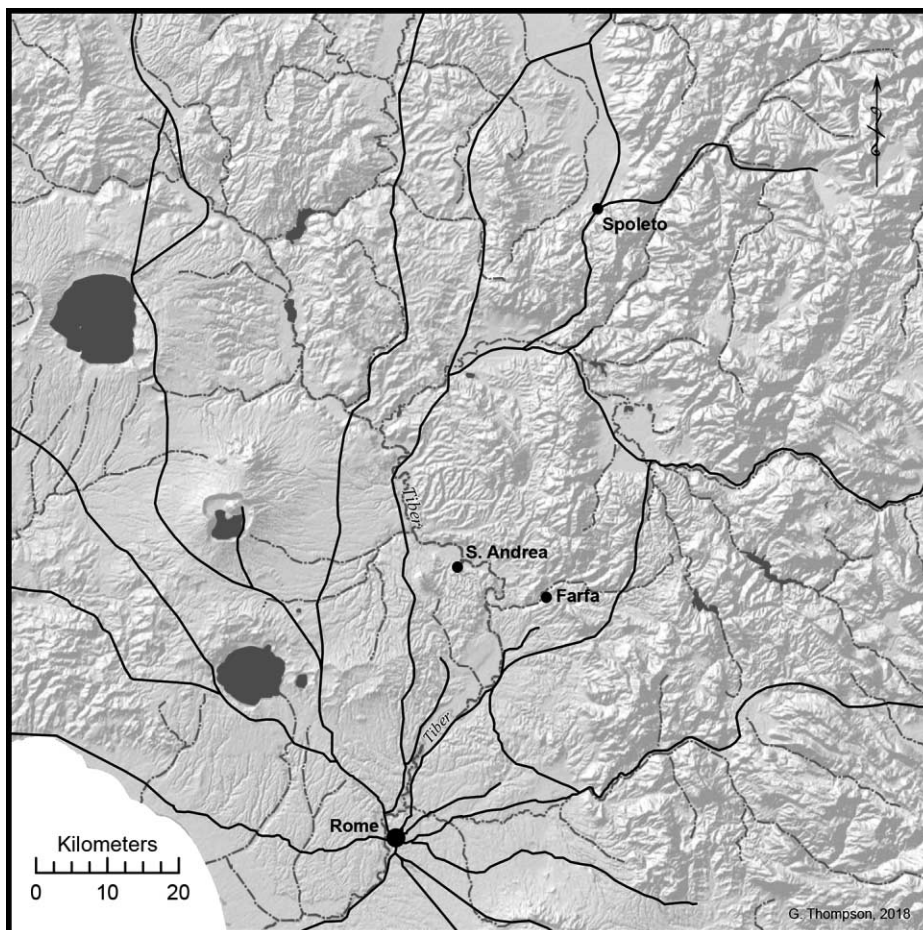


Fig. 1. Central Italy, showing Roman roads. Map created by Gordie Thompson. Reproduced with permission. See the online edition for a color version of this image.

Because of its unclassical Latin, textual confusions, and historical inaccuracies, and because, for the period prior to Louis the Pious, Benedict's chronicle is largely stitched together from earlier hagiographical and historiographical texts, older scholarship tended toward poor evaluations of the text and its author. Benedict was regarded as an ignorant monk naively transcribing his sources and repeating garbled hearsay.<sup>10</sup> With the exception of Benedict's account of Charlemagne's

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been the amount of text missing from the end of Benedict's chronicle (in more recent studies usually judged to be very little; see Chiesa, "Benedictus") and the question of whether the manuscript is an autograph (most recently judged not to be; see below, Part 3).

<sup>10</sup> Max Manitius, *Geschichte der lateinischen Literatur des Mittelalters*, vol. 2, *Von der Mitte des zehnten Jahrhunderts bis zum Ausbruch des Kampfes zwischen Kirche und Staat* (Munich, 1923), 179–81, at 179: "Diese Chronik ist ein wahres Monstrum, sowohl nach dem Inhalt wie nach der Form"; Wilhelm Wattenbach and Robert Holtzmann, *Deutschlands Geschichtsquellen im Mittelalter: Speculum* 94/4 (October 2019)



journey to the Holy Land—the first attestation of a tradition that would have a long medieval afterlife—scant attention was paid to sections of Benedict’s chronicle prior to Louis the Pious.<sup>11</sup> Indeed, Georg Heinrich Pertz’s 1839 edition omitted most of the passages of the chronicle where Benedict was following known sources.<sup>12</sup>

Greater attention to the composition of historical texts has revised such reductive attitudes to medieval historiography, and in recent decades Benedict’s attitude to the past and to specific rulers has come under closer scrutiny.<sup>13</sup> To summarize very briefly, Benedict generally portrays the Lombards in negative terms; the Carolingians, especially Charlemagne, in glowing terms;<sup>14</sup> Alberic (II) more ambivalently; Pope John XII as detestable; and Otto I as a foreign conqueror. As Wickham has discussed, Benedict’s chronicle, together with the hard-to-place *Libellus de imperatoria potestate in urbe Roma*,<sup>15</sup> is noteworthy for the minimal role of the papacy in structuring the text, and throughout the chronicle Benedict disparages the inhabitants of Rome on account of their propensity for strife and discord.<sup>16</sup> This suggests an ambivalence towards the papacy and the people of Rome. Yet because the chronicle breaks off with a lament for Rome’s lost greatness,<sup>17</sup> Benedict is usually characterized as “Roman” (that is, from the city of Rome), or at least as writing from a “Roman” perspective,<sup>18</sup>

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*Die Zeit der Sachsen und Salier*, vol. 1, *Das Zeitalter des ottonischen Staates (900–1050)*, ed. Franz-Josef Schmale (Darmstadt, 1967), 336: “berüchtigt wegen ihre Sprache. . . . Aber auch als Geschichtswerk steht die Chronik ausserordentlich tief.”

<sup>11</sup> For discussion of Benedict’s account (with references to the older literature), see Matthew Gabriele, *An Empire of Memory: The Legend of Charlemagne, the Franks, and Jerusalem before the First Crusade* (New York, 2011), 42–44; Anne Austin Latowsky, *Emperor of the World: Charlemagne and the Construction of Imperial Authority, 800–1229* (Ithaca, 2013), 62–74.

<sup>12</sup> MGH SS 3 (Hannover, 1839), 695–719.

<sup>13</sup> Kunsemüller, *Chronik*, 80–95; Paolo Delogu, “I Romani e l’impero (VII–X secolo),” in *Three Empires, Three Cities*, ed. West-Harling, 191–226; Chris Wickham, *Medieval Rome: Stability and Crisis of a City, 900–1150* (Oxford, 2015), 376–77; Maya Maskarinec, “In the Shadow of Rome: After Empire in the Late-10th-Century Chronicle of Benedict of Monte Soratte,” in *Using and Not Using the Past after the Carolingian Empire, c. 900–c. 1050*, ed. Sarah Greer, Alice Hicklin, and Stefan Esders (Abingdon, forthcoming).

<sup>14</sup> See further Part 2.

<sup>15</sup> The *Libellus de imperatoria potestate* is usually dated to the late ninth/early tenth century. It was first edited in the sixteenth century by M. Flacius Illyricus from a Eutropius manuscript that no longer survives. The text, following Flacius’s edition, can be found in Zucchetti’s edition of Benedict’s chronicle: Zucchetti, *Il “Chronicon” di Benedetto*, 191–210.

<sup>16</sup> Wickham, *Medieval Rome*, 376–77; Chris Wickham, “The Romans According to Their Malign Custom’: Rome in Italy in the Late Ninth and Tenth Centuries,” in *Early Medieval Rome and the Christian West: Essays in Honour of Donald A. Bullough*, ed. Julia M. H. Smith, The Medieval Mediterranean 28 (Leiden, 2000), 151–67.

<sup>17</sup> Benedict, *Chronicle*, 186.

<sup>18</sup> For a summary of the older arguments regarding Benedict’s origins see Alfredo Cioni, “Benedetto di S. Andrea,” in *Dizionario biografico degli Italiani* (Rome, 1966), 8:446–51, who concludes (448) that Benedict is “probabilmente romano, di ambiente e di formazione, almeno, se non di nascita (che conta poco, del resto)”; William S. Monroe, “Benedict of St. Andrea,” in *Encyclopedia of the Medieval Chronicle*, ed. Raymond Graeme Dunphy, 2 vols. (Leiden, 2010), 1:165: “Probably a monk of Roman birth”; Wickham, *Medieval Rome*, 376: “Benedetto wrote from a totally Roman perspective”; Delogu, “I Romani,” 193: “Benedetto raccoglie tradizioni e memorie che hanno un prevalente riferimento romano, e confermano che questo era l’interesse preminente del suo lavoro.”

nostalgic for the city's glorious past.<sup>19</sup> In contrast, presumably in large part because of Sant'Andrea's lesser fame as a monastery, Benedict's chronicle remains largely unincorporated into the larger landscape of tenth-century Italy and the history of central Italian monasticism.

In what follows, a close reading of the chronicle reveals how carefully Benedict crafted his text, in part in defense of a property claim, and how, throughout the chronicle, he went out of his way to include the outlines of a history of Lombard, Carolingian, and later lawgiving. Accordingly, rather than regarding Benedict as a backward-looking monk, obsessed by Rome's former grandeur and attempting, unsuccessfully, to craft a traditional world chronicle (in the model of Bede's chronicle, one of Benedict's primary sources), I propose a portrait of Benedict as forward-looking, preoccupied by his monastery's territorial ambitions, and aspiring to craft a text that would mobilize the monastery's documentary, historiographical, and legal resources in support of these claims. This hidden agenda invites further consideration of Benedict's still understudied portrayal of the distant (late Roman, Lombard, and Carolingian) past, and reconsideration of his well-known portrayal of the late Carolingian and Ottonian periods. Above all, it requires that scholars proceed cautiously in their interpretations of the chronicle: what may appear to be a careless error may well turn out to be Benedict's attempt to provide building blocks for a potentially advantageous narrative.

#### PART 1. A PROPERTY DONATION AND A LEGAL ARGUMENT

In a section of the chronicle in which Benedict is not following any known source, he narrates how the Lombard king Ratchis (r. 744–749) and his wife Tassia traveled with their retinue to Monte Soratte. There the body of the blessed monk Nonnosus and the blessed bishop Sylvester, both buried at Monte Soratte, reveal their miraculous powers by exorcizing a tenacious hereditary demon from one of Ratchis's Beneventan followers.<sup>20</sup> This is a climactic moment of the text. Indeed, as observed by Paolo Delogu, somewhat earlier in the chronicle (ten pages earlier in Zucchetti's edition) Benedict had incorporated the *Life of Barbatius, Bishop of Benevento*, precisely in order to explain the origins of this hereditary curse.<sup>21</sup> The concluding passage of this text relates that, in the time of Duke Romuald, a curse was placed on a certain Lombard family in Benevento;<sup>22</sup> this sets up the later cure at Monte Soratte,

<sup>19</sup> Fedor Schneider, *Rom und Romgedanke im Mittelalter: Die geistigen Grundlagen der Renaissance* (Munich, 1926), 138–39, at 139: "Vaterlandsliebe macht seine Schilderung der verödeten Stadt zu einer ergreifenden Totenklage"; Girolamo Arnaldi, "B. v. S. Andrea," in *Lexikon des Mittelalters* (Munich, 1980), 1:1868: "Im Zentrum seiner Betrachtung steht Rom mit seiner ruhmvollen Vergangenheit und seinem tief beklagten gegenwärtigen Verfall."

<sup>20</sup> Benedict, *Chronicle*, 66: "intrans in ecclesia iuxta corpus sanctissimi Nonnosi, cuius superius memoriam fecit, non longe a corpus beati Silvestri, erat unus ex parasitibus suis Langobardis, de genealogia Langobardo de Beneventi hurbem, qui per hereditaria a demonio sunt vexati, propter maledictionem que beatissimus Barbatius episcopus imposuit, propter Theodora uxoris Romuald principii, cuius superius memoriam fecimus."

<sup>21</sup> Delogu, "I Romani," 193 n. 5.

<sup>22</sup> Benedict, *Chronicle*, 56–57: "at quem beatissimus Barbatius conversus ait: 'Quia a diabolum adiuuare niteris, diabolo manciparis.' continuo a diabolo correptus, acrius cepit torqueri. addensque eis: 'Indicium

since—as Benedict states explicitly—the individual cured at Monte Soratte was a descendant of this cursed Beneventan family.<sup>23</sup>

On account of the miraculous exorcism, Ratchis donates certain lands to the monastery of San Silvestro at Monte Soratte: an estate (*curtis*) called Ustriciano, in the territory of Spoleto, in the district of Pinnis, with a church dedicated to Saint Sylvester, and everything else pertaining to the estate.<sup>24</sup> In describing this donation, Benedict uses the technical terminology of charters, suggesting that he had available to him the charter in question and is comfortable with the language of charter donations. This is also true for other instances throughout the chronicle in which Benedict describes property owned by the monastery (as indeed is usual for the genre of a monastic chronicle, although we should note that Benedict is an early example).<sup>25</sup>

The location (although not the extent) of the property can be identified. As demonstrated by Stefania Fidanza, on the basis of later documentation, the church in question, a church dedicated to Saint Sylvester in the district of Pinnis, referred to a church in close proximity to San Pietro “extra moenia,” a church less than a kilometer outside the town of Spoleto (Figs. 2–3).<sup>26</sup> Still extant is a small medieval church (though damaged by the 2016 earthquakes), now attached to the rear end

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sit in posterum Langobardorum genti, quod tu diabolo consensisse, usque tot generationes ex te procedente non sit tempus, quod tua generationes quispiam diabo non vexetur. non enim recolitur, quod generationis instituit; tamen usque nunc, qui de illorum sunt propagati, quilibet ex eis semper malignus spiritus agitari conspicitur.”

<sup>23</sup> See n. 20.

<sup>24</sup> Benedict, *Chronicle*, 66–67: “Rachisi rex et Tassia regina, uxor eius, per preceptum donationis in venerabilis monasterium Sancti Silvestri et beatissimi Nonnosi curte unam nuncupantem Ustriciano in territorio Spolitino, in pago cuius vocabulum est Pinnis, cum ecclesia in onore sancti Silvestri infra ipsa curte constructa est, et omnibus adiacentiis vel appendiciis hibidem pertinentibus vel aspicientibus, sicuti Luponi ducis manibus suis detenuit. mansit in eo montes rex dies tres gratias agens Deo; a Spolitina urbem regressus est. Langobardi furore accensi, sicuti consuetudo gentis eorum, fronite unoque animo Astulpho petierunt, ut frangerent donationes cartule que Rachisi rex fecerat uti Langobardorum deinceps non esset.”

<sup>25</sup> Detailed by Zucchetti, *Il “Chronicon” di Benedetto*, xi–xvii; see, for example, Benedict, *Chronicle*, 75–76, regarding lands acquired by Carloman for the monastery. Cf. Gregory of Catino’s early twelfth-century *Chronicon Farfense*, ed. Ugo Balzani, 2 vols., *Fonti per la Storia d’Italia* 33–34 (Rome, 1903), which includes, verbatim, many of the documents Gregory of Catino transcribed into his cartulary, the *Regestum Farfense* (hereafter RF): Ignazio Giorgi and Ugo Balzani, eds., *Il Regesto di Farfa di Gregorio di Catino*, 5 vols. (Rome, 1879–92). Regarding the incorporation of charters into monastic histories more generally, see Jörg Kastner, *Historiae foundationum monasteriorum: Frühformen monastischer Institutionsgeschichtsschreibung im Mittelalter* (Munich, 1974), 65–71.

<sup>26</sup> Stefania Fidanza, “Su un privilegio pontificio del XIII secolo per i monasteri di S. Andrea ‘in flumine’ e S. Silvestro sul monte Soratte,” in *Il Lazio tra antichità e medioevo: Studi in memoria di Jean Coste*, ed. Zaccaria Mari, Maria Teresa Petrarra, and Maria Sperandio (Rome, 1999), 305–21, at 310. The sources are a later papal privilege, discussed below, text related to n. 28, and the so-called Pelosius, a codex of the Curia Arcivescovile di Spoleto, compiled in the sixteenth century, which contains a late fourteenth-century list of church revenues, edited by Luigi Fausti, “Le chiese della diocesi spoletina nel XIV secolo,” *Archivio per la storia ecclesiastica dell’Umbria* 1 (1913): 129–216, at 155–205. Included for the parish of San Pietro in Montanis is an “Eccl. S. Sylvestri de Pennis” (179). The location of this church right outside Spoleto, so Fidanza argues, explains the fact that, whereas the papal privilege describes it as located in the town of Spoleto, Benedict’s chronicle describes it as being within a *curtis* in a *pagus* outside the city.

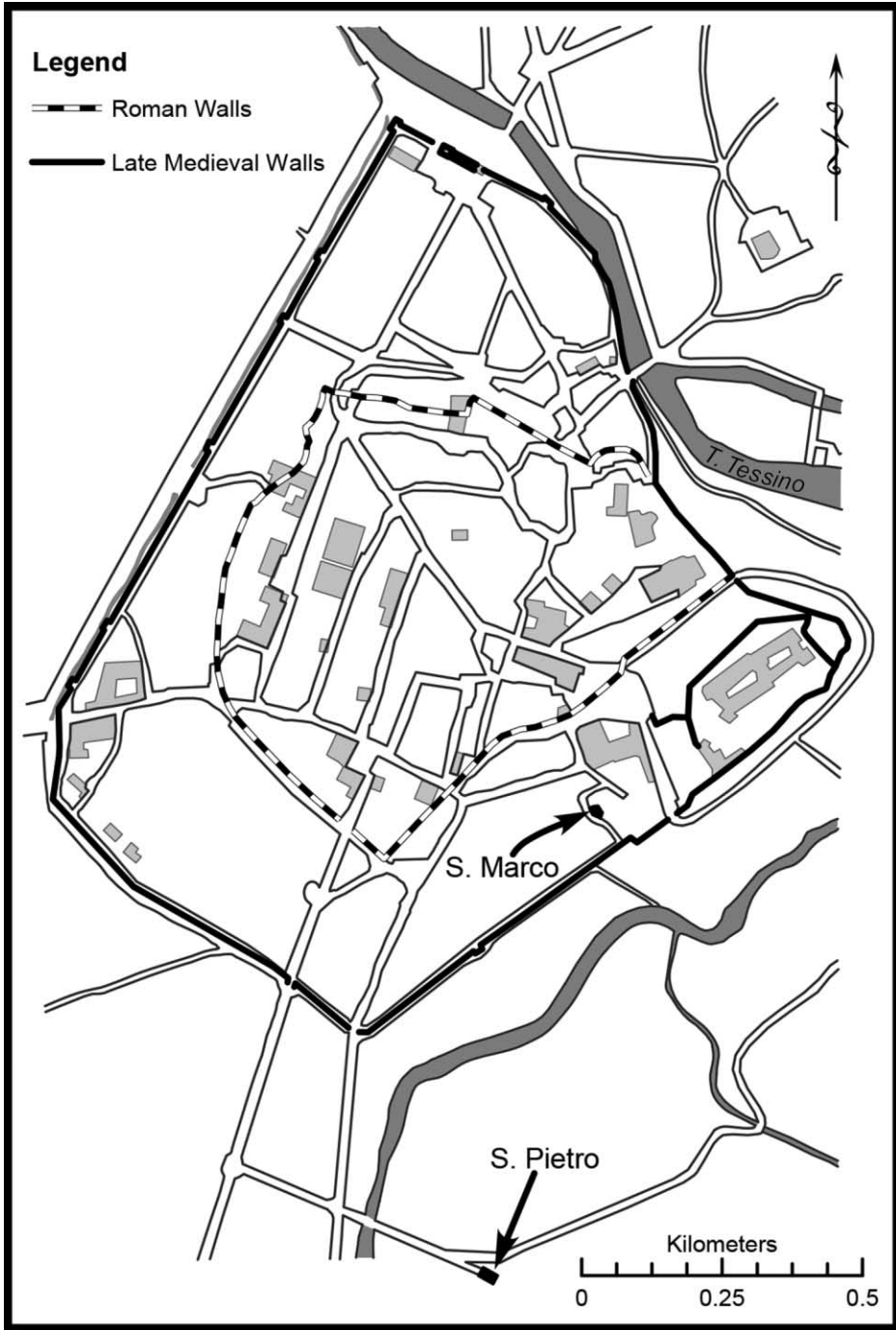


Fig. 2. Spoleto. Map created by Gordie Thompson. Reproduced with permission. See the on-line edition for a color version of this image.





Fig. 3. San Pietro “extra moenia” as seen from Spoleto. Photograph by author. See the online edition for a color version of this image.

of the later complex of San Pietro (Fig. 4). The interior contains a c. fourteenth- or fifteenth-century fresco image of Saint Sylvester, confirming the dedication (Fig. 5).<sup>27</sup>

The town of Spoleto, it should be emphasized, is a significant distance away from Monte Soratte: 55 km to the northeast, but considerably longer by ancient and modern roads (Fig. 1). This, then, was a geographically ambitious property claim. There is no surviving evidence to assess whether the monastery of Sant’Andrea had possession of this property. However, the monastery was certainly tenacious in its claims: the same property—the “Ecclesiam S. Silvestri in Pennis sitam in civitate Spoletana cum omnibus pertinentiis suis”—is listed among the properties belonging to the monastery in a privilege issued by a certain Pope Nicholas, conventionally interpreted to be Pope Nicholas IV (r. 1288–92).<sup>28</sup> Yet this privilege again suggests how unusual the monastery’s claims to this property were. As analyzed by Fidanza, the monastery of Sant’Andrea’s possessions documented in this privilege were for the most part in close vicinity to Monte Soratte (the medieval *territorium Collinense*) and, to the east of the Tiber, in the nearby Sabina. The privilege records only two instances of properties farther afield: a property in Rome (which the monastery

<sup>27</sup> I am grateful to Padre Edoardo, at the church of San Pietro in Spoleto, for facilitating access to the church.

<sup>28</sup> *Regesta pontificum romanorum*, ed. Augustus Potthast, 2 vols. (Berlin, 1874–75; repr. Graz, 1957), 2:1913, no. 23945. The text of the bull was printed by Pierluigi Galletti, *Del primicero della santa sede apostolica e di altri uffiziali maggiori* (Rome, 1776), 347–50, from a parchment document in the Archive of San Paolo fuori le Mura. The document, according to him, appeared to date from the fourteenth century. The text is reprinted and discussed in Voss, *Die Benediktinerabtei S. Andrea*, 292–96 (text), 58–61 (discussion); and Fidanza, “Su un privilegio pontificio.” The document does not survive; later scholarship is familiar with the privilege only from Galletti. According to Fidanza, the terminus post quem of the document is established by its mention of the church of Santa Romana “in pedes montis Syracti,” consecrated in 1218. Fidanza agrees with Galletti’s attribution of the bull to Pope Nicholas IV.



Fig. 4. San Silvestro, next to San Pietro “extra moenia,” Spoleto. Photograph by author. See the online edition for a color version of this image.

certainly did possess in 998)<sup>29</sup> and the property outside Spoleto.<sup>30</sup> For Sant’Andrea, then, this was an exceptional property claim. This is helpful to keep in mind as we turn to the complex narrative and legal argument that Benedict sets up in justifying the monastery’s claim to the property.

Benedict tells us that the land Ratchis donated had belonged to a certain duke, Lupo (presumably Lupo, duke of Spoleto, as discussed below). As described by Benedict (immediately prior to the description of the miraculous exorcism), this Lupo had died without heirs, and, accordingly, his land had passed to the royal palace. Benedict specifies, “It was established in the laws of the Lombards that when a Lombard died without an heir, the royal palace (*curtis regia*) should become heir.”<sup>31</sup> Indeed, the Lombard king Rothari’s *Edict* (issued in 643), as well as the edicts issued by subsequent Lombard rulers, include numerous titles that specify inheritance cases in which the royal palace succeeds to a share of an individual’s inheritance in the absence of certain heirs, or which specify stipulations for when the royal palace does

<sup>29</sup> Fianza, “Su un privilegio pontificio,” 312; the monastery’s claim to possess this property is first attested in Benedict, *Chronicle*, 170, and is documented in the records of a case between Farfa and the church of Sant’Eustachio in Rome (as being immediately adjacent to Farfa’s property in Rome): RF 3, no. 426 (998). Regarding this case, see further below, n. 42.

<sup>30</sup> Fianza, “Su un privilegio pontificio,” 308.

<sup>31</sup> Benedict, *Chronicle*, 65–66: “perrexit Ratchisi rex a Pinnensis urbe vetustatem consumpta, eratque hibi abitatores Langobardo nomine Lupo, que sine heredibus mortuus fuerat. est autem constitutus in legibus Langobardorum, ut Langobardus qui sine heredes mortuus fuerit, curtis regia succedat. successit Ratchisi rex omnes facultates Luponi in sue regie potestatis.”



Fig. 5. Fresco of Saint Sylvester, San Silvestro, Spoleto. Photograph by author. See the on-line edition for a color version of this image.

succeed to an individual's inheritance.<sup>32</sup> Benedict has simplified the complexity of these laws—or, put another way, he has extrapolated the general rule from the particular cases—but the sense and even the terminology of Benedict's text conforms to Rothari's *Edict*. Drawing on his knowledge of Lombard law, Benedict thus affirms that the royal palace had legally inherited the property of Lupo, such that it was within Ratchis's authority to donate the property to the monastery at Monte Soratte.

The legitimacy of this donation is important for Benedict because of what happens next in his narrative: the Lombards, who (according to Benedict) were already angry at King Ratchis, conspire against the king and elect the evil Aistulf instead. Aistulf, we are told, passes laws (*capitula*) that the Lombards request.<sup>33</sup> Benedict does not specify what these laws were, but if we turn to Aistulf's first laws issued in 750, we find that the first title pertains to the legality of donations given by Ratchis: "First of all let it be established concerning those gifts which were made by King Ratchis and his wife Tassia that all gifts made after Aistulf became king shall not be valid unless they were conceded again by King Aistulf to the man to whom they were originally given."<sup>34</sup> Aistulf's first set of laws, issued in 750, are not frequently transmitted in the surviving manuscript tradition (in contrast to the second set of laws he issued in 755);<sup>35</sup> however, as demonstrated in Part 3 below, there is reason to believe that Benedict would have had access to a legal compilation that included this law.

What is at stake for Benedict, then, is the status of Ratchis's donation of Lupo's lands. Benedict is determined to demonstrate that these lands belong rightfully—

<sup>32</sup> Zucchetti, *Il "Chronicon" di Benedetto*, 65 n. 5, cites the *Edictus Rothari* 158–60, 163, 223, 231; *Leges Liutprandi* 17, 18, 32, 34, 77. The Lombard laws are edited by Friedrich Bluhme, MGH LL 4 (Hannover, 1868), *Edictus Rothari*, 3–90; *Leges Liutprandi*, 96–182. *Edictus Rothari* 163, at 38, uses the same phrase found in Benedict: "curtis regia succedat"; *Edictus Rothari* 223, at 54, uses very similar language in the context of explaining what happens if the "curtis regis" becomes heir: "Si quis sine heredis mortuus fuerit, et res ipsius ad curtem regis pervenerit."

<sup>33</sup> Benedict, *Chronicle*, 67–68: "Coronatus est hisdem Astulphus in Mediolana hurbem, infra ecclesia Sancti Ambrosii episcopi, et electus est rex in mense iunius, indictione .x.. tanta denique nequitia exarsit suis temporibus, quanta numquam suis antecessoribus repertum non est. fecit synodum cum Valerius archiepiscopus Ravenne civitatis et cum Conaldus archiepiscopus Mediolane civitatis, et cum iacentiis episcopis, abbatibus, iudicibus, fidelibus Langobardis in regno Italie permanentibus, fecitque capitula sicuti Langobardi precati sunt; et in edictis affigi precepit."

<sup>34</sup> *The Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia, 1973), 228; *Leges Aistulfi* 1, ed. Friedrich Bluhme, MGH LL 4:194–205, at 196: "Primo omnium statuerunt de donationes illas, quae facte sunt a Ratchis rege et Tassia coniuge ipsius, ut omnia illa precepta quae postea facta sunt, postquam Aistolf factus est rex, stare nullatenus debeant, nisi per Aistolfus regem ei denuo, cui donatum est, fuerit concessum."

<sup>35</sup> The editor of the Lombard laws, Friedrich Bluhme, hypothesized (with reference to this passage in Benedict's chronicle) that the early laws of Aistulf were not transmitted frequently because of this law that deprived ecclesiastical foundations of donations made by Ratchis: MGH LL 4:195 n. 1, 196 n. 2. See further discussion in Walter Pohl, "Frontiers in Lombard Italy: The Laws of Ratchis and Aistulf," in *The Transformation of Frontiers from Late Antiquity to the Carolingians*, ed. Walter Pohl, Ian Wood, and Helmut Reimitz, *The Transformation of the Roman World* 10 (Leiden, 2001), 117–42, at 125–26, who remarks, "There is no trace in the text that Aistulf's *capitula* were not intended to be 'written into the code.' . . . But obviously, most of those who copied the lawcode regarded them that way" (126).



and legally—to his monastery. To do so he has crafted both a legal argument and a larger historiographical narrative that justifies the monastery's claims. In the passage that precedes this episode, Benedict tells us that after the death of his father, Liudprand, Ratchis took a wife from the city of Rome, by the name of Tassia, and “spurned the paternal law<sup>36</sup> of the Lombards, and did not carry out the ‘morning gift’ (*morgyncaph*) and the ‘meta’ (*mithio*), which is set down in their laws.<sup>37</sup> But he [that is, Ratchis] did make Roman charter donations as the Romans sought.”<sup>38</sup> (This, we should note, had been specified by Liudprand's laws, as legally permissible.<sup>39</sup>) Yet, on account of this, so Benedict tells us, the Lombards were angry at Ratchis and conspired with Aistulf.<sup>40</sup> Thereupon Benedict proceeds to narrate how Ratchis legally came into possession of Lupo's lands and how Ratchis and his wife traveled to Monte Soratte and, after the exorcism, donated Lupo's lands to the monastery. Then Benedict resumes the narrative where he had earlier left off, about how the Lombards were displeased with Ratchis and beseeched Aistulf to destroy the charter donations that Ratchis had made. Aistulf promised that he would do so in return for the Lombards' support.

Benedict thus associates Ratchis's donation to Monte Soratte with Ratchis's marriage to Tassia and presents us with a narrative in which the Lombards appear to be unreasonably upset because Ratchis scorned Lombard customs and made out his charters according to Roman law. The incident is framed in terms of an opposition between Lombard and Roman law—a legal construct with which Benedict

<sup>36</sup> Benedict's term is “lex paterna,” which I interpret here to mean the “law of one's fathers/forefathers.” The *Edictus Rothari* 386, MGH LL 4:89, speaks of the “antiquas legis patrum nostrorum quae scriptae non erant.” This passage is in the conclusion to the edict in the context of specifying that this same law has now been written down.

<sup>37</sup> With regard to the “morning gift” and “meta” there is no law in Rothari's *Edict* that specifies them as legally required. Indeed, two titles in Liudprand's laws restrict the amount that could be given: *Leges Liutprandi* 7 and 89, MGH LL 4:110 and 144. However, this could also be interpreted as an indication that these gifts continued to be expected by Lombard custom.

<sup>38</sup> Benedict, *Chronicle*, 65: “obiitque Liuprandus rex, accepit Rachisi uxorem de hurbem Roma, nomine Tassia, et disruptit lex paterna Langobardorum morgyncaph, et mithio, que in suis legibus affixum est, non adimplevit. fecit autem donationes cartule Romane, sicut ipsi Romani petierunt. propter hoc Langobardi irritati adversus Rachisi rex, et tractantes cum Astulphus de regno eius.” See also 67: “Langobardi furore accensi, sicuti consuetudo gentis eorum, fronte unoque animo Astulpho petierunt, ut frangerent donationes cartule que Rachisi rex fecerat uti Langobardorum deinceps non esset.”

<sup>39</sup> *Leges Liutprandi* 91, MGH LL 4:144: “De scrivis hoc prospeximus, ut qui cartolas scribent sive ad legem Langobardorum, quoniam apertissima et pene omnibus nota est, sive ad Romanorum, non aliter faciat, nisi quomodo in ipsis legibus conteneretur; nam contra legem Langobardorum aut Romanorum non scribant.” For discussion of this law, see Antonella Ghignoli, “Istituzioni ecclesiastiche e documentazione nei secoli VIII–XI: Appunti per una prospettiva,” *Archivio storico italiano* 162 (2004): 619–66; Brigitte Pohl-Resl, “Legal Practice and Ethnic Identity in Lombard Italy,” in *Strategies of Distinction: The Construction of Ethnic Communities, 300–800*, ed. Walter Pohl and Helmut Reimitz (Leiden, 1998), 205–19; Nicholas C. Everett, “How Territorial Was Lombard Law?,” in *Die Langobarden: Herrschaft und Identität*, ed. Walter Pohl and Peter Erhart, Denkschriften: Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse 329, Forschungen zur Geschichte des Mittelalters 9 (Vienna, 2005), 345–60.

<sup>40</sup> Benedict here offers a markedly different explanation for Aistulf's rise to power than that of the contemporary source, the *Liber pontificalis's* *Life of Zacharias*, which relates how Pope Zacharias convinced Ratchis to abandon his siege of Perugia and become a monk: *Liber pontificalis* 93.23, ed. Louis Duchesne, 2 vols. (Paris, 1886–92), 1:433–34.



would have been well familiar from contemporary legal wrangling.<sup>41</sup> For example, in three court proceedings in 998, 999, and 1014 (in Rome), the monastery of Farfa asked to be judged according to Lombard, as opposed to Roman, law.<sup>42</sup> Benedict, I suggest, has retrojected this well-defined system of legal pluralism back into the mid-eighth century in order to make sense of the conflict between Ratchis and Aistulf—and to construct a narrative in which Aistulf’s law retracting donations made by Ratchis appears unreasonable and, as it were, illegal.

Most importantly, this entire narrative, with its elaborate discussion of inheritance laws and the legality of Roman charter donations, creates a smoke screen that distracts the reader and obfuscates what, I suggest, is the real point of controversy. At stake is whether Ratchis inherited Lupo’s properties. However, the crux of the matter is not the mechanics of Lombard inheritance laws, or the validity of Roman charter donations, but rather the timeline of events.

Given the location of the properties discussed, the Lupo in question must be the duke of Spoleto (r. 745–51), who is known from his charter donations to the nearby monastery of Farfa in the Sabina, about 15 km from the monastery of Sant’Andrea (Fig. 1).<sup>43</sup> Moreover, the evidence from Farfa indicates that the monastery of Sant’Andrea was not unique in preserving a memory of Duke Lupo into the tenth century and beyond—nor was it alone in its concern for the legality of donations of Duke Lupo’s lands. In the late eleventh century Gregory of Catino copied numerous donation charters by Lupo to Farfa (as well as a diploma issued by Aistulf confirming the donations made by Lupo)<sup>44</sup> into the extensive cartulary that he compiled,

<sup>41</sup> François Bougard, *La justice dans le royaume d’Italie de la fin du VIIIe siècle au début du XIe siècle*, Bibliothèque des Écoles françaises d’Athènes et de Rome 291 (Rome, 1995), 295, esp. n. 61.

<sup>42</sup> RF 3, no. 426 (998) = *I placiti del Regnum Italiae*, ed. Cesare Manaresi, 3 vols., *Fonti per la Storia d’Italia* 92, 96, 97 (Rome, 1955–60), 2.1, no. 236; in Rome, in the presence of the *missus* of Otto III, the advocate for the monastery of Farfa (arguing against the church of Sant’Eustachio in Rome) explains that the monastery has the right to be judged by Lombard law: “Secundum legem langobardam uolumus nos defendere, quia per centum et eo amplius annos res nostri monasterii per legem langobardam defensata est, et praecepta regalia exinde habemus.” As proof, the monastery presents a confirmation issued by Emperor Lothar and Pope Paschal asserting the monastery’s right to live by Lombard law. See also RF 3, no. 437 (999) = Manaresi, *I placiti*, 2.1, no. 254; RF 3, no. 492 (1014) = Manaresi, *I placiti*, 2.2, no. 285. Cited by P. S. Leicht, “Lineamenti del diritto a Roma dal IX al XII secolo,” in Brezzi, *Roma e l’impero medioevale*, 561–92, at 567. Similarly, in a case of 1014, the monastery of Montecassino invoked Lombard law (whereas its opponent professed Roman law): *Codex diplomaticus Cajetanus* (Montecassino, 1887), 244–52, no. 130; *Chronica monasterii Casinensis* 2.35, ed. Hartmut Hoffmann, MGH SS 34 (Hannover, 1980), 234–35. The case is discussed in Walter Pohl, *Werkstätte der Erinnerung: Montecassino und die Gestaltung der langobardischen Vergangenheit*, *Mitteilungen des Instituts für österreichische Geschichtsforschung: Ergänzungsband* 39 (Vienna, 2001), 148–49.

<sup>43</sup> Regarding Lupo, see Stefano Gasparri, *I duchi longobardi*, *Studi Storici* 109 (Rome, 1978), 80–81; Carlrichard Brühl, “Chronologie und Urkunden der Herzöge von Spoleto,” *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 51 (1971): 1–92, at 36, with reference to the older scholarship.

<sup>44</sup> In the following references, the abbreviation CDL refers to *Codice diplomatico longobardo*, 5 vols., vols. 1–2, ed. Luigi Schiaparelli (Rome, 1929–33); vols. 3–4.1, ed. Carlrichard Brühl (Rome, 1973–81); vols. 4.2–5, ed. Herbert Zielinski, *Fonti per la Storia d’Italia* 62–66 (Rome, 1986–2003). The donation issued by Aistulf is RF 2, no. 18 = CDL 3, no. 23, dated to 4 July 751. Two of the donations in question and an order prohibiting women from entering the area around the monastery (all confirmed in Aistulf’s diploma) were also transcribed in the *Regestum*: RF 2, no. 15 = CDL 4.1, no. 8, issued December 749; RF 2, no. 28 = CDL 4.1, no. 10, issued October 750; and RF 2, no. 17 = CDL 4.1, no. 13,

the so-called *Regestum Farfense*.<sup>45</sup> Gregory of Catino also described Lupo's donations to Farfa (and Aistulf's confirmation of them) in his narrative history of the monastery, the *Chronicon Farfense*,<sup>46</sup> and included Duke Lupo in the tables of rulers that accompanied the *Regestum Farfense* and the *Chronicon Farfense*.<sup>47</sup>

Farfa's documents allow for a reconstruction of the outlines of Lupo's career; when we turn to the timeline of events described by Benedict, however, a discrepancy quickly becomes apparent. Aistulf's law specified that all gifts made by Ratchis and Tassia after Aistulf became king would not be valid unless they were conceded again by King Aistulf. Yet Aistulf dated his accession to power to July 749, but Lupo was still alive in April 751:<sup>48</sup> thus (at least according to Aistulf) it was Aistulf, not Ratchis, who would legally have inherited Lupo's properties.<sup>49</sup> Here then is the crux of the matter. For in Benedict's narrative, Ratchis inherited Lupo's properties and then donated them to the monastery at Monte Soratte before Aistulf was crowned king. As a result, Ratchis's donation of Lupo's lands did not, according to Aistulf's law, need to be reconfirmed by Aistulf. Indeed, Benedict specifies precisely that Aistulf was crowned in June of the tenth indiction, that is, June 757, rather than—according to Aistulf and later catalogs of Lombard kings—in July of the second indiction, that is, July 749.<sup>50</sup> This date has been understood as a scribal error, but it very conveniently has the result of having Ratchis reign until well after Lupo's death. In particular, it is worth noting that this is the only point in Benedict's chronicle when the reign of a Lombard king is precisely dated by indiction, and that Benedict has included other specific details to make his account more credible: we are told in which church (of Saint Ambrose in Milan) Aistulf was crowned, and the name of

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issued April 751. It is worth noting that all three of these documents were issued by Lupo after Aistulf became king in July 749.

<sup>45</sup> Donations by Lupo: RF 2, nos. 9–17, no. 28. For an introduction to the *Regestum Farfense* and questions of its reliability, with further bibliography, see Marios J. Costambeys, *Power and Patronage in Early Medieval Italy: Local Society, Italian Politics and the Abbey of Farfa, c. 700–900*, Cambridge Studies in Medieval Life and Thought, 4th ser., 70 (Cambridge, UK, 2007), 11–17.

<sup>46</sup> *Chronicon Farfense*, ed. Balzani, 1:148–50.

<sup>47</sup> The table of dates included by Gregory of Catino at the beginning of his late eleventh-century *Regestum Farfense* includes the entry “Haistulphus rex” next to the year 749, second indiction. “Lupo dux” is also recorded in this table (next to the year 746): RF 2:12 (Vatican City, Biblioteca Apostolica Vaticana, MS Vat. lat. 8484, part 1, fol. 89v). (The table indicates date of accession but not date of death or end of reign.) The catalog of rulers that precedes Gregory of Catino's *Chronicon* includes on the same line “Ratchisus regnavit” and “Lupo dux Spoleti,” and, on the next line, “Haistulfus regnavit”: *Chronicon Farfense*, ed. Balzani, 1:88, but here no specific dates are given.

<sup>48</sup> The last attested charter donation by Lupo (copied in the *Regestum Farfense*) is dated to April 751: RF 2, no. 17 = CDL 4.1, no. 13. The diploma issued by Aistulf confirming the donations of Lupo (“qui fuit dux ciuitatis nostrae spoletanae”) is dated to 4 July 751: RF 2, no. 18 = CDL 3, no. 23. Presumably then Lupo had died (or, as many scholars have postulated, had been deposed by Aistulf) between April and July 751. After Lupo's death (or deposition) Aistulf ruled over the duchy of Spoleto in his own name. For discussion see Brühl, “Chronologie,” esp. 35, 46.

<sup>49</sup> For further discussion of the circumstances surrounding the abdication of Ratchis and the accession of Aistulf see Maya Maskarinec, “Why Remember Ratchis? Medieval Monastic Memory and the Lombard Past,” *Archivio Storico Italiano* 177/1 (2019): 3–57.

<sup>50</sup> See n. 33 above.

the archbishop of Ravenna (Valerius) and the archbishop of Milan (Conaldus) with whom Aistulf then held a synod.<sup>51</sup>

What Benedict has done, so I suggest, is to direct our attention to two fairly tangential legal concerns—inheritance laws and the use of charters drawn up by Roman law—to defend against claims that the monastery’s deed to Lupo’s property was invalid, while neatly resolving the underlying chronological problem of Ratchis’s donation to Monte Soratte. To be clear, in the scenario I am imagining, Benedict was aware that the beginning of Aistulf’s reign was conventionally dated to 749: he is proposing an alternate chronology as well as an alternative narrative that makes sense of the dispute between Ratchis and Aistulf. Careful attention to precise dates (of charters) is attested in the legal records of court proceedings in central Italy.<sup>52</sup> It is with such a context in mind that Benedict may have been preparing his dossier. Indeed, as attested by a document in Farfa’s cartulary, in 1013 one Benedict, abbot of Sant’Andrea (“domnus benedictus uir uenerabilis abbas”), agreed to renounce a certain property and its two churches (dedicated to Saint Lawrence and Saint Benedict), agreeing not to make any claims on them then or in the future, whether by documents or any other means (“neque per cartas neque per ullum tenorem”), on penalty of three pounds of gold.<sup>53</sup> It is tempting to identify this abbot with our Benedict, although given the frequency of the name this can be nothing more than speculation. Clearly it is not unreasonable to imagine the monastery of Sant’Andrea agitating for property rights.

Moreover, we may even surmise the specific context that might have prompted Benedict to develop his legal and historiographical dossier. In the late tenth century Farfa’s property holdings included San Marco in Spoleto. This was a church and monastery located immediately outside the town’s Roman walls (although it is within the later, thirteenth-century walls) and less than a kilometer from the church of San Silvestro, separated by what are still today for the most part open fields (Figs. 2–3). Farfa’s claims to San Marco can be traced back in Farfa’s documentation (as compiled by Gregory of Catino) to a diploma in which Charlemagne confirmed earlier diplomas issued by Aistulf and Desiderius.<sup>54</sup> The properties specifically

<sup>51</sup> Indiction dates occur earlier in the chronicle (when Benedict’s information is derived from Bede) and once later in the chronicle (when Benedict is following Einhard’s *Life of Charlemagne*). As noted by Zucchetti, *Il “Chronicon” di Benedetto*, 67 n. 2, a Valerius was archbishop of Ravenna c. 789–810: Agnellus of Ravenna, *The Book of Pontiffs of the Church of Ravenna*, trans. Deborah Mauskopf Deliyannis (Washington, DC, 2004), 308 (his life is missing from the manuscript of Agnellus’s *Book of Pontiffs*). I have not found evidence for a Conaldus, bishop of Milan.

<sup>52</sup> For example, RF 2, no. 30 (April 747) = CDL 5, no. 8, the record of a court proceeding in which the relative dates of two donation charters are compared. See also Chris Wickham, “Land Disputes and Their Social Framework in Lombard-Carolingian Italy, 700–900,” in *Land and Power: Studies in Italian and European Social History, 400–1200* (London, 1994), 229–56, esp. 240–43.

<sup>53</sup> RF 4, no. 670 (1013); Voss, *Die Benediktinerabtei S. Andrea*, 278–79 (translation), 48 (discussion): “Breue recordationis seu obligationis facio ego iohannes notarius territorii sabinensis de ipsa intentione quae fuit inter domnum benedictum uirum uenerabilem abbatem uenerabilis monasterii sancti andreae apostoli, quod est positum territorio collinensi suptus montem qui dicitur soracten.”

<sup>54</sup> RF 2, no. 273 (801): “quidam uenerabilis ingoaldus abbas . . . ostendit nobis praecepta langobardorum haistulpi ac desiderii. . . . Ob firmitatem tamen rei, postulauit praedictus uenerabilis abbas, ut eorundem regum praeceptiones nostra auctoritate confirmaremus.” It is worth noting that because

mentioned by name include the monastery of San Marco in Spoleto.<sup>55</sup> Diplomas issued by Louis the Pious, Lothar, and Louis II, reconfirming Farfa's properties, continue to mention the monastery.<sup>56</sup> San Marco is included yet again in a diploma issued by Otto I in 967,<sup>57</sup> but in the interval between Louis II in the mid-ninth century and Otto I in the mid-tenth, San Marco must have been abandoned and destroyed (or fallen into ruin), for in 975 Farfa's abbot, John, granted the ruined monastery to a group of monks who had begun to rebuild it.<sup>58</sup>

In 981 Otto II reconfirmed the possessions and privileges of Farfa, again including San Marco.<sup>59</sup> Additionally, however, this diploma, immediately after mentioning San Marco (and before continuing to detail further properties belonging to Farfa), specifies Farfa's rights to "all these places in their entirety which now the above-mentioned monastery [Farfa] is presently seen to possess in the above-named regions, or which it should acquire, whether from those who presently hold the properties of this church unjustly or [which it acquires] from other God-fearing men." This phrase was again repeated immediately after mention of San Marco in a diploma issued by Otto III in 996<sup>60</sup>—though it is no longer included in a diploma

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of chronological discrepancies, the editors, Giorgi and Balzani, voice doubts about the form (though not the content) of this document.

<sup>55</sup> RF 2, no. 273 (801): "Et in ducato spoletano monasterium sancti marci supertos muros ciuitatis spoletanae."

<sup>56</sup> RF 2, no. 217, Louis (815): "Monasterium sancti MARCI euangelistae quod est situm iuxta muros spoletanae ciuitatis, quod ipse domnus et genitor noster ad idem monasterium per suum confirmauit praeceptum"; RF 2, no. 282, Lothar (840): "Monasterium sancti marci euangelistae, quod est situm iuxta muram spoletanae ciuitatis, quod domnus et auus noster Karolus augustus ad idem monasterium per suum confirmauit praeceptum"; RF 3, no. 300, Louis II (857? 859?): "monasterium sancti marci euangelistae, quod est situm iuxta murum ciuitatis spoletinae, quod domnus et bisauus noster Karolus augustus ad idem monasterium per suum confirmauit praeceptum."

<sup>57</sup> RF 3, no. 404 (967): "Monasterium sancti marci euangelistae, quod situm est iuxta murum spoletanae ciuitatis, quod domnus karolus augustus ad idem monasterium per suum confirmauit praeceptum."

<sup>58</sup> *Liber largitorius vel notarius monasterii Pharphensis*, ed. Giuseppe Zucchetti, 2 vols. (Rome, 1913–32), 1:196: "DOMNUS Iohannes abbas concessit cuidam Donato presbitero et monacho atque preposito et Martino presbitero et monacho et Ardoni presbitero et monacho vel aliis confratribus qui se cum ipsis colligere voluerint secundum regulam sancti Benedicti, diebus vite illorum, monasterium Sancti Marci, quod est iuris istius monasterii, et fuit destructum funditus, et istorum manibus inchoatum est resolidari, in territorio Spoletano, iuxta muros ipsius civitatis."

<sup>59</sup> RF 3, no. 407 (981): "Et in ducato spoletano. Aecclesiam sancti marci. Haec omnia in integrum quae iam dictum monasterium in supradictis comitatibus modo habere uidetur, aut acquisierit, aut ab his qui modo de rebus eiusdem aecclesiae iniuste tenent aut ab aliis hominibus deum timentibus." This is one of the few diplomas whose original survives from Farfa: Rome, Archivio di Stato, Pergamene, Farfa-Benedettini in Santa Maria, 117/1, available online through IMAGO (<http://www.cflr.beniculturali.it/serie.html>, last accessed 18 June 2019); edited in Ignazio Giorgi, "Il *Regesto di Farfa* e le altre opere di Gregorio di Catino," *Archivio della Società romana di storia patria* 2 (1878–79): 409–73, at 444–46, here 445: "et in ducato spoletino aecclesia sancti marci, et omnia in integro quae iam dictum monasterium in supradictis comitatibus modo habere uidetur, aut adquisierit, aut ab his qui modo de rebus eiusdem aecclesiae iniuste tenent aut ab aliis hominibus deum timentibus."

<sup>60</sup> RF 3, no. 413 (996): "In ducato spoletano aecclesiam sancti marci. Et omnia in integrum, quae iam dictum monasterium in supradictis comitatibus modo habere uidetur, aut acquisierit, aut ab his qui modo de rebus eiusdem aecclesiae iniuste tenent, aut ab aliis hominibus deum timentibus."

issued by Otto III in 998, nor in diplomas issued by later emperors (which continue to mention San Marco).<sup>61</sup> The inclusion of this phrase in the 981 and 996 diplomas, asserting Farfa's rights to properties it might acquire, including those in the vicinity of San Marco (which by 975 had been reoccupied), gives the appearance of a property dispute (or a potentially developing property dispute). Moreover, if we imagine Benedict writing in the late 970s (consistent with the internal evidence of the chronicle that dates it to after 972),<sup>62</sup> then we might interpret the reference to "those who now hold the properties of this church unjustly" as specifically alluding to the monks of Sant'Andrea.

Farfa possessed a monastery (donated by Aistulf?) very close to (or even overlapping with?) a piece of property Sant'Andrea had acquired, or claimed to have acquired, from Ratchis. In the late tenth century Farfa began to reoccupy and expand in the area; in response, the monks at Sant'Andrea wished to assert their monastery's claims. This is not to say that Benedict, or his monastery's advocate, necessarily ever argued a case in a public hearing, but rather that Benedict found the framework of his monastic chronicle an appropriate place to embed the legal and historiographical rationale that supported his monastery's claims to possess this piece of property outside the distant town of Spoleto.

In Benedict's passage on Ratchis and Aistulf, then, we can observe the chronicler Benedict as a calculating and deliberate narrator of history—a monk conversant with specific (Lombard) laws pertaining to donations, inheritance, and property, and familiar with the tricks of legal practice as it applied to these domains. As we have seen, Benedict makes reference to the Lombard laws of inheritance in which the royal court inherits in the absence of other heirs, and he is clearly familiar with Aistulf's law that required donations made by Ratchis after Aistulf's succession to be reconfirmed by Aistulf. Law, as Benedict imagines it, would thus seem to be a corpus of texts to which both he and the monastery's hypothetical opponents have access. More strikingly, the narrative Benedict crafts to argue his case demonstrates a legal mindset and careful legal reasoning: because Ratchis rightfully inherited the property, it was rightfully his to give away, and since Aistulf had not yet come to power, there was no need for Aistulf to confirm Ratchis's property donation. Moreover, the circumstances that surrounded Aistulf's rise to power were based on an unreasonable Lombard objection to the use of Roman charter donations, thus perhaps offering a second prong to the argument, namely that Aistulf's accession, and thus his cancellation of Ratchis's donations, was somehow illegitimate. This is not an attitude to law as a set of "undisputed facts and immutable rules" (as Radding has characterized early medieval legal science in Italy),<sup>63</sup> but rather one that shows interpretive legal reasoning and an ability to extrapolate judicial categories from specific laws.

<sup>61</sup> RF 3, no. 425 (998): "In comitatu spoletano aecclesiam sancti marci et sancti saluatoris cum omnibus eorum pertinentiis"; RF 4, no. 675, Conrad II (1027); RF 4, no. 879, Henry III (1050); RF 5, no. 1099, Henry IV (1099); RF 5, no. 1318, Henry V (1118).

<sup>62</sup> See above, n. 2.

<sup>63</sup> Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna 850–1150* (New Haven, 1988), 30.



PART 2. THE HISTORY OF LAW IN BENEDICT'S CHRONICLE

Underpinning Benedict's legal reasoning, so I have suggested, is a specific idea of what constitutes law. By examining references to law in Benedict's chronicle, we may reconstruct his notion of law in somewhat more detail. Throughout the chronicle Benedict included brief comments that chart a history of lawgiving from the Lombard king Rothari to the Carolingian emperors to the emperor Otto, and his remarks indicate that he regarded all this legislation as part of the same body of Lombard law. Benedict does not, however, regard this as a concrete and immutable corpus. To the contrary, by embedding the history of lawgiving into a larger historical narrative that often runs counter to the legal trajectory, Benedict presents a historicizing understanding of law that emphasizes and embraces the historical contingencies (and contradictions) of its creation.

The first point to be made is that prior to the Lombards, references to lawgiving are fairly absent from Benedict's chronicle. There is one reference to a specific law (*lex*) prior to the time of the Lombards. This is the statement, from Bede's chronicle, that the emperor Valens passed a law against monks who were unwilling to fight in the army.<sup>64</sup> This relative absence of law in the first part of Benedict's chronicle is not too surprising given that Benedict is, for the most part, closely following Bede (as well as drawing on Gregory the Great's *Dialogues*). Furthermore, it is worth emphasizing that Narses, styled as a ruler in his own right, not Justinian, is the main protagonist of Benedict's narrative, meaning that the absence of Justinian's laws is less conspicuous.<sup>65</sup>

*Lombard Law*

It is with the Lombards that references to law become more frequent in Benedict's chronicle. With the exception of the references to law discussed in Part 1 above, these are abstract references to lawgiving, not references to specific laws and their application. Nevertheless, the language Benedict uses indicates that he is familiar with some of the prologues to Lombard legislation (Table 1).

Although he gives an unflattering portrait of Rothari (as "sensual and a drunkard"), Benedict asserts that Rothari issued laws in order that the "Lombards should live in Italy with a law."<sup>66</sup> This phrase echoes the prologue to Rothari's *Edict*, which

<sup>64</sup> Benedict, *Chronicle*, 11: "Valens, talem legem datam, ut monachi militare nolentes, fustibus iussit interfici." Cf. Bede, *Chronicle* 449, ed. Theodore Mommsen, MGH Auct. Ant. 13 (Berlin, 1898), 223–333, at 298.

<sup>65</sup> Bede's chronicle does not discuss Justinian's laws. Justinian's laws are discussed by Paul the Deacon, *Historia Langobardorum* 1.25, ed. Ludwig Bethmann and Georg Waitz, MGH SS rer. Lang. (Hannover, 1878), 12–187, at 63. However, it seems unlikely that Benedict had access to Paul the Deacon's *History of the Lombards*; see below, n. 68.

<sup>66</sup> Benedict, *Chronicle*, 38–39: "Rotharius rex Langobardorum, lubricum suis corporis et multum vinolentum, fecit synodum cum episcopi, et dictis legibus Langobardorum composuit, quomodo Langobardorum in Italia cum lege viveret." For Benedict's phrase "cum lege," cf. *Pactus legis Salicae* 50.4, ed. Karl August Eckhardt, MGH LL nat. Germ. 4.1 (Hannover, 1962), 1–236, at 195: "qui cum lege ei iustitiam exigere debeat"; *Cartularium* 17 (eleventh century), ed. Alfred Boretius, MGH LL 4:595–602, at 600: "Et sue esse debent cum lege? . . . Sed, sicut dictum habes, suae propriae sunt et esse debent cum lege?"

TABLE 1  
Laws Associated with Specific Rulers Mentioned in Benedict's Chronicle

Ruler	Benedict (ed. Zucchetti)	Text of Benedict	Textual correspondence between Benedict and specific law (if any)	In Cava dei Tirreni, Biblioteca della Badia, MS 4	In <i>Liber legis Langobardorum</i> (ed. Boretius)
Rothari	pp. 38–39	Rotharius rex Langobardorum, lubricum suis corporis et multum vinolentum, fecit synodum cum episcopi, et dictis legibus Langobardorum composuit, quomodo Langobardorum in Italia cum lege viveret.	<i>Edictus Rothari</i> prologue, MGH LL 4:2	X	X
Grimuald	p. 43	Grimualdus rex, pater Romuald, sinodum facto cum episcopi et iudicibus Langobardis in civitatem Mediolano, ante corpus beati Ambrosii, adiuncxit lege in edictis que dudum Rotharius rex constituit.		X	X
Liutprand	p. 64	quo rex factus vir christianissimus atque catholicus, synodus factus canonicorum, cum episcopis et clericis fidem sancte Trinitatis. et rex [read: lex] Langobardorum que antea disposita non sunt, mirifice composuit.	<i>Leges Liutprandi</i> prologue, MGH LL 4:107	X	X
Aistulf	pp. 67–68	fecit synodum cum Valerius archiepiscopus Ravenne civitatis et cum Conaldus archiepiscopus Mediolane civitatis, et cum iacentiis episcopis, abbatibus, iudicibus, fidelibus Langobardis in regno Italie permanentibus, fecitque capitula sicuti Langobardi precati sunt; et in edictis affigi precepit.	<i>Leges Aistulfi</i> 1, MGH LL 4:196	partial	

Charlemagne	p. 98	Tunc domnus rex Karolus prospiciens, se ex omni parte largiente Deo pacem habere, sumpsit consilium causa orationis ad limina beatorum apostolorum iter peragendi et causas Italicas disponendas et cum missis imperatoris placitum habendis de conventiis eorum, legibus Italie, que antecessor eorum regibus dudum antea in dictis eorum scripta non esset; quod ita factum est.	<i>Capitulare Italicum</i> (801) prologue, MGH Capit. 1:204–5 (no. 98)	X	
Louis the Pious	pp. 145–46	imperator Loduicus in tanta virtus in Italia estitit, ut sanguinum pontificis Romani a legibus non potuisset erueret. . . . et monitate legibus in super decriptis monasteriis in edictis legibus Langobardorum affigi precepit.		X	X
Guy of Spoleto	p. 155	In Langobardorum gens civitatis Ticine preerat rex nomine Quido, cuius temporibus redactum est regnum Langobardorum sue potestative regie potestate. fecit idem Quido synodum cum episcopis et abbatibus et cum fidelibus Langobardis capitulis legis, et in edictis affigi precepit.			X
Otto I, Otto II	pp. 182–83	fecerunt autem hisdem imperatoris legem, et conclusit in legibus Romanam legem et Langobardiam, et in edictis Langobardorum affigi precepit.	<i>Capitulare Veronense de duello iudicali</i> 9, MGH Constit. 1:29 (no. 13)		X

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states that the purpose of bringing together laws into one volume is so that everyone may “live peacefully under sound law and with justice.”<sup>67</sup> Furthermore, we may note that Paul the Deacon in his *History of the Lombards* (a text that Benedict might have had available to him, although probably not in its entirety)<sup>68</sup> does not make reference to this notion of living under a law in describing Rothari’s *Edict*.<sup>69</sup>

Moreover, Benedict’s reference to Rothari’s laws is all the more noticeable in that it comes immediately after an almost word-for-word extract from Gregory the Great’s *Dialogues* describing the destructiveness of the Lombard invasion and is followed by a passage from a different section of the *Dialogues*, again almost verbatim, describing how the Lombards continued to follow their pagan ways.<sup>70</sup> In the midst of telling us just how terrible the Lombards were, Benedict has gone out of his way to add this detail about Rothari’s laws. (On the other hand, if we imagine a hypothetical reader aware of Rothari’s legislation and seeking greater historical contextualization, Benedict’s chronicle provides a set of historical considerations that complicate the positive image of Rothari’s act of lawgiving.)

The intrusiveness of the next reference to Lombard law is even more striking. Here Benedict has begun to follow the *Life of Barbatus*, describing the Lombards’ pagan rites.<sup>71</sup> Benedict, however, briefly interrupts himself to report that King Grimwald, the father of Romuald, held a synod with bishops and Lombard judges in the city of Milan before the body of the blessed Ambrose and added a law to the edicts that King Rothari had earlier established.<sup>72</sup> Then Benedict resumes his

<sup>67</sup> *Edictus Rothari* prologue, MGH LL 4:2: “In unum previdimus volumine conplectendum, quatinus liceat unumquemque salva lege et iustitia quiete vivere.” The prologue to Charlemagne’s *Capitulare missorum generale* (802) also expresses a similar idea about law: ed. Alfred Boretius, MGH Capit. 1 (Hannover, 1883), 91–99, no. 33, at 92: “et direxit in universum regnum suum, et per eos cunctis subsequentibus secundum rectam legem vivere concessit. Ubi autem aliter quam recte et iuste in lege aliquid esse constitutum, hoc diligentissimo animo exquirere iussit et sibi innotescere.”

<sup>68</sup> According to Zucchetti, *Il “Chronicon” di Benedetto*, there is only one short passage (37–38) where Benedict is following Paul the Deacon verbatim: Paul the Deacon, *Historia Langobardorum* 2.23, MGH SS rer. Lang., 37–38, from his historical geography section. Apart from this there are similarities in content, but not in wording.

<sup>69</sup> Paul the Deacon gives a more flattering portrait of Rothari, although he then proceeds to describe the king as tainted by Arian heresy: Paul the Deacon, *Historia Langobardorum* 4.42, MGH SS rer. Lang., 134: “Hic Rothari rex Langobardorum leges, quas sola memoria et usu retinebant, scriptorum serie conposuit codicemque ipsum edictum appellari praecepit.”

<sup>70</sup> Preceded by Gregory the Great, *Dialogues* 3.38 (to which Benedict has added mention of Monte Soratte), followed by *Dialogues* 3.28; ed. Adalbert de Vogüé, *Grégoire le Grand: Dialogues*, 3 vols., Sources Chrétiennes 251, 260, 265 (Paris, 1978–80), 2:430, 374.

<sup>71</sup> Benedict, *Chronicle*, 43: “is quoque diebus quamvis sacris bapismatis unda Langobardi ablueretur, tamen prisco gentilitatis ritum tenens, sicut bestiali mentem degebant, bestie simulacro, que vulgo vipera nominatur.”

<sup>72</sup> Benedict, *Chronicle*, 43: “Grimwaldus rex, pater Romuald, sinodum facto cum episcopi et iudicibus Langobardis in civitatem Mediolano, ante corpus beati Ambrosii, adiunxit lege in edictis que dudum Rotharius rex constituit.” Cf. *Leges Grimowaldi* prologue, ed. Friedrich Bluhme, MGH LL 4:91–95, at 91: “Ideo ego vir excellentissimus Grimowald gentis Langobardorum rex, anno deo propitio sexto regni mei, mense Iulio indictione undecima, per suggestionem iudicum omniumque consensu, ea que illis dura et impia in hoc edictum visa sunt, ad meliorem statum et clementiorem remedium corrigere et revocare previdimus. Incipit capitula de causis quas Grimoald rex adiunxit.” Paul the Deacon includes a similar notice (*Historia Langobardorum* 5.33, MGH SS rer. Lang., 155: “Hic in edicto, quod Rothari rex conposuerat, aliqua capitula legis, quae ei utilia visa sunt, adiecit”),

description of the Lombards' pagan practices. Here we can clearly observe Benedict working with two contradictory depictions of the Lombards: as ruthless pagans and as Christian lawgivers. He generally follows the former, but makes a point of including the latter. (And, again, from the perspective of a hypothetical reader wishing to evaluate Grimuald's legal tradition, Benedict offers a set of historical circumstances that potentially undermine the king's accomplishment.)

The next laws we hear of are those of Liudprand, whom Benedict characterizes as a "vir christianissimus atque catholicus,"<sup>73</sup> a description that corresponds to the prologue to Liudprand's laws, which describes him as a "christianus" (the reading "christianissimus" is also found) and "catholicus princeps" who was inspired to promulgate his laws through the "wisdom and inspiration of God."<sup>74</sup>

Last but not least, for the Lombard period we also have the references to law under Ratchis and Aistulf. These, as we saw in Part 1, are references to specific laws embedded in a narrative in which historical considerations (the good deeds of Ratchis and the evil deeds of Aistulf) complicate the validity and applicability of these kings' laws.

To briefly summarize, then: Benedict mentions law with respect to all five Lombard kings whose laws come down to us today—Rothari, Grimuald, Liudprand, Ratchis,<sup>75</sup> and Aistulf—and he generally describes this body of law in positive terms, even as he (and the sources he is following) portray the Lombards as destructive and prone to violence. Furthermore, as we shall see, Benedict presents Lombard law as the backbone of Carolingian legal achievements in Italy. Again, Benedict's references to Carolingian law pertain, for the most part, to lawgiving in general terms, not to specific legislation, although, again, his language indicates a familiarity with specific laws (Table 1). In contrast with the Lombard period, however, there is less tension here between Benedict's portrait of the Carolingian kings and their tradition of lawgiving.

### *Carolingian Law*

The Carolingians feature extensively in Benedict's chronicle. If there is a hero in Benedict's chronicle, it is certainly Charlemagne. Nevertheless, as Paolo Delogu has pointed out, Benedict studiously omits Charlemagne's imperial coronation in

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but Benedict's language is closer to the prologue of Grimuald's laws. Paul the Deacon also reports (5.33), soon after mentioning Grimuald's laws, that Grimuald was buried in the basilica of the blessed Ambrose, which he [Grimuald] had had built in Ticinum (Pavia). As Zucchetti, *Il "Chronicon" di Benedetto*, 44 n. 13, suggests, this may help explain Benedict's description of Grimuald's synod.

<sup>73</sup> Benedict, *Chronicle*, 64: "quo rex factus vir christianissimus atque catholicus, synodus factus canonicorum, cum episcopis et clericis fidem sancte Trinitatis. et rex [read: lex] Langobardorum que antea disposita non sunt, mirifice composuit." Paul the Deacon (*Historia Langobardorum* 6.58, MGH SS rer. Lang., 187) mentions that Liudprand was an "increaser of the law" (*legum augmentator*), but does not say more. No source has been identified for the passages that precede and follow this passage of Benedict's text.

<sup>74</sup> *Leges Liutprandi* prologue, MGH LL 4:107: "Legis quas christianus [*al.* christianissimus] hac catholicus princeps instituere et prudenter cinsire disponit, non sua providentia, sed Dei notu et inspiratione eas animo concepit."

<sup>75</sup> It should be noted that Benedict does not specifically mention Ratchis as composing new laws; see Part 1 for his discussion of Ratchis and law.



Rome, a task that involves awkwardly rephrasing the *Royal Frankish Annals*, which, together with Einhard's *Life of Charlemagne*, is Benedict's main source for this period.<sup>76</sup> As Delogu has argued, Benedict wishes to avoid conveying the impression that the Carolingians have established a Roman Empire. For my purposes, however, what is important to emphasize is that Benedict nevertheless portrays the heyday of Carolingian rule under Charlemagne as a time of relative peace and prosperity, when the monasteries at Monte Soratte thrived and prospered. Benedict's attitude to Charlemagne is aptly summed up by his decision to embed his own name in the verses praising Charlemagne. This seeming contradiction—Benedict's enthusiasm for the Carolingians despite his aversion to a Roman Empire ruled by Carolingians—is best explained, I suggest, by Benedict's admiration for Carolingian law. In Benedict's ideal world there would be Carolingian law but not necessarily any Carolingians.

The first and most extensive description of Charlemagne as a lawgiver comes in the context of one of Charlemagne's trips to Italy. Here Benedict is following the *Royal Frankish Annals* (for the year 786). Yet Benedict's specific interest in law leads him to go beyond the information provided in his source, and he adds a phrase explaining that provisions were made for the laws of Italy that earlier kings had not written into their edicts.<sup>77</sup> The wording of Benedict's chronicle harkens back to the prologue of Charlemagne's 801 capitulary, known as the *Capitulare Italicum*, a text that explicitly presents itself as a continuation and expansion of earlier Lombard law.<sup>78</sup> Benedict thus portrays Charlemagne as acting in accordance with earlier Lombard tradition in a way that promotes the peace and stability of Italy. Furthermore, a phrase Benedict uses, "que . . . scripta non esset," is also reminiscent of a text with which Benedict was certainly familiar, but which he chose to omit: the passage of Einhard's *Life of Charlemagne* in which Einhard briefly describes and generally dismisses Charlemagne's legal achievements but does grant that Charlemagne "directed that the unwritten laws (*quae scripta non erant*) of all the peoples under his control should be gathered up and written down."<sup>79</sup>

<sup>76</sup> Delogu, "I Romani," 193–94.

<sup>77</sup> Benedict, *Chronicle*, 98 (italics signify text *not* found in the *Royal Frankish Annals*): "Tunc domnus rex Karolus prospiciens, se ex omni parte largiente Deo pacem habere, sumpsit consilium causa orationis ad limina beatorum apostolorum iter peragendi et causas Italicas disponendas et cum missis imperatoris placitum habendis de conventiis eorum, *legibus Italiae, quae antecessor eorum regibus dudum antea in dictis eorum scripta non esset; quod ita factum est.*" *Royal Frankish Annals* 786, MGH SS rer. Germ. 6:72: "Tunc domnus rex Carolus praespiciens, se ex omni parte Deo largiente pacem habere, sumpsit consilium orationis causae ad limina beatorum apostolorum iter peragendi et causas Italicas disponendi, et cum missis imperatoris placitum habendi de conventiis eorum; quod ita factum est."

<sup>78</sup> *Capitulare Italicum* (801), MGH Capit. 1:203–06, no. 98, at 204–5 (italics signify words also found in Benedict's *Chronicle*): "Quocirca nos, considerantes utilitatem nostram et populi a Deo nobis concessi, ea quae ab *antecessoribus* nostris *regibus* Italiae in *edictis* legis Langobardicae ab ipsis editae praetermissa sunt, iuxta rerum et temporis considerationem addere curavimus." For discussion of the *Capitulare Italicum*, see Jennifer R. Davis, *Charlemagne's Practice of Empire* (Cambridge, UK, 2015), 285–86.

<sup>79</sup> Translated in Paul Edward Dutton, *Charlemagne's Courtier: The Complete Einhard*, Readings in Medieval Civilizations and Cultures 3 (Peterborough, Ontario, 1998), 34. Einhard, *Life of Charlemagne* 29, MGH SS rer. Germ. 25:33: "Post susceptum imperiale nomen, cum adverteret multa legibus

In describing Charlemagne's interactions with the monasteries at Monte Soratte, Benedict emphasizes this continuity with Lombard law. In describing Charlemagne's grant of immunity to the monastery of Sant'Andrea, the phrase Benedict uses is that Charlemagne "ordered this immunity to be added to the edicts of the Lombards."<sup>80</sup> Charlemagne's grants to the monastery are thus positioned squarely within the tradition of Lombard law.

The high point of Carolingian law comes with Louis the Pious. At this point Benedict is no longer following a known source, although his description is similar to that found in the so-called *Libellus de imperatoria potestate*.<sup>81</sup> Benedict relates that "such was the emperor Louis's power in Italy that not even a relative of the pope would have been able to evade the law."<sup>82</sup> We hear of the justice dispensed at the Lateran palace in Rome, at the spot known as the "Lupa."<sup>83</sup> And Benedict reports that the emperor Louis confirmed all the concessions to the pope made by the emperor Constantine and affirmed the imperial status of certain monasteries, including the monasteries at Monte Soratte, ordering their immunity to be added to the edicts of the Lombards.<sup>84</sup> Thereafter, Louis (and his son Lothar), having received a papal benediction, return to Francia. The impression we get is of a well-ordered division of power between pope and emperor and a smoothly functioning system of justice.

After the time of Louis we have two final references to law. Benedict tells us that Guy of Spoleto (d. 894), after he took control of the "regnum Langobardorum,"

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populi sui deesse—nam Franci duas habent leges, in plurimis locis valde diversas—cogitavit quae deerant addere et discrepantia unire, prava quoque ac perperam prolata corrigere, sed de his nihil aliud ab eo factum est, nisi quod pauca capitula, et ea imperfecta, legibus addidit. Omnium tamen nationum, quae sub eius dominatu erant, iura quae scripta non erant describere ac litteris mandari fecit." I am grateful to Jennifer Davis for this observation.

<sup>80</sup> Benedict, *Chronicle*, 107–8 (italics signify text *not* found in the *Royal Frankish Annals*): "mansitque apud illum dies .VIII., et sicut dictum et constitutum est inter ipsos, Roma repediavit. *ordinata omni et composita, quae opus et necesse erat sancte Romane Ecclesiae, et omni Tusciae finibus, seu Pentapolim, Ravenne in apostolicis Leonem constituit. nam monasterium Sancti Andree apostoli munitatem concessit, et in edictis Langobardorum affigi precepit; et exinde reversus est in Francia.*" *Royal Frankish Annals* 804, MGH SS rer. Germ. 6:119: "Mansitque apud illum dies octo et, sicut dictum est, Romam repediavit." Cf. Benedict, *Chronicle*, 106, 116.

<sup>81</sup> Regarding the *Libellus*, see n. 15 above.

<sup>82</sup> Benedict, *Chronicle*, 145: "Romani etenim imposuerunt ad imperatore Loduicus Pius, unde memoriam eius permanet usque in eternum. imperator Loduicus in tanta virtute in Italia estitit, ut sanguinum pontificis Romani a legibus non potuisset erueret. abebat autem in palatio Lateranensis iudices preordinati, per singulos dies, a locus ubi dicitur a Lupa, quod est mater Romanorum, ut populum Romani per districtum placitum a dux Spolitinus, Aciprandum nomine, discutiendum." Cf. *Libellus de imperatoria potestate in urbe Roma*, in Zucchetti, *Il "Chronicon" di Benedetto*, 199.

<sup>83</sup> Perhaps there might be an echo in this passage of the *Constitutio Romana* (824), with its emphasis on *iustitia* (and description of *iudices* and *duces* as responsible for carrying out justice for the *populus Romanus*), but if so, it is certainly not very direct: *Constitutio Romana*, MGH Capit. 1:322–24, no. 161. Regarding the *lupa*, see Ingo Herklotz, "Der *Campus Lateranensis* im Mittelalter," *Römisches Jahrbuch für Kunstgeschichte* 22 (1985): 3–43, at 17–21; Adalbert Erler, *Lupa, Lex und Reiterstandbild im mittelalterlichen Rom: Eine rechtsgeschichtliche Studie*, Sitzungsberichte der wissenschaftlichen Gesellschaft an der Johann-Wolfgang-Goethe-Universität Frankfurt am Main 10 (Wiesbaden, 1972), 124–32.

<sup>84</sup> Benedict, *Chronicle*, 146: "monasterium Sancti Silvestri in monte Syrapti cum monasterium Sancti Andree apostoli, ad defensionis suis palatii imperator kamere sue concessit. et monitate legibus in super decriptis monasteriis in edictis legibus Langobardorum affigi precepit."

held a synod that issued laws; Guy then “ordered them to be added to the edicts.”<sup>85</sup> Indeed, a capitulary was issued by Guy in 891.<sup>86</sup>

Finally, with regard to Otto I and his son Otto II, Benedict tells us that the two emperors issued a law and “included it in both Roman and Lombard law and ordered it to be added to the edicts of the Lombards.”<sup>87</sup> Unusual, when compared with Benedict’s other references to lawgiving, is his reference here to Roman law. References to Roman law are also unusual in surviving Ottonian legislation.<sup>88</sup> Yet Benedict’s reference is explained by the specific capitulary to which he would appear to be referring: the *Capitulare Veronense de duello iudicali*, issued jointly by the two Ottos in 967, which does refer to Roman law.<sup>89</sup> This capitulary specifies that its decrees (regarding the use of the judicial duel) are to be valid no matter under what law individuals are living, “even Roman” law.<sup>90</sup> Correspondingly, one way to interpret Benedict’s comment is that Otto’s capitulary was to be applicable in cases judged by Roman, as well as Lombard, law.

What is apparent from these citations is that when Benedict refers to law, or rather to the “edicts of the Lombards,” he has in mind a fairly specific body of legislation: Lombard, Carolingian, and Ottonian; at times Benedict’s phrasing clearly indicates that he is familiar with the text of specific Lombard and Carolingian laws. More generally, Benedict usually describes law as the product of consensus, often agreed in conjunction with or following synods in which bishops take part.<sup>91</sup> This is a description that corresponds much closer to Carolingian than to Lombard notions of lawgiving,

<sup>85</sup> Benedict, *Chronicle*, 155: “In Langobardorum gens civitatis Ticine preerat rex nomine Quido, cuius temporibus redactum est regnum Langobardorum sue potestative regie potestate. fecit idem Quido synodum cum episcopis et abbatibus et cum fidelibus Langobardis capitulis legis, et in edictis affigi precepit.” This is a section of the text where Benedict is not following any known source.

<sup>86</sup> *Widonis imperatoris capitulare*, ed. Alfred Boretius and Victor Krause, MGH Capit. 2 (Hannover, 1897), 107–9, no. 224 (no. 223 is also dubiously attributed to Guy).

<sup>87</sup> Benedict’s *Chronicle*, 182–83: “fecerunt autem hisdem imperatoris legem, et conclusit in legibus Romanam legem et Langobardiam, et in edictis Langobardorum affigi precepit.”

<sup>88</sup> There are no other references to *Romana lex/leges* in the Ottonian legislation collected by Ludwig Weiland in MGH Const. 1 (Hannover, 1893). In court proceedings under Otto I in Ravenna in 967, reference is made to “iudices et dativi Romani et Langobardi” (MGH DD O I: 464–66, no. 340). I am grateful to an anonymous reviewer for this observation and citation. Under Otto III in Rome (in 998 and 999) reference is made to the *lex Romana* as opposed to the *lex Langobarda* (RF 3, nos. 426 and 437; see further discussion of these cases in nn. 42 and 118).

<sup>89</sup> *Capitulare Veronense de duello iudicali*, MGH Const. 1, 27–30, at 28, no. 13: “Incipit kapitula quae instituit domnus Otto gloriosissimus imperator et item Otto filius eius gloriosus rex, una cum summis principibus, id sunt episcopis, abbatibus, iudicibus, seu cum omni populo.” For discussion of this law, see François Bougard, “Rationalité et irrationalité des procédures autour de l’an mil: Le duel judiciaire en Italie,” in *La justice en l’an mil*, ed. Claude Gauvard, Histoire de la Justice 15 (Paris, 2003), 93–122.

<sup>90</sup> *Capitulare Veronense*, MGH Const. 1:29, no. 13.9: “Quacumque lege, sive etiam Romana, in omni regno Italico homo vixerit, haec omnia, sicut in his capitulis per pugnam decrevimus, servare precipimus.”

<sup>91</sup> Benedict, *Chronicle*; Rothari: “synodum cum episcopi” (38, line 15); Grimuold: “sinodum facto cum episcopi et iudicibus Langobardis” (43, lines 8–9); Liudprand: “synodus factus canonicorum, cum episcopis et clericis fidem sancte Trinitatis” (64, lines 5–6; Liudprand’s composition of laws is described in the following sentence); Aistulf: “fecit synodum cum Valerius archiepiscopus Ravenne civitatis et cum Conaldus archiepiscopus Mediolane civitatis, et cum iacentiis episcopis, abbatibus, iudicibus, fidelibus Langobardis in regno Italie permanentibus” (67, line 17–68, line 1); Guy: “fecit

but Benedict also retrojects this description onto the Lombard past.<sup>92</sup> This anachronism notwithstanding, Benedict's chronicle presents law as a body of material that took shape over time in specific circumstances; it is a historicizing vision of a particular corpus of law.

PART 3. VAT. CHIGI F.IV.75 AND COMPILING LAW IN NINTH-  
TO ELEVENTH-CENTURY ITALY

The corpus of law charted in Benedict's chronicle—Lombard laws with Frankish and later additions—finds clear parallels in the ninth- to eleventh-century Italian manuscript tradition. The Lombard laws, from Rothari to Aistulf, were transmitted together in a fairly stable textual unit.<sup>93</sup> Carolingian capitularies circulated in much more diverse collections.<sup>94</sup> However, in a handful of ninth- to early eleventh-century northern Italian manuscripts, we find the Lombard laws put together with (differing) collections of Carolingian capitularies.<sup>95</sup> These manuscripts indicate a growing

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idem Quido synodum cum episcopis et abbatibus et cum fidelibus Langobardis" (155, lines 3–4). A noticeable exception to this pattern is the legislation issued by Otto and his son Otto II.

<sup>92</sup> Some of the prefaces to the Lombard laws speak of laws being issued with the advice or consent of different groups (Grimuald's preface mentions *iudices*; Liudprand's preface mentions *iudices, fideles*, and the Lombard *populus*; Ratchis's preface mentions *iudices*; Aistulf's preface mentions *iudices* and all the Lombards in his provinces), but there is no mention of synods or other assemblies. But a synod is mentioned in the prologue of the *Capitulare Haristallense* (779), MGH Capit. 1:46–51, no. 20, at 47 (*forma langobardica*): "Anno feliciter undecimo regni Karoli gloriosissimi regis in mense Martio facto capitulare, qualiter, congregatis in unum sinodale concilium episcopis, abbatibus virisque illustribus comitibus, una cum piissimo domino nostro secundum Dei voluntatem pro causis oportunis consenserunt decretum." Also, the *gesta* of the bishops of Le Mans, a text that dates to around the time of Louis the Pious, does speak of Carolingian capitularies being produced in episcopal synods: *Gesta Aldrici episcopi Cenomannensis* 17, ed. Georg Waitz, MGH SS 15.1 (Hannover, 1887), 304–27, at 315; discussion in Arnold Bühler, "Capitularia relecta: Studien zur Entstehung und Überlieferung der Kapitularien Karls des Grossen und Ludwigs des Frommen," *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde* 32 (1986): 305–502, at 336. I am grateful to Jennifer Davis for this reference.

<sup>93</sup> Walter Pohl, "Leges Langobardorum," in *Reallexikon der germanischen Altertumskunde*, ed. Johannes Hoops and Heinrich Beck (Berlin, 2001), 208–13; Walter Pohl, "Le leggi longobarde nell'Italia carolingia: Contesto e trasmissione," in *Paolino d'Aquileia e il contributo italiano all'Europa carolingia: Atti del Convegno internazionale di studi, Cividale del Friuli-Premariacco, 10–13 ottobre 2002*, ed. Paolo Chiesa, Libri e Biblioteche 12 (Udine, 2003), 421–37.

<sup>94</sup> Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, MGH Hilfsmittel 15 (Munich, 1995); see also Christoph Meyer, "Auf der Suche nach dem lombardischen Strafrecht: Beobachtungen zu den Quellen des 11. Jahrhunderts," in *Neue Wege strafrechtsgeschichtlicher Forschung*, ed. Hans Schlosser and Dietmar Willoweit (Cologne, 1999), 341–88. Older scholarship assumed the formation of a more stable collection of Carolingian capitularies by around the tenth century, the so-called *Capitulare Italicum*.

<sup>95</sup> Manuscripts in which Lombard laws and Carolingian capitularies appear together: Ivrea, Biblioteca Capitolare, MS XXXIV, c. 830/832, from Ivrea (Carolingian capitularies and Lombard laws); Paris, Bibliothèque nationale de France, MS lat. 4613, tenth century, north Italian, available online at <http://gallica.bnf.fr/ark:/12148/btv1b9066866b> (last accessed 18 June 2019; Lombard laws and Carolingian capitularies); Wolfenbüttel, Herzog-August-Bibliothek, MS Blankenburg 130, after 855, northern Italy, available online at <http://diglib.hab.de/mss/130-blank/start.htm> (last accessed 18 June 2019; this manuscript also contains other national laws, but the Lombard laws and Carolingian capitularies are clearly assembled as a unit). One might also add to this list Cava dei Tirreni, Biblioteca della Badia, MS 4,

interest in organizing and systematizing Lombard and Frankish law into a legal corpus of texts, ordered chronologically by ruler. This impulse toward collecting and organizing legislation finds its most elaborate expression in the eleventh-century manuscripts that contain the so-called *Liber legis Langobardorum* (*Liber papiensis*), a compilation or, more probably, compilations of the Lombard laws, selections of Carolingian capitularies, and later legislation.<sup>96</sup> The differences among these manuscripts notwithstanding, clearly recognizable is an idea of law similar to that found in Benedict's chronicle. Carolingian and later legislation was grafted onto the Lombard laws, and throughout Italy this body of legislation continued to be used in the tenth century and beyond.

Based on Benedict's knowledge of specific laws, we may postulate that Benedict had access to a collection of legal materials related to the compilation of laws today included in the same manuscript as Benedict's chronicle, Vat. Chigi F.IV.75.<sup>97</sup>

The sole surviving copy of Benedict's chronicle, Vat. Chigi F.IV.75, fols. 1r–58v, is written in a Roman minuscule that recent scholarship has tended to date to the first decades of the eleventh century;<sup>98</sup> older scholarship believed it to be an autograph,

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discussed further below, which includes both the Lombard laws and Carolingian capitularies (although the latter do not immediately follow the former); Gotha, Forschungsbibliothek, MS Cod. Memb. I.84, late tenth or early eleventh century, Mainz? (one of the sections of this extensive compilation includes the Lombard laws and Carolingian capitularies); Vatican City, Biblioteca Apostolica Vaticana, MS Vat. lat. 5359, first decades of ninth century, Verona, available online at [http://digi.vatlib.it/view/MSS\\_Vat.lat.5359](http://digi.vatlib.it/view/MSS_Vat.lat.5359) (last accessed 18 June 2019; this manuscript contains very few capitularies in addition to Lombard laws). We may distinguish these manuscripts in type from those that contain a larger collection of many national laws, in addition to a collection of Carolingian capitularies, as in, for example, Modena, Biblioteca Capitolare, MS O. I. 2, last third of ninth century or tenth century, from Modena, available online at <https://www.archiviodiocesano.mo.it/archivio/flip/ACMo-OI-2/> (last accessed 18 June 2019; contains Lupus of Ferrières' *Liber legum*, including the *Lex Langobardorum*, as well as a collection of Carolingian capitularies). My list is based on the information provided by the Bibliotheca Legum website, <http://www.leges.uni-koeln.de/en/lex/leges-langobardorum/> (last accessed 18 June 2019) and the descriptions of the manuscripts in Pohl, "Le leggi longobarde." See also Bougard, *La justice*, 42–43.

<sup>96</sup> Radding, *Origins*, 81–82; Meyer, "Auf der Suche," emphasizes that manuscripts of the *Liber legis Langobardorum* are nowhere as homogeneous (especially in terms of the Carolingian capitularies included therein) as the edition of them as a single text presupposes them to be. I am grateful to Thomas Gobbitt, who is working on the manuscripts of the *Liber legis Langobardorum*, for his comments.

<sup>97</sup> Available online at [http://digi.vatlib.it/view/MSS\\_Chigi.F.IV.75](http://digi.vatlib.it/view/MSS_Chigi.F.IV.75) (last accessed 18 June 2019). The manuscript is described by Zucchetti, *Il "Chronicon" di Benedetto*, li–lxiii, and more recently by Paola Supino Martini, *Roma e l'area grafica romanesca: Secoli X–XII*, Biblioteca di Scrittura e Civiltà 1 (Alessandria, 1987), 290–91; Mordek, *Bibliotheca capitularium*, 756–68; Matthias M. Tischler, *Einheits "Vita Karoli": Studien zur Entstehung, Überlieferung und Rezeption*, 2 vols., MGH Schriften 48.1–2 (Hannover, 2001), 1:469–73. Regarding the codicology of the manuscript, see Chiesa, "Benedictus," who demonstrates that two codices (Benedict's chronicle and the codex with a fragment of Charlemagne's testament and legal texts) were stitched together.

<sup>98</sup> First decades of the eleventh century: Supino Martini, *Roma*, 290–91; and Tischler, *Einheits "Vita Karoli"*, 1:469; c. 1000: Mordek, *Bibliotheca capitularium*, 756. According to Supino Martini two main hands were responsible for copying Benedict's chronicle; a different, somewhat more Beneventan, hand was responsible for copying just a few lines on fol. 42v; a single hand was responsible for the entire collection of legal texts on fols. 59r–109v. The manuscript was located at San Paolo fuori le Mura in the fourteenth century, as attested by a later entry on fol. 1r that identifies the book as belonging to the monastery of San Paolo.



but more recent assessments have judged this to be unlikely.<sup>99</sup> Immediately following Benedict's chronicle (fols. 59r–109v)—but as a separate codicological unit—is a collection of texts written in a hand different from but roughly contemporaneous with the two hands that copied Benedict's chronicle. When these two codices were combined is unclear; since both codices were already damaged by this point, this may have been significantly later in date than the initial composition of the manuscripts.<sup>100</sup> Nevertheless, given that Benedict's chronicle and this largely legal collection of texts were copied at roughly the same point in time (presumably at Sant'Andrea), we have strong circumstantial evidence for the sort of collection of legal materials that could have been available to Benedict when he composed his chronicle.<sup>101</sup> Further evidence for this is that the compilation includes the final lines of Charlemagne's will as reported by Einhard's *Life of Charlemagne*, followed by Gerward's verses in praise of Charlemagne,<sup>102</sup> as mentioned above, Einhard's *Life of Charlemagne* was one of Benedict's primary sources for the period of Charlemagne, and Benedict quotes Gerward's verses, reworked to include his own name.<sup>103</sup>

The body of legislation included in the second half of the Chigi manuscript is by no means that sketched out in Benedict's chronicle. What the Chigi collection includes

<sup>99</sup> The most detailed study, Kunsemüller, *Chronik*, 23–58, argued that the manuscript was the result of Benedict dictating to a scribe, who, in turn, often attempted to correct the text as he recorded it. This introduced a considerable range of errors. Skeptical about this interpretation are Hoffmann, in his review of Kunsemüller; and Chiesa, "Benedictus," who both agree that many errors must derive from a scribe misunderstanding an oral dictation but who are not convinced that this dictation must have been done by Benedict himself.

<sup>100</sup> Benedict's chronicle must be missing pages at the beginning and end of the text; the subsequent collection of texts likewise begins and ends mid-sentence. When the numbering of the folios in the bottom right corner (letter and number system) was done, these pages were already missing: Tischler, *Einbarts "Vita Karoli"*, 1:470.

<sup>101</sup> Older scholarship tended to assume that the manuscript was copied at Sant'Andrea. Mordek and Tischler propose San Paolo as the most probable place of composition (primarily on the basis of the manuscript's later presence at the monastery, but also because San Paolo was known to have a scriptorium); Supino Martini is more skeptical. For discussion of the scriptorium at San Paolo, see Supino Martini, *Roma*, 88. It should be emphasized that since no manuscripts can be securely attributed to the monastery of Sant'Andrea, it is impossible to confirm or reject the manuscript's attribution to Sant'Andrea. Likewise, too little is known about the scriptorium at San Paolo to be able to attribute it securely to that monastery. Given the significant evidence for later contacts between Sant'Andrea and San Paolo, it seems to me most plausible to imagine that the manuscript was copied at Sant'Andrea and later made its way to San Paolo; the evidence of Benedict's chronicle suffices to demonstrate that the monks of Sant'Andrea would have had the resources to copy a text. In the mid-fifteenth century Pope Eugene IV confirmed San Paolo's jurisdiction over Sant'Andrea: Annarosa Cerutti Fusco, "Paesaggi monastici benedettini e itinerari di pellegrinaggio intorno al Soratte, dall'alto medioevo all'età moderna," in Cancellieri, *Il complesso monumentale*, 173–244, esp. 206. Certain documents related to the monastery of Sant'Andrea (such as the fourteenth-century copy of an undated papal bull, discussed above in Part 1) made their way into the archive of San Paolo. A fragment of fourteenth- or fifteenth-century pottery found in the recent archeological investigations of Sant'Andrea depicts a hand holding an upright sword. This may be the emblem of San Paolo and is thus perhaps another indication of the relationship between the two monasteries: Clementina Sforzini and Donatina Olivieri, "L'area archeologica: Evidenze e nuove acquisizioni," in Cancellieri, *Il complesso monumentale*, 105–38, at 134, 133 fig. 20.

<sup>102</sup> Fol. 59r; these are the first texts included in the collection (as it survives).

<sup>103</sup> Tischler, *Einbarts "Vita Karoli"*, 1:473. According to Tischler, the Chigi manuscript is the oldest surviving attestation of Einhard's *Life of Charlemagne* in the environs of Rome.

consists almost entirely of Carolingian capitularies, organized very roughly in chronological order.<sup>104</sup> There is only one short piece of Lombard legislation (interspersed within the capitularies and not labeled as such): Liudprand's *Notitia*.<sup>105</sup> However, there are at least two similarities between the references to law in Benedict's chronicle and this collection of texts. Firstly, we may note that the Chigi collection includes, twice, the opening of Charlemagne's 801 *Capitulare Italicum*. This is a text with which, as I mentioned earlier, Benedict appears to have been familiar.<sup>106</sup> It should be emphasized, however, that this is a very frequently transmitted capitulary.<sup>107</sup> Secondly, the material contained in the Chigi collection does exhibit an interest in the question of inheritance.<sup>108</sup> In particular, the manuscript contains a title from the Salic Law (not indicated as such) that addresses the question of who should inherit if a man dies without children.<sup>109</sup> This is not the Lombard law that Benedict references with respect to Ratchis's inheritance of Lupo's properties; however, if nothing else, this law is a reminder that inheritance laws mattered for monasteries.

Of greater interest is the fact that the Chigi manuscript clearly derives from the same shared ancestor manuscript as the much more elaborate Cava dei Tirreni 4, written shortly after 1000 in Montecassino.<sup>110</sup> The Carolingian capitularies included in the Cava manuscript are extremely similar, in content and in order, to those of the Chigi manuscript (although the Chigi manuscript contains additional capitularies not found in the Cava manuscript); certain capitularies survive only in these two

<sup>104</sup> List of capitularies in Mordek, *Bibliotheca capitularium*, 756–68. A partial transcription of the capitularies is available online at “Capitularia: Edition of the Frankish Capitularies,” ed. Karl Ubl and collaborators (Cologne, 2014), <http://capitularia.uni-koeln.de/mss/vatikan-bav-chigi-f-iv-75> (last accessed 18 June 2019).

<sup>105</sup> Fols. 104v–106v.

<sup>106</sup> Fols. 72v–73r; fols. 91r–92r. Titles from the capitulary (without the opening section) are also included at fols. 69v–70r.

<sup>107</sup> This capitulary appears in numerous Italian collections of Carolingian capitularies. Bougard, *La justice*, 50, notes that this is one of the most widely diffused Italian capitularies. Basing my conclusions on the Capitularia website and Mordek's description of the manuscripts, I count eight Italian manuscripts that contain the *Capitulare Italicum* of 801. This includes Vat. Chigi F.IV.75; Cava dei Tirreni 4 (which, as discussed below, is closely related to Vat. Chigi F.IV.75); as well as Ivrea XXXIV; BnF lat. 4613; Wolfenbüttel, Blankenburg 130 (all mentioned above, n. 95). The Chigi collection also includes the *Constitutio Romana* (fols. 97r–98r), of which there may be (see above, n. 83) a distant echo in Benedict's text (but in the Chigi manuscript the *Constitutio* is attributed to Lothar, while the passage in Benedict's chronicle is about Louis the Pious); as well as the *Capitulare Haristallense* (fols. 60r–62r), which presents the capitulary as the product of a synod (see above, n. 92).

<sup>108</sup> The Chigi collection contains most of the *Capitula legibus addenda* (fols. 77v–82v), including the title that affirms the right of a free man to donate what he wishes for the salvation of his soul: MGH Capit. 1:280–85, no. 136, here 282, section 6. Charlemagne's will (as reported in Einhard's *Life of Charlemagne*) is another text that relates to inheritance. Questions of inheritance are also addressed on fol. 71r–v: *Capitulare legibus additum*, MGH Capit. 1:111–14, no. 39, here 113–14, section 6; fol. 72r–v: *Capitulare missorum in Theodonis villa*, MGH Capit. 1:122–26, no. 44, here 125–26, section 22; fols. 94v–97r: *Capitulare Olonnense mundanum*, MGH Capit. 1:329–31, no. 165.

<sup>109</sup> Fol. 59v: *Pactus legis Salicae* 62.1–6, MGH LL nat. Germ. 4.1:223.

<sup>110</sup> For discussion of the manuscript, see Pohl, *Werkstätte der Erinnerung*, 108–51; Mordek, *Bibliotheca capitularium*, 98–111; Friedrich Bluhme, in his introduction to the edition of the Lombard laws, MGH LL 4:xxx–xxxiv. The Cava manuscript is especially noteworthy for its illuminations of rulers, which are included in the section of Lombard laws and Carolingian capitularies (as well as in the section of Beneventan laws).

manuscripts.<sup>111</sup> What is significant about this relationship is that the Cava manuscript includes, among other materials, not only a collection of Carolingian capitularies, but also all the Lombard legislation from Rothari to Aistulf, thus making it a close fit to the idea of law that emerges from a reading of Benedict's chronicle (Table 1). What makes this relationship especially tantalizing is that the Cava manuscript is one of only three surviving manuscripts to transmit (in a fragmentary state) Aistulf's first set of laws issued in 750, that is, including Aistulf's law requiring donations made by Ratchis to be confirmed by Aistulf.<sup>112</sup> As I argued above (Part 1), this is a law with which Benedict was familiar. We may postulate, then, that Benedict had access to a redaction related to the ancestor manuscript from which both the southern Italian Cava and central Italian Chigi manuscripts derive: a central/southern Italian manuscript type that included both Lombard laws (including Aistulf's first laws of 750) and a collection of Carolingian capitularies.<sup>113</sup>

This hypothesis does not, however, fully account for all the laws with which Benedict was familiar (Table 1). As we have seen, he was aware of legislation issued by Guy of Spoleto and the two Ottos. In the latter case, the wording of Benedict's chronicle indicates that he was probably familiar with the text of the *Capitulare Veronense de duello iudicali*, the capitulary issued by the two Ottos in 967.

<sup>111</sup> For the relationship of the Chigi and Cava manuscripts, see Mordek, *Bibliotheca capitularium*, 756–57; Wolfgang Kaiser, *Authentizität und Geltung spätantiker Kaisergesetze: Studien zu den Sacra privilegia concilii Vizaceni*, Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte 96 (Munich, 2007), 267–69.

<sup>112</sup> In Cava dei Tirreni 4, the index of laws (including mention of this law, “De donationes illa que facta sunt a Rachis regem et Tasia coniuge”), and some of these laws are included, but the manuscript is missing the page that would presumably have included this law, as well as a miniature of Aistulf: discussion by Friedrich Bluhme in his edition of the Lombard laws, MGH LL 4:194–96, xxxii. The other two manuscripts containing this first set of laws are Madrid, Biblioteca Nacional, MS 413 (olim D. 117), first half of eleventh century, from Bari (contains all the Lombard laws, but no capitularies), a manuscript related to Cava dei Tirreni 4; and the damaged BnF lat. 4613, mentioned above, n. 95. Regarding the Madrid manuscript, see Guglielmo Cavallo, “Per l’origine e la data del cod. matrit. 413 delle ‘Leges Langobardorum,’” in *Studi di storia dell’arte in memoria di Mario Rotili*, ed. Antonio Cadei, Marina Righetti Tosti-Croce, Anna Segagni Malacart, and Alessandro Tomei (Naples, 1984), 135–42. The Paris manuscript includes Aistulf's *De donationes* law in its entirety (fol. 57v), but Aistulf's first set of laws is not included in the manuscript's table of contents. Pohl, “Frontiers in Lombard Italy,” 126, suggests, “Most probably, that means that they were supposed to be left out, although in this case, perhaps by mistake, the text was copied.” As Pohl (126) points out, “the two southern Italian manuscripts of Lombard law that have been preserved” (that is, the Cava and Madrid manuscripts) contain Aistulf's first set of laws, while “the manuscripts copied in northern Italy under Carolingian rule tend to omit them.” I am grateful to Walter Pohl for this reference and his discussion of the relationship between these manuscripts.

<sup>113</sup> As noted above, BnF lat. 4613 also once contained all the Lombard laws and an extensive collection of Carolingian capitularies; however, the collection of Carolingian capitularies contained in the Paris manuscript is not closely related to that of the Cava and Chigi manuscripts: Mordek, *Bibliotheca capitularium*, 469–76; Friedrich Bluhme, in his introduction to the edition of the Lombard laws, MGH LL 4:xxvi–xxvii. This reinforces the impression that the manuscript available to Benedict was more closely related to the southern Italian strand of the Cava and Madrid manuscripts than to the northern Italian strand represented by the Paris manuscript. However, it should be emphasized that none of Benedict's references to law indicate a knowledge of or interest in the Beneventan legal materials included in the Cava manuscript; this would appear to have been a specifically southern Italian addition to the corpus. Still, Benedict's sources for his chronicle did include the *Life of Saint Barbatius* and the *Translation of Saint Bartholomew*, indicating the exchange of texts between central and southern Italy.

Neither of these pieces of legislation is included in the Cava-Chigi manuscript tradition. But since the Chigi manuscript breaks off mid-sentence, it may once have contained more legislation than it does today. Furthermore, the last piece of legislation contained in the Chigi manuscript (an Italian capitulary issued by Louis II) is otherwise only found in manuscripts of the so-called *Liber legis Langobardorum*.<sup>114</sup>

Guy of Spoleto's capitulary is found in a fragmentary state in two manuscripts (both northern Italian, according to Mordek's assessment), both of which once constituted larger collections of Carolingian capitularies.<sup>115</sup> The capitulary is also to be found in *Liber legis Langobardorum* manuscripts.<sup>116</sup> Meanwhile, the *Capitulare Veronense de duello iudicali* is only to be found in *Liber legis Langobardorum* manuscripts<sup>117</sup>—although it was also known to and put to use by Farfa in a case in 999.<sup>118</sup>

At first glance, then, it might be tempting to hypothesize that Benedict relied exclusively on a manuscript similar to the later *Liber legis Langobardorum* manuscripts; after all, this latter compilation includes Lombard legislation, Carolingian capitularies, and later legislation, including legislation issued by Guy of Spoleto and the Ottos (Table 1).<sup>119</sup> But the collection of Lombard legislation found in manuscripts of the *Liber legis Langobardorum* cannot be the sole basis for Benedict's knowledge of the Lombard laws because none of the *Liber legis Langobardorum* manuscripts includes the first set of laws issued by Aistulf in 750 (which are, as we have seen, included in the Cava manuscript).<sup>120</sup> Accordingly, we may conclude that in addition to a compilation or compilations related to the Cava manuscript, Benedict had access to post-Carolingian pieces of legislation (whether on loose sheets or compiled and bound together) that were likewise available to the compilers of the *Liber legis Langobardorum*.

To summarize: I have argued that Benedict had access to a compilation of Lombard laws and Carolingian capitularies (similar to, but probably not as elaborate as, that found in Cava dei Tirreni 4), as well as later pieces of legislation, such as the 967 *Capitulare Veronense de duello iudicali* issued by the two Ottos. This is significant,

<sup>114</sup> Fol. 109v, *Hludowici II. capitulum italicum*, MGH Capit. 2:78, no. 208; Mordek, *Bibliotheca capitularium*, 767.

<sup>115</sup> *Widonis imperatoris capitulare*, MGH Capit. 2:107–9, no. 224: Munich, Bayerische Staatsbibliothek, MS lat. 29555/1, part E, ninth or tenth century, northern Italy, available online at [http://daten.digital-sammlungen.de/bsb00080501/image\\_1](http://daten.digital-sammlungen.de/bsb00080501/image_1) (last accessed 18 June 2019; one of the fragments of a manuscript of Carolingian capitularies); Vatican City, Biblioteca Apostolica Vaticana, MS Vat. Reg. lat. 263, tenth century, probably from Italy, available online at [http://digi.vatlib.it/view/MSS\\_Reg.lat.263](http://digi.vatlib.it/view/MSS_Reg.lat.263) (last accessed 18 June 2019). Descriptions follow Mordek, *Bibliotheca capitularium*.

<sup>116</sup> *Liber papiensis*, ed. Alfred Boretius, MGH LL 4:289–585, at 559–67.

<sup>117</sup> *Liber papiensis*, MGH LL 4:567–80.

<sup>118</sup> RF 3, no. 437 (999), cited above, n. 42: “Tunc hugo abbas prae manibus tenebat capitulum, quod idem otto imperator fecerat, de cartulis falsis, ubi continebatur: Si quis aliquam cartulam falsam appellauerit, et per pugnam eam approbare uoluerit, ut ita discernatur.” *Capitulare Veronense* 1, MGH Const. 1:29: “si ipse qui cartam falsam appellauerit, per pugnam declarare uoluerit, ut ita decernatur.” This case is cited by Bougard, “Rationalité et irrationalité,” 18, no. 6.

<sup>119</sup> Manuscripts with the *Liber legis Langobardorum* are listed in Alfred Boretius's introduction to the text, MGH LL 4:liii–lxi; and by Thomas Gobbitt, <http://thomgobbitt.net/> (last accessed 18 June 2019).

<sup>120</sup> I am grateful to Thomas Gobbitt for verification of this point. Six of the seven surviving eleventh- to twelfth-century manuscripts only include the laws issued by Aistulf in his fifth year (755); the seventh manuscript is now incomplete, and its original contents cannot be verified.

given the very limited evidence for the presence of similar legal compilations at monasteries in ninth- to eleventh-century Italy.

That monasteries should be interested in property law is not unexpected. After all, monasteries had properties to administer, and it is well known that they had the intellectual resources to engage in the study of law. But to judge from the surviving evidence, the sorts of collections typically available at monasteries were collections of selected pieces of secular legislation (often integrated into canon law collections) that were specifically relevant for monasteries' day-to-day administrative needs.<sup>121</sup> Moreover, abbots in early medieval Italy, at least from the ninth century onwards, were customarily represented in court proceedings by their advocates, laymen with legal expertise, often judges or notaries trained outside the monastery.<sup>122</sup> Strictly speaking, then, monastics did not themselves need to develop legal expertise. What comes as more of a surprise, then—and is considerably less attested—is monks' knowledge of, and engagement with, the larger realm of secular law.

Basing his examination on early medieval Italian monastic and episcopal library catalogues, François Bougard identified only two references to secular legal compilations held by monasteries in Italy in the ninth to eleventh centuries: (1) two “libros legis Langobardorum” held by Bobbio in the mid-ninth century and (2) an “Edictum regum” or “Edictum legis Langobardorum” in Montecassino in 1020.<sup>123</sup> To this we may add the evidence that (1) as established by Pohl, the elaborate Cava dei Tirreni 4 was written in Montecassino shortly after 1000;<sup>124</sup> and (2) as demonstrated by Leicht, the abbot Winizo at San Salvatore of Monte Amiata in Tuscany drew on both a *Liber legis Langobardorum* manuscript and a different legal compilation in composing a petition to Count Hildebrand in 1005–6.<sup>125</sup> Vat. Chigi F.IV.75, with its legal compilation preceded by Benedict's chronicle, contributes to this picture of the greater circulation and accessibility of compilations focusing on secular law—especially at the turn of the millennium—at prominent Italian monasteries.

## CONCLUSIONS

As we have seen, Benedict, a monk at the late tenth-century monastery of Sant'Andrea at Monte Soratte, had access to a compilation (or compilations) of secular legal texts, went out of his way to include snippets of information related to the

<sup>121</sup> Bougard, *La justice*, 30–47, esp. 40–41, 43–46.

<sup>122</sup> For a concise overview of the situation in northern Italy, see Charles West, “Monks, Aristocrats, and Justice: Twelfth-Century Monastic Advocacy in a European Perspective,” *Speculum* 92/2 (2017): 372–404, at 386–88. See also Bougard, *La justice*, 264–69; François Menant, *Campagnes lombardes du Moyen Âge: L'économie et la société rurales dans la région de Bergame, de Crémone et de Brescia du Xe au XIIIe siècle*, Bibliothèque des Écoles françaises d'Athènes et de Rome 281 (Rome, 1993), 707–13.

<sup>123</sup> Bougard, *La justice*, 46–47 n. 95. Cf. Pohl, *Werkstätte der Erinnerung*, 150 n. 246. As Pohl remarks, early medieval legal compilations are preserved at the libraries of the episcopal sees of Modena, Ivrea, and Vercelli, even if the origins of these manuscripts are unclear.

<sup>124</sup> Pohl, *Werkstätte der Erinnerung*, 130–36, 150, who emphasizes that although Cava dei Tirreni 4 was certainly not meant for everyday use, it would be a mistake to see it as a “reine Repräsentationsobjekt.”

<sup>125</sup> Pier Silverio Leicht, “Leggi e capitolarî in una querimonia Amiatina dell'anno 1005–1006,” *Bullettino senese di storia patria* 14 (1907): 536–57. Cf. Bougard, *La justice*, 44, who suggests that the second compilation available to Winizo may only have been a more limited collection for ecclesiastical use.



history of law throughout his chronicle, and used his knowledge of property law to lay the groundwork for a defense of the monastery's claims to a certain piece of land outside Spoleto. This suggests that two grand historical narratives that are usually told separately may be more intertwined than is commonly assumed.

As Bougard has argued, following older scholarship, the tenth and eleventh centuries, especially under the Ottonians, saw the development of a new juridical culture throughout Italy.<sup>126</sup> The most conspicuous product thereof was the compilation of the *Liber legis Langobardorum*, but, as noted by Bougard, this shift is also more generally apparent in a "passion for the letter of the law."<sup>127</sup> In contrast to the more limited citation of Lombard or Carolingian laws found prior to the tenth century, legal documents now abound with references to specific Lombard and Carolingian laws.<sup>128</sup> This new juridical culture, in particular in the case of *Liber legis Langobardorum*, has been seen as spearheaded by legal professionals (that is, judges and notaries), specifically, in the case of the *Liber legis Langobardorum*, by the palace judges in Pavia. According to Radding, Pavia's declining importance after the middle of the tenth century and the activity of palace judges at "ever increasing distances from Pavia" brought these judges into contact with different legal traditions, giving rise to a desire for "a portable, authoritative text of the laws," as well as promoting more interpretive attitudes to legal texts.<sup>129</sup> This is a story of progress, as Radding's title, the *Origins of Medieval Jurisprudence*, makes amply clear. From the *Liber legis Langobardorum*, we progress to an interest in Roman law and the invention of "a legal science."

Meanwhile, the story of the central Italian countryside that Benedict and the monastery of Sant'Andrea inhabited is usually presented in a much bleaker light in terms of *incastellamento* and the formation of a landscape in which fortified monasteries and churches were the dominant landowners, leasing out blocks of land to lay aristocrats to build fortified villages.<sup>130</sup> In this story, monasteries and lay aristocrats gradually take the administration of justice into their own hands.<sup>131</sup> The nearby monastery of Farfa, with its extensive surviving documentation, is the major source for this process in the Sabina. This narrative does not typically address the level of legal learning at these monasteries, although Toubert's extensive study, which remains the basis for our understanding of this process in central Italy, does address it—and offers a very dismal assessment.<sup>132</sup>

The evidence of Benedict's knowledge of and interest in the corpus of secular law suggests that there may be more points of contact between these two narratives than

<sup>126</sup> Bougard, *La justice*, 292–96.

<sup>127</sup> Bougard, 294: "C'est toute la profession qui, d'un coup, se prend de passion pour la lettre de la loi."

<sup>128</sup> Bougard, 146–47, 293–94 n. 57.

<sup>129</sup> Radding, *Origins*, 68–84, at 69, 79.

<sup>130</sup> For a general overview, see Wickham, *Medieval Rome*, 42–52; foundational remains Pierre Toubert, *Les structures du Latium médiéval: Le Latium méridional et la Sabine du IXe siècle à la fin du XIIe siècle*, Bibliothèque des Écoles françaises d'Athènes et de Rome 221 (Paris, 1973). It should be noted that neither Toubert nor Wickham specifically addresses the medieval *territorium Collinense* in which Monte Soratte is located.

<sup>131</sup> In addition to Wickham and Toubert, cited above, see now West, "Monks, Aristocrats, and Justice," 386–88.

<sup>132</sup> Toubert, *Les structures du Latium médiéval*, 1274–1313, esp. 1303–5.

first meets the eye. The new juridical culture—as P. S. Leicht suggested over a century ago<sup>133</sup>—was forged, in part, at monasteries, and age-old monastic concerns too, in particular defending property claims and other monastic privileges, could spur new approaches to compiling and using the law. As monasteries competed with each other to consolidate and expand their control over the surrounding countryside, one approach, at least at Sant’Andrea, was for monks to garner additional legal resources, to cultivate legal expertise, and to put these to use in consolidating their property claims. This involved turning to the past, to the preexisting traditions of law, but also taking steps to systematize this law and apply it to new circumstances.

From this perspective, we may read Benedict’s chronicle as a determined attempt by a middling elite monastery to compete with its peers, in particular with its more dominant rival, Farfa. Farfa’s property holdings and imperial privileges were extensive.<sup>134</sup> But in the mid-tenth century the gap that separated the fortunes of Farfa and Sant’Andrea was not, at least from the perspective of the monks at Sant’Andrea, insurmountable. Farfa, like Sant’Andrea and other monasteries throughout central Italy, remembered the late ninth to early tenth century with horror: according to Ugo of Farfa’s late tenth-century *Destructio Farfensis*, Saracen attacks had even forced Farfa’s monks to abandon the monastery.<sup>135</sup> Nor was Farfa’s subsequent recovery instantaneous. As reported by both Benedict’s chronicle and Ugo’s *Destructio Farfensis* (though not by Gregory of Catino’s later *Chronicon Farfense*), the monastery of Farfa was entrusted to an abbot of Sant’Andrea, Leo, for two to three years in the mid-tenth century.<sup>136</sup> Under this abbot Leo, and supported by Alberic (II, d. 954), so Benedict reports, Sant’Andrea acquired walls and new properties, including land in Rome and in the Sabina, that is, in the region around Farfa.<sup>137</sup> The monks of Sant’Andrea must have seen potential for advancing the interests of their monastery, even if they were disappointed by the subsequent turn of events. Benedict’s chronicle, as has often been noted, has a dismal view of the Ottonians in Italy. By contrast, Farfa received a diploma from Otto I in 967, confirming its privileges and properties—including, as we have seen, the monastery of San Marco in Spoleto (very close to lands claimed by Sant’Andrea), which Farfa subsequently proceeded to develop as a dependency.<sup>138</sup> It was against this backdrop that Benedict sat down

<sup>133</sup> Leicht, “Leggi e capitolari,” 43, in the conclusion to his study of Winizo of Monte Amiata’s petition in 1005–6, mentioned above, n. 125: “non si può a meno di chiedere se fra questo subitaneo risveglio della scienza giuridica e gl’indizi di cultura legale offerti dalla nostra querimonia, scritta fra le mura del chiostro amiatino, non vi sia un intimo legame.”

<sup>134</sup> For Farfa’s history prior to the tenth century, see Costambeys, *Power and Patronage*; for the tenth century, see Jean-Marie Sansterre, “‘Destructio’ et ‘diminutio’ d’une grande abbaye royale: La perception et la mémoire des crises à Farfa au Xe et dans les premières décennies du XIe siècle,” in *Les élites au haut Moyen Âge: Crises et renouvellements*, ed. François Bougard, Laurent Feller, and Régine Le Jan (Turnhout, 2006), 469–85.

<sup>135</sup> Ugo, *Destructio Farfensis*, ed. Balzani, *Chronicon Farfense*, 27–51, at 35.

<sup>136</sup> According to Benedict, Alberic (II) (d. 954) entrusted the monastery of Farfa to Leo for two years (during the time that Campo was abbot of Farfa); according to Ugo, Pope John XIII (r. 965–72) entrusted the monastery to Leo for three years (after the deposition of Farfa’s abbot Ubertus): Benedict, *Chronicle*, 168–69; Ugo, *Destructio Farfensis*, ed. Balzani, *Chronicon Farfense*, 44; Voss, *Die Benediktinerabtei S. Andrea*, 38–39.

<sup>137</sup> Benedict, *Chronicle*, 168–70; Voss, *Die Benediktinerabtei S. Andrea*, 39.

<sup>138</sup> See above, n. 57.

to compose his chronicle. Sant'Andrea was a monastery whose high ambitions did not match its more modest reality. Benedict wove together diverse material (documentary, legal, and historical) to craft a narrative that would befit—and, so he may have hoped, perhaps one day realize—his monastery's aspirations.

Benedict's particular vision of law aligns with manuscript evidence for secular legal compilations in the ninth to mid-eleventh century arranged chronologically by legislator.<sup>139</sup> But Benedict's historicizing vision of law was soon to become outdated, as later eleventh- and twelfth-century legal science followed a trajectory that increasingly dehistoricized the corpus of Lombard, Carolingian, and Ottonian law.<sup>140</sup> Radding has argued that the *Liber legis Langobardorum* "reduces the text to its practical essentials," digesting it for practical use.<sup>141</sup> Another way of describing this development is that legislation was stripped of its historical context. Manuscripts of the *Liber legis Langobardorum* often omit rulers' legislative preambles or other prefatory remarks.<sup>142</sup> This contrasts with earlier compilations of Lombard laws and later capitularies, which routinely include this material. In turn, the *Lex Lombarda*, compiled in the later eleventh to early twelfth century, and which quickly came to be preferred to the *Liber legis Langobardorum*, systematically reorganized the latter's material by topic.<sup>143</sup> This reorganization rendered the corpus of Lombard legal materials more similar in organization to corpora of Roman law and canon law.<sup>144</sup>

Powerful monasteries had reason to latch onto this system of immanent—rather than imposed and historically contextualized—law.<sup>145</sup> For they were invested in the status quo and the maintenance of their privileges; undesirable was a vision of law, such as that voiced in Benedict's chronicle, that qualified specific legislation as historically contingent, undermining its claims to perpetual validity.

At Farfa, in the later eleventh to early twelfth century, Gregory of Catino undertook his extensive projects documenting Farfa's property holdings, including a chronicle (*Chronicon Farfense*) that mobilized Farfa's charters to tell the history

<sup>139</sup> See the manuscripts discussed in Part 3, n. 95.

<sup>140</sup> See Chris Wickham, "Lawyers' Time: History and Memory in Tenth- and Eleventh-Century Italy," in *Land and Power*, 275–93, at 285–89.

<sup>141</sup> Charles M. Radding and Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival*, Brill's Studies in Intellectual History 147 (Leiden, 2007), 141–42. Radding contrasts the *Liber legis Langobardorum* to earlier compilations of Lombard laws and Carolingian capitularies, in particular, BnF lat. 4613 (cited above, n. 95), which, so he argues, is "essentially a container of pre-existing texts."

<sup>142</sup> Radding and Ciaralli, *Corpus iuris civilis*, 141; according to Thomas Gobbitt, personal communication, the treatment of the prologues varies across different manuscripts.

<sup>143</sup> The *Lex Lombarda* lacks a modern critical edition; for a reprint of the 1537 Venice edition, see *Leges longobardorum cum argutissimis glosis Caroli de Tocco*, with an introduction by Guido Astuti (Turin, 1964). Regarding the compilation, see Astuti's preface to the reprint (esp. 11–12); regarding the date, see further Meyer, "Auf der Suche," 352 n. 31.

<sup>144</sup> Wickham, "Lawyers' Time," 288–89; Rosamond McKitterick, *History and Memory in the Carolingian World* (Cambridge, UK, 2004), 255, demonstrates that whereas ninth-century (and earlier) compilations of canon law tend to be chronologically ordered, later collections tend to be ordered by topic.

<sup>145</sup> Indeed, some monasteries may have been involved in creating it: an early *Lombarda* manuscript from Montecassino (Montecassino, Archivio della Badia, MS Casinensis 328) suggests Montecassino's involvement in the creation of the *Lombarda*: Pohl, *Werkstätte der Erinnerung*, 150, esp. n. 243; Meyer, "Auf der Suche," 352 n. 31, 377 n. 132, 386 n. 168.

of the monastery from its foundations, through the Lombard, Carolingian, and Ottonian periods, to his own day.<sup>146</sup> Like Benedict, Gregory of Catino was engaged in preserving and reworking his monastery's historiographical and documentary materials. Like Benedict, Gregory presents his monastery's property holdings as underpinned by the law.<sup>147</sup> But Gregory's concern is not with this law's historical development, but rather with its durability, above all in terms of the inalienability of ecclesiastical property.<sup>148</sup>

By the time that Gregory of Catino was writing, Farfa had developed into the powerful monastery with which historians are more familiar, and Sant'Andrea's fortunes had further waned. In contrast with Farfa, few castles are attested in the territories controlled by Sant'Andrea,<sup>149</sup> and Gregory of Catino's cartulary preserves two agreements between Farfa and Sant'Andrea that show Sant'Andrea at a disadvantage vis-à-vis its neighbor: in 1013 the monastery of Sant'Andrea renounced claims to a certain property;<sup>150</sup> in 1052 the two monasteries traded properties, with the monastery of Sant'Andrea also receiving forty-two pounds of silver for the restoration of its church.<sup>151</sup> In both contracts Sant'Andrea was to pay a penalty to Farfa if it did not honor the agreement.

Benedict's chronicle survives, by chance, in a single manuscript. It was a text written, above all, for a specific purpose: defending the monastery's ambitious claims to a distant piece of property. What it reveals is much more: a world of resourceful monastics, striving to put their legal and historiographical resources to work in the shifting landscape of Ottonian Italy. As such, Benedict's chronicle is a precious document, not least as a testament to a path of historicizing monastic legal science not taken.

<sup>146</sup> Gregory of Catino, *Chronicon Farfense*, ed. Balzani. In addition to his chronicle, Gregory's many works include the so-called *Regestum Farfense*, an extensive cartulary; the *Liber Largitorius*, a collection of leases; and the *Liber Floriger*, an index to the documents included in his works: for an overview, see Umberto Longo, "Gregorio da Catino," in *Dizionario biografico degli Italiani* (Rome, 2002), 59:254–59.

<sup>147</sup> In Gregory's chronicle, law appears most often "in action," that is, in the context of the legal proceedings that Gregory describes or whose documents he transcribes. Gregory also included a collection of thematically organized legal material (primarily excerpts of canon law, but also pieces of secular legislation) in his *Regestum Farfense: Collectio canonum Regesto Farfensi inserta*, ed. Theo Kölzer, *Monumenta Iuris Canonici: Serie B, Corpus Collectionum 5* (Vatican City, 1982). A smaller selection was included in the *Liber Floriger*: Gregory of Catino, *Liber Floriger*, ed. Maria Teresa Maggi Bei (Rome, 1984): 34–44. Throughout his chronicle Gregory draws on this material.

<sup>148</sup> See Mary Stroll, *The Medieval Abbey of Farfa: Target of Papal and Imperial Ambitions*, Brill's Studies in Intellectual History 74 (Leiden, 1997), 56–62, 121–26.

<sup>149</sup> Voss, *Die Benediktinerabtei S. Andrea*, 44.

<sup>150</sup> See n. 53 above.

<sup>151</sup> RF 4, no. 835; Voss, *Die Benediktinerabtei S. Andrea*, 280–81 (translation), 48–49 (discussion).