

ORIGINS AND DEVELOPMENT OF THE NOTARIATE
AT RAVENNA
(SIXTH THROUGH THIRTEENTH CENTURIES).

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Mark Wayne Steinhoff
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CHAPTER I

INTRODUCTION

Excluding the profession of the sword, that of the notary was among the earliest, the most self-conscious and certainly the largest in the medieval world. In origin closely bound up with Roman law and practice, this ancient institution was profoundly transformed by the changing conditions of post-Roman western society. Of course the notary of our period was a transmitter of civilization, preserving knowledge of Roman law and more basically the value of written proof. But he was also creator of a new, and in many ways superior, scribal culture. With the spread of illiteracy the medieval notary was called upon to play a far more important role in the newly emerging civilization than that performed by his Roman ancestor in his more literate world. This transition between ancient and medieval notarial traditions can best be observed at the late imperial capital Ravenna where a rich hoard of notarial documents forms a continuous chain from the sixth through the thirteenth centuries and even beyond. My terminus a quo is dictated by the most ancient surviving papyri dating from 489. My terminus ad quem of 1227 is a

natural breaking off point because it was when the tabelliones were reorganized into a single society under one maior. The story that we shall tell of cultural pioneers creating a needed institution, and drawing on tradition even as they did so, in order to stabilize relations with their fellow men, is one of the brighter chapters in the history of civilization.

1. Historiographical Outline

Speaking first in general terms, various reasons for the neglect of this topic can be given. It has been not so much a problem of lack of sources, which is so often the case in medieval studies, as it is a problem of perspective. Neither the period nor the area of our study are favored by researchers. In 1971 A. Woloch reported that "not much on Ostrogothic Italy seems to be under way,"¹ and the prospects for the seventh through tenth centuries are no more promising. What studies there are of this formative period concentrate on the invasions (the fourth through the sixth centuries) and do not go on to the transition to medieval institutions² -- municipal institutions for instance. No period in the history of urbanism remains so obscure. Medievalists have shunned as unattractive this

¹G. Woloch, "A Survey of Scholarship on Ostrogothic Italy (A.D. 489-552)," Classical Folia XXV, 2 (1971), p. 330.

²For instance, A. H. M. Jones, The Later Roman Empire 284-602: A Social Economic and Administrative Survey (2 vols; Oxford, 1964).

age before the towns attained civic autonomy (ca. 1100). Italian towns in particular have suffered from this neglect which is all the more unfortunate because Italy is precisely where Roman urban traditions (such as registration of documents) are most likely to have persisted. In like manner historians of the notariate have been lured by the richer documentation of later centuries when the profession was in its heyday and have done little with the early period when the first wavering steps were taken in the development of the notariate. These culminated in a revolutionary advance that occurred around the year 1050 -- the attribution to notarial documents of a special quality of public faith. The cause(s) of this important innovation is still undetermined. But clearly the watershed is in our period.

Certain historians such as Fernand Braudel, reacting against too parochial a concern with northern Europe, have wisely turned their attention to the Mediterranean. Yet many medievalists still remain on a steady diet of Anglo-Saxon documents or they are centered on the French Middle Ages. Even the Mediterranean itinerary charted by D. Claude in Die byzantinische Stadt im 6. Jahrhundert bypasses Italy in general and Ravenna in particular. Ravenna was actually a halfway house between East and West and its documents offer western medievalists a window on the interaction between their civilization and that of Byzantium. Furthermore, the notariate itself is in origin a Mediterranean

institution. So far, northern European scholars have preferred to study native notaries, although this is putting the cart before the horse. Even C. Cheney, author of Notaries Public in England in the Thirteenth and Fourteenth Centuries, who feels that the importance of English notaries has been underestimated, must admit that "the notary remained exotic [in England]." ³ Instead of passing over wheat to get at chaff, perhaps we should take a cue from Master John de Bononia who remarked in the 1280's:

. . . Ytalici tamquam cauti quasi de omneo quod ad invicem contrahunt habere volunt publicum instrumentum, quod quasi contrarium est in Anglicis videlicet quod nisi necessarium esset non nisi rarissime petitur instrumentum . . . ⁴

The institutional history of the profession in Italy has scarcely been touched. Liberal historians of the nineteenth and early twentieth centuries tended to idolize the merchants as the dominant group in the medieval town and as the group most responsible for winning communal liberties. ⁵

³ Christopher R. Cheney, Notaries Public in England in the Thirteenth and Fourteenth Centuries (Oxford, 1972), p. 136.

⁴ John de Bononia, Summa notarie, prologue, Ludwig Rockinger, ed, Briefsteller und Formelbücher des eilten bis vierzehnten Jahrhunderts (2 vols; Munich, 1863-4), II, 603.

⁵ A more balanced account of the history of liberty shows that ". . . every urban social element had a part to play in the attainment of liberty. . . . it cannot be argued that any one group in the medieval town desired or fought for liberty more than any other . . .," J. H. Mundy, "European Society in the Middle Ages," in Chapters in Western Civilization ed. by the contemporary civilization staff of Columbia College (3rd ed; New York, 1961), p. 112, 114.

As a result other urban orders, such as the professional classes, have been overshadowed in the secondary literature. For example, R. Davidsohn and A. Doren in their exhaustive studies of the commercial and industrial guilds of Florence slighted the "Arte dei Giudici e Notai" which went unstudied until L. Martines' ground-breaking work in 1968.⁶ However, having avoided Scylla I would beware of Charybdis -- the conviction that "the growth of the organized profession [was] perhaps the greatest change in the whole of modern history."⁷

Notarial documents have received some attention in the standard manuals of diplomatics such as Bresslau and Bouard, where the chief concern is the part they played in the evolution of the authentic instrument. Likewise notaries figure in the basic constitutional histories of Italy such as Ficker and Pertile, where their notarial art is considered as part of the cultivation of legal science.⁸ Also from the juridical perspective is E. Durando's Il tabellionato o notariato nelle leggi romane, nelle leggi

⁶ Lauro Martines, Lawyers and Statecraft in Renaissance Florence (Princeton, 1968).

⁷ Richard Pares, King George III and the Politicians (Oxford, 1953), p. 16.

⁸ Harry Bresslau, Handbuch der Urkundenlehre für Deutschland und Italien (2nd ed.; 2 vols; Leipzig, 1912-31). Alain de Bouard, L'acte privé, vol 2 of Manuel de diplomatique française et pontificale (Paris, 1929, 1948). Julius Ficker, Forschungen zur Reichs- und Rechtsgeschichte Italiens (Innsbruck, 1874). Antonio Pertile, Storia del diritto italiano dalla caduta dell'Impero Romano fino alla codificazione (8 vols; Torino, 1896-1903).

medievali italiane . . . (1897). Basing himself solely on legislation, Durando's procedure is roughly analogous to studying American history using only the Congressional Record.⁹

Today the notariate is being restudied from the point of view of the social historian, who seeks to describe how society as a totality functioned, relating such disparate phenomena as class structure, religious values, economics and law. The notaries of Lucca, for instance, have been placed in the context of the rest of their society by H. Schwarzmaier in the course of his survey of that town down to 1100. Another practitioner of historical sociology (probably the leading school of medieval history of our time), J. Mundy has similarly analyzed the notaries of Toulouse in the period 1050-1230.¹⁰ Assuming that there is more to reap in this fertile field, the present work hopes to contribute to the steadily evolving urban sociology of the early Middle Ages.

For the notariate of Ravenna the bibliography is sparse. Aside from a small number of articles by

⁹In a class by itself however is Friedrich Karl von Savigny's The History of Roman Law during the Middle Ages, trans. by E. Cathcart (Edinburgh, 1829). In pursuit of his Romanist thesis Savigny was anxious to point out the survival in medieval times of Roman municipal institutions among which were the tabelliones and exceptor civitatis.

¹⁰Hansmartin Schwarzmaier, Lucca und das Reich bis zum Ende des 11. Jahrhunderts: Studien zur Sozialstruktur einer Herzogstadt in der Toskana (Tübingen, 1972). John H. Mundy, Liberty and Political Power in Toulouse 1050-1230 (New York, 1954).

archivists and historians of law,¹¹ there is one outstanding monograph, that of G. Buzzi. His "La Curia arcivescovile e la Curia cittadina di Ravenna dall'850 al 1118: Studio diplomatico preparatorio dell'edizione delle Carte Ravennati,"¹² takes off from a long runway of archival research at fourteen depositories in Ravenna, Rome, Milan, Bologna, Modena, Forli and Parigi. Unfortunately Buzzi never lived to publish his contemplated edition. He certainly compiled the data diligently. More than half of his article consists of lists of the notaries' names with inventories of the documents surviving from each. However he is weak on interpretation, making few references to secondary literature and advancing few ideas of his own. A clue to this disappointing performance is given by his choice of dates, 850-1118, which is strange as far as the notariate is concerned but was made to coincide with those of his "Ricerche per la storia di Ravenna e di Roma dall' 850 al 1118," which "presenta per la prima volta un' esposizione ragionata, convincente, delle vicende politiche

¹¹A. Palmieri, "Le carte giudiziarie ed i documenti privati ravennati dei secoli di mezzo," ADSPR, Ser. 3:19 (1901), p. 394-416. N. Tamassia, "La donazione 'more salario' nei documenti ravennati e romani," ADSPR, Ser. 3: 19 (1901), p. 213-23. A. Mancini, "Il diritto giustiniano a Ravenna e nei documenti ravennati e sinigagliesi del dodicesimo secolo (Ancora della ipotesi sulla patria ravennate della cosiddetta 'Lombarda')," Studi e saggi di storia medievale del diritto e della economia, 1943.

¹²BISI, 35 (1915), p. 7-187.

di Ravenna."¹³ Old fashioned political history indeed seems to be Buzzi's speciality for which this diplomatic study was merely propaedeutic. The only other work on my topic, P. de Lorenzi's Storia del notariato ravennate devotes only a scant twenty-three pages to the period before 1200, derived mostly from Buzzi's article of fifty years before. Indeed it does not pretend to be a textual study at all.

There still appears to be room for a book-length study of the Ravennese notariate which assembles all the data from the period before 1227. Besides the private law documents used by Buzzi there are others on papyri dating from the sixth century which are crucial for understanding what came later, and even some passages from various literary texts which help fill out the story.

Rather than study the Ravennese documents in isolation, analogies and contrasts can be sought elsewhere in northern Italy. A large quantity of comparative data is available, conveniently summarized by leading scholars, which should help to spotlight the really distinctive features of the situation at Ravenna. For example, comparisons with Lucca are particularly appropriate and easy to make for two reasons. In the first place, the record there is heavy for the eighth through eleventh centuries -- 3,494 documents, which is about ten times that of most

¹³ ASRSP, 38 (1915), p. 107-213.

other cities. Secondly, the Lucchese acts, like the Ravennese but unlike the Genoese, deal primarily with real estate rather than commercial transactions.

The time seems ripe for some synthesizing of existing studies on the notariate in northern Italy, bearing in mind Pirenne's dictum: "If it is true that every attempt at a synthesis is necessarily provisional, it is also true that by the hypotheses it proposes, the connections it establishes, and the problems it poses, it is able to assist in scientific progress."¹⁴ Some comparisons and broad interpretations have recently been offered by A. Petrucci in Notarii: documenti per la storia del notariato italiano (1958); but he is rather general and devotes only two paragraphs to Ravenna.

Since there has been little systematic research on this class of documents, the methodology for dealing with them is still somewhat experimental. The pioneers who cleared the way in this field have been very innovative in the kind of questions that they ask of the documents. When the documentation is this scarce and this reticent, one must use everything to try to work out the social history. Paleography is another one of the tools which can be used to squeeze dry the sources. For example, on the basis of script alone Buzzi was able to identify families of notaries.

¹⁴Henri Pirenne, Histoire de Belgique (Brussels, 1932), vol 7, p. xi-xii, quoted in Bryce Lyon, The Origins of the Middle Ages (New York, 1972), p. 86.

And Schwarzmaier even achieves what I would call "psychological penetration" of his notaries' handwriting styles: "Im übrigen aber ist die Entwicklung von der etwas verschnörkelten und gekünstelten Notarsschrift des ältesten zu den kräftigen und sparsamen Zügen des dritten und vierten Leo unverkennbar."¹⁵

My investigation is limited to public scribes and does not deal with writers of literary manuscripts, although there seems to be fascinating material from Ravenna's scriptoria which produced both Christian and pagan texts. Representative of the former is an Orosius codex of mid-sixth century Ravenna which is discussed in C. Nordenfalk's Die spätantiken Zierbuchstaben, whose theme is the growing differentiation between scribes and illuminators.¹⁶

Apparently late antique initials were done by scribes, medieval ones by illuminators. On the other side, the last pagan aristocrats, excluded from office, withdrew to a life of letters which they regarded as inseparable from ancient worship. Moving evidence of this comes from the following subscriptio of a manuscript of Macrobius: "Aurelius Memmius Symmachus v. c. [vir clarissimus] emendabam vel

¹⁵Schwarzmaier, Lucca und das Reich, p. 288.

¹⁶Carl Nordenfalk, Die spätantiken Zierbuchstaben (Stockholm, 1970), p. 169. He also refers to an eleventh century sacramentary from Ravenna now at the Walters Art Gallery in Baltimore.

disting. meum Ravennae cum Macrobio Plotino Eudoxio v. c. [vir clarissimus]."¹⁷ The city also boasts the best manuscript of Aristophanes. Concerning the mass of non-legal manuscripts done at Ravenna in later centuries it would be interesting to know if any of their scribes were notaries. Also one wonders if any notarial influence can be detected in these texts' Latinity, orthography, etc.

2. Sources

Ravenna's magnificent collection of records lightens the darkness of this age when written documents were so rare. This material may be subdivided into private and public law documents. The first are certain binding declarations (such as donations, testaments, bills of sale and rent contracts) which were made at first for entry into public registers and later by a "public person" (notary) who acted in effect as an ambulatory archive. At Ravenna most of these private documents concern the transfer of land and were preserved by the church. Our second category consists of the administrative acts of governmental officials, such as the placitum, a record of a lawsuit held in a public court. This legal evidence provides the basic framework for our research. There is also data gleaned from several historically significant literary sources. First in

¹⁷O. Jahn, "Ueber die Subscriptionem in den Handschriften römischer Classiker," Berichte Sächs. Ak. Wiss. 3 (1851), p. 347, quoted by A. Momigliano, "Cassiodorus and Italian Culture," in Proceedings of the British Academy, 41 (1955), p. 207.

time and in prominence is Cassiodorus' Variae Epistulae, published in 537, a veritable commentary on his life as praetorian prefect. Second is a narrative history of the church of Ravenna by Abbot Agnellus, Liber Pontificalis Ecclesiae Ravennatis (completed ca. 850) which invites comparison with the Liber Pontificalis of the church of Rome, especially concerning the clerical notaries of each place. Finally, epigraphical remains, ie. one wax and one stone tablet, provide a valuable supplementary vein of information.

Unattractive though they may appear at first glance, notarial records do have some redeeming features. Among their unique qualities is that of particularity. These legal acts of society give specifics instead of generalities. They are accurate mirrors of the details of almost every aspect of life -- the routine as well as the unusual. As such their only rival before modern times is the ancient Egyptian papyri. Secondly, compensating for their occasional unreadability is their inadvertent veracity. By their very nature these texts are less biased than chronicles, sermons or statutes, and include unconscious evidence never intended for the historian's eye. Another virtue is their relevance. They deal with matters seldom broached by medieval writers that are important to us. We can devise our own questions suitable to this kind of data. "Mentre fino al tardo Medio Evo la documentazione di cui dispone lo storico è di carattere prevalentemente pubblico od

ecclesiastico, questi cartulari notarili, . . . sono costituiti prevalentemente da atti di carattere privato . . ."18

What makes the Ravennese evidence especially worthy of study? Their early date alone would establish their importance. "The late sixth and seventh centuries are less well documented than any period since the third century B.C."19 But Ravenna can boast an almost continuous chain of documents throughout this period, including the only northern Italian examples of insinuation (the registration of acts in public archives). Ravenna is fortunate that so many of its deeds predate the golden age of the notarial chartulary which was the thirteenth and fourteenth centuries. Secondly Ravennese records survive in significant quantity, numbering in the hundreds for the period prior to the twelfth century. Thirdly, we emphasize their lay authorship. Elsewhere documentation is universally ecclesiastical in this early period. "Gli atti privati dei nostri Archivi, anteriori alla metà del sec. XIII, provengono da enti ecclesiastici." But at Ravenna there is a demonstrable secular tradition among the notaries throughout the early Middle Ages.

Two definitive editions of Ravennese acts have

¹⁸G. Cencetti, "Il notaio medioevale Italiano," Atti della società ligure di storia patria, n.s. IV, vol 78, fasc. 1-2, (1964), p. 28.

¹⁹Norman F. Cantor, The Meaning of the Middle Ages: A Sociological and Cultural History (Boston, 1973), p. 108.

been around for a long time waiting for someone to work on them. In 1805 the prefect of the Vatican archives, Abbot Gaetano Marini, edited 146 papyri from the sixth through ninth centuries. These are now in the process of being re-edited by J.-O. Tjäder. His first volume is a model work whose commentaries pay almost equal attention to all aspects of the documents. Miraculously the original Ravennese papyri have come down to us. By comparison no original papal document has been preserved before the time of Hadrian I (772-795) and so scholars must rely on transcripts of the earliest Roman acts. Contemporaneously with Marini, Count Marco Fantuzzi published, in 1801-1804, six volumes of acta from parchments chiefly of the ninth through thirteenth centuries. Unfortunately he did not always choose the most important ones and often cited them incorrectly or incompletely. Aside from brief introductions there are no historical or diplomatic notes. Tarlazzi's four-volume appendix (1869-1876) deals mostly with the thirteenth and fourteenth centuries. A new edition of Fantuzzi is a desideratum which has not been met for almost two centuries.

Many notarial instruments from Ravenna have not been published in any form. G. Buzzi's monographs were "preparatio dell'edizione delle carte ravennati." As a result of his untimely death, "ogni lavoro su Ravenna è però gravemente condizionato dalla mancanza di un'edizione delle carte

ravennati, che il Buzzi non riuscì a pubblicare . . ." ²⁰

Anyone undertaking a partial edition of new manuscripts relating to the notariate would be spared much laborious spadework, since the meticulous Buzzi refers to the crucial ones by archival box number in his footnotes. New outlooks can take us just so far, then the student must turn to new manuscripts.

²⁰G. Fasoli, R. Manselli, G. Tabacco, "La struttura sociale delle città italiane dal V al XII secolo," Vorträge und Forschungen, XI, p. 314n.87.

CHAPTER II

NOTARIATE AND TABELLIONATE IN ROMAN AND BYZANTINE TIMES

"Script and papyrus created the social environment we think of in connection with the empires of the ancient world."¹

My inquiry does not really begin at the beginning. A full understanding of the medieval notariate would presuppose a knowledge of its ancestors more remote than the immediate Roman ones. Use of scribes for the composition of private law documents is to be found among the ancient Egyptians (who were wont to give the physical characteristics of the contracting parties), Hebrews (witness Jeremiah 32)² and Greeks (whose municipal magistrates required redaction of contracts). Indeed H. Steinacker has a case when he urges that the study of

¹ Marshall McLuhan, The Gutenberg Galaxy: The Making of Typographic Man, Signet Books (New York, 1969), p. 7. It seems just as simplistic but necessary to acknowledge the importance of authenticated private acts and the social-economic ambiance in which they were transmitted to the medieval world.

²"Agri ementur pecunia et scribentur in libro, et imprimetur signum, et testis adhibebitur . . .," Prophetia Ieremiae 32:44 (Vulgate).

Roman law be replaced by the study of "ancient law."³ In rebuttal one may argue, as G. Ferrari has done, that "non è mai esistito un diritto antico" and take exception to the generic abstractions that Steinacker thinks were common to the various juridical systems of antiquity.⁴ At any rate these roots lie too deep for our spade. Moreover it is in good company that this beginner's study limits its horizons to Rome, because that is the ground most hotly disputed by historians of diplomatics from Brunner to Bouard in their quest to determine the true degree of borrowing and innovating.

I

In the later Roman empire the title notarius referred to an office in the Imperial civil service (indeed the most prestigious public office of the comitatus), while tabellio referred to private persons, without any public appointment, who drew up wills and contracts.⁵

³Harold Steinacker, Die antiken Grundlagen der frühmittelalterlichen Privaturkunde (Leipzig-Berlin, 1927), p. 46.

⁴G. Ferrari, "Il documento privato dell'alto medioevo e i suoi presupposti classici: A proposito di recenti studi," ASI, Ser. 7, XII, I (1929), p. 3-17. Another seemingly obvious but apparently neglected domain for fruitful comparisons is Islam. Given the same Roman inheritance does the Islamic notariate exhibit any greater continuity? Cf. M. Gaudefroy-Demombynes, "Le notariat et le régime de la preuve par écrit en droit musulman," AEDEB, II (1945).

⁵For many of the facts embodied in this chapter see Edoardo Durando, Il tabellionato o notariato nelle leggi romane, nelle leggi medievali italiane, e nelle posteriori specialmente piemontesi (Torino, 1897) and Jones, Later Roman Empire.

We first hear of notaries under Constantine (311-337). In the early fourth century they functioned as a secretariat for the imperial consistory -- keeping minutes, etc. The senior notary (primicerius notariorum) recorded appointments to all dignities both civil and military in the laterculum maius.⁶ Though their duties were originally clerical, notarii were soon employed on special missions by Constantius II (337-361). He entrusted them with important diplomatic, ecclesiastical, military, administrative and confidential assignments -- such as serving as ambassadors to the Persian king, convening church councils, installing bishops, supervising public works, leading troops, rounding up dissidents and watching rivals. The sinister reputation acquired at this time by the agentes in rebus with their Gestapo tactics should be equally borne by many notaries of Constantius' reign (for example, Paulus "the Chain"). According to Libanius (314-393), the Emperor Julian (361-363) slashed the corps to four shorthand writers: "He [Julian] put the cities under the government of persons of ability in rhetoric and put a stop to the employment as provincial governors of those savages who, for all their skill in shorthand, had not a scrap of sense and upset the boat."⁷ However, this

⁶ The duties of the primicerius are described in the Notitia Dignitatum Occidentalis XVI, and Notitia Dignitatum Orientalis XVIII, ed. O. Seeck (Berlin, 1876).

⁷ From Libanius' funeral oration over Julian (365 A.D.), Libanius Selected Works with an English translation, ed. and trans. by A. F. Norman (Cambridge, Mass, 1969), p. 383. Cf. also Oratio II, 58.

drastic reaction to the alleged reign of terror was short-lived. To Libanius' chagrin the corps recovered from Julian's purge and soon swelled to 520 members in the East alone.

The first notaries were of humble origin, recruited largely from the shopkeeper-artisan classes. Included in their ranks were sons of sausage makers, fullers, manual laborers and cloakroom attendants at the public baths. But because of their close working relationship with the emperor, notaries often advanced more rapidly than members of the other palatine services. Already under Constantius II some were promoted to the praetorian prefecture and the consulship. Jovian (363-364) and Valentinian I (364-375) continued this policy of rapid promotion. Definitive legislation came in 381 when Gratian and Theodosius made all notaries senators:

Notariorum primicerios . . . non solum vicariis anteponi, sed etiam proconsulibus aequari sancimus, ita ut nihil nisi tempus intersit. Eodem honore atque eodem ordine sequens primicerium tribunus ac notarius perfruetur. Alios porro notarios et tribunos vicariis iubemus aequari At vero domesticos et notarios consularibus simili ratione conponimus.⁸

The notarial corps had become a springboard of upward social mobility, especially for members of the new senate at Constantinople which lacked a core of ancient families. In the West too, the Roman aristocracy gradually came to

⁸Codex Theodosianus, ed. T. Mommsen and P. M. Meyer (Berlin, 1905), VI. 10. 2. Hereafter CTh.

dominate this branch of service. Among the Roman nobles who served in it were Procopius (the relative of Julian), the poet Claudian, and the father of Sidonius Apollinaris. A fashionable sinecure, open to scions of senatorial families but closed to the lower classes, this office soon became saleable and the problem of absentee notaries emerged. By the mid-fifth century only thirty of the vast army of notaries were in active service at the court.⁹ The actual secretarial work was passed on to memoriales or agentes in rebus.

This spectacular advancement of notaries effected a revolution in the educational curriculum, at least in the East. Libanius, always the reactionary lacking sympathy for new developments, reported that wealthy parents, mindful of the technical qualifications for notarial service, began to have their sons taught shorthand instead of Greek rhetoric -- Athene forgive them!¹⁰

II.

The word tabellio is probably derived from tabulae, ancient wax writing tablets recovered at Pompeii and even

⁹Valentinian III, Novella VI. 3.

¹⁰Libanius' invectives against the notaries are found in Or. II. 43-46; LXII, 10-11, 15, 51; Epistulae 1224; of which the following is representative: ". . . he [Julian] expelled the many secretaries who, though performing a menial function, yet required prefects to be under their thumb. . . . Ancient cities were ransacked . . . to provide some fuller's sons with houses more glorious than palaces." Or. XVIII, 131-132 (Norman trans., p. 365-7).

at Ravenna. In Cicero's day tabulari (a more ancient title) swore an oath before the prefectus urbis who had nominated them and gave them rings for their professional use.¹¹ The earliest reference to tabelliones is by Ulpian (d. 230), who mentions them assisting clients with their affairs.¹²

It is not until the fourth century, the "swing century" in so many areas of life, that the record becomes fuller. In 301 Diocletian, in his edict on maximum prices prescribed the following fee which tabelliones could charge for composing one hundred lines:

tabellanioni in scriptura libelli			
vel tabularum	in vesibus		
	n ^o centum	* X	13

Ten denarii (pennies) is not much when a pint of ordinary wine cost eight denarii, a pound of fish twenty-four denarii and a measure of wheat one hundred denarii. Nor is it much when compared with the twenty-five denarii which scribes

¹¹Paolo de Lorenzi, Storia del notariato ravennate (2 vols; Ravenna, 1961-62), I, 7.

¹²Ulpian in Digest, ed. T. Mommsen (Berlin, 1870) 48. 19. 9. 4: "Nonnumquam non advocatibus cui interdicitur, sed foro, plus est autem foro quam advocatibus interdiceret, si quidem huic omnino forensibus negotiis accomodare se non permittatur. Solet autem ita vel iuris studiosis interdici, vel advocatis, vel tabellionibus sive pragmaticis."

¹³"The Edict of Diocletian on Maximum Prices," ed. and trans. by E. R. Graser in vol. 5 of An Economic Survey of Ancient Rome, ed. Tenney Frank (5 vols; Baltimore, 1936-41), p. 342-3. Prices for other items mentioned above: p. 342, 322, 328, 318.

received for one hundred lines of their writing. The inference that the tabelliones may have been a very numerous class is substantiated by a papyrus from the small village of Aphrodito in Egypt which had at least two of them.

In 316, Constantine put through on the same day (January 30) two enactments concerning tabelliones. In De decurionibus he forbade decurions (members of municipal councils) to practice as tabelliones, but he did not thereby exempt those who were already tabelliones from service on the curia:

Universos decuriones volumus a tabellionum officiis temperare. Nemo autem ad decurionatum vocatus excusare se poterit eo, quod fuerit tabellio, cum et huiusmodi homines, si sint idonei, vocari ad decurionatum oporteat. Lex enim, quae decuriones a tabellionum officiis voluit submovere, ad decurionatum tabelliones vocari non prohibet.¹⁴

Of course this must be seen against the contemporary decline of the curia and attempts of decurions to avoid eligibility for it. In a separate law concerning forgeries, Constantine ruled that tabelliones who are elected to the curia remain liable to torture if need be to determine the authenticity of documents they wrote before:

Nec vero is, qui ante fuerit tabellio, ad eludendam quaestionem super his, quae ante conscripsit, factus decurio defendi hac poterit dignitate, quoniam scriburae veritas, si res poposcerit, per ipsum debet probari auctorem.¹⁵

¹⁴CTh XII. 1. 3.

¹⁵CTh IX. xix. 1.

Since only humiliores were liable to torture, it is probably safe to conclude that tabelliones were from the lower classes.

It should be stressed that, unlike the notarii and perhaps the tabulari, the tabelliones had no official public office. They acted entirely as private persons, drawing up legal documents on request in their stationes which were usually located in the forum (hence the later title forensis). In each city tabelliones were organized into a schola -- one of those functional groups into which all society was brigaded by the experiment in state socialism of the late empire.

III.

Another response to the challenge of the fourth century was the evolution of the curia into a college of notaries -- a "chrysalis" from which republican institutions emerged in the twelfth century cities of northern Italy, according to Savigny.¹⁶ Through the encroachment of imperial administration the municipal curiae lost most of their traditional duties, such as collecting civic revenues and overseeing public works, but they did acquire one new function -- that of keeping public documents. Was it precisely because their duties were so minor that these obscure officials survived while most other autonomous institutions were swept away? Remember, too, that no law had ever suppressed completely the ancient municipal magistrates.

¹⁶ Savigny, Roman Law during the Middle Ages, I, 289.

Insinuation was the process whereby a complete transcription of a document was inserted into the collected acts of the city (gesta municipalia) after it had been read in the presence of the witnesses to the assembled curia. In his study of the gesta municipalia B. Hirschfeld found no reference to the institution by the Roman jurists or by legislation before Constantine.¹⁷ In his law of 319 requiring insinuation of donations into the gesta, Constantine says that the practice was established by his father Constantius:

Pater noster nullam voluit liberalitatem valere, si actis inserta non esset Ante tempus legis istius donationes etiam sine gestorum testificatione valebant. Nunc vero post hanc legem nec nubtialis nec quaelibet alia inter quascumque personas donatio de quibuscumque rebus valere potest, si gestis non fuerit allegata.¹⁸

As against Hirschfeld who argues for a purely western origin of insinuation, Steinacker attributes this jus acta conficiendi to imitation of the practice of Greek cities.¹⁹

¹⁷ Bruno Hirschfeld, Die Gesta municipalia in römischer und frühgermanischer Zeit (Marburg, 1904), p. 12-13. More recently, J.-O. Tjäder proposed that, "Die Gesta können m.E. überhaupt nur im Zusammenhang mit den Märtyrerakten und den Konzilsakten erschöpfend behandelt werden, . . .," Die Nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445-700 (vols I and III; Lund, 1955), I, 15.

¹⁸ CTh III, v. 1. Legislation from the fourth through sixth centuries exempted more and more donations from this requirement. At first the limit was set at 200 solidi (CTh XIII, iii. 5), then at 500 solidi by Justinian who also dispensed with insinuation of donations made to or by the emperor, donations made to repair houses and to ransom captives (L36:1, 2, 3; L31: 5, 12).

¹⁹ Steinacker, Antiken Grundlagen, p. 51, 77-78, 171.

It is significant that the institution grew up in the west precisely at the time when Constantine transferred his capital to the east. Hitherto wills, for instance, were read before a provincial governor or some other imperial lieutenant, but it soon became common to address them to a municipal curia. Thus in 366 Valentinian and Valens expressly granted the right of redacting public documents to municipal magistrates: "Magistratus conficiendorum actorum habeant potestatem."²⁰ A stipulation that three decurions besides the magistrate and the exceptor be present was added by Honorius in 396:

Municipalia gesta non aliter fieri volumus quam trium curialium praesentia, excepto magistratu et exceptore publico, semperque hic numerus in eadem actorum testificatione servetur.²¹

For some transactions -- such as appointment of a guardian, mortgage of property, record of sale, discharge of claims under a will -- insinuation, though not required by law, was highly desirable. This was because by the fifth century writings which had been "proved" before a curia enjoyed considerable credibility. Witness Honorius' declaration in De re iudicata (414 A.D.):

Gesta quae sunt translata in publica monumenta habere volumus perpetuam firmitatem . . . Superfluum est privatum testimonium cum publica monumenta sufficiant.²²

²⁰CTh I. 56. 2.

²¹CTh XII. 1. 151.

²²CTh VII. 52.6.

IV.

We shall see that many of the disparate themes introduced above come together in the documents surviving from Ravenna: documents such as the earliest preserved gesta municipalia, numerous acts of tabelliones from the sixth through thirteenth centuries, and even some literary and numismatic evidence of politically active primicerii who upon occasion usurped the imperial throne, claimed the archepiscopal seat and led coups d'état.

The earliest private law source from the city on the Ronco is a wax tablet (the third plaque of a triptych) dating from the second century A.D., in the reign of Hadrian or Antoninus.²³ It records the sale of a slave girl by the name of Marmaria, characterized as veterana, to a sailor, T. Memmius Montanus, a private in the fleet stationed at Ravenna. The vendor, Aeschines Flavianus, a slave dealer from Milos, drew up the receipt in Latin but using Greek letters. It is a sample of legal documentation which combines the chirograph

²³"T. Memmius Montanus emit puellam natione Marmaricam nomine -- veteranam -- de Aeschine.

Eam puellam sanam esse ex edicto et si quis eam puellam partemve quam eius evicerit, duplam pecuniam -- dari fide rogavit T. Mem. Mont. fide promisit Aeschines -- id fide sua et auctoritate esse jussit Domitius Theophilus.

Eosque denarios -- numeratos accepisse et habere se dixit Aesch. a T. Mem. Mont. emptore et tradidisse ei puellam optimis condicionibus.

idem cosulubus aeadem diem Domitius Theophilus scripsi me in veditioem puellae Marmariae supra scriptae pro Aescine Aescine philiium Flavianum secundum auctorem exstitise (S) acctum"

Cited by O. Eger, "Eine Wachstafel aus Ravenna aus dem zweiten Jahrhundert nach Chr.," SavZRA, XLII, p. 452-468.

of Greek origin with the testatio of Roman origin. Though we do not know how many witnesses participated, this source is a "Verbindung von Zeugenbeweis mit der Handschriften- und Siegelvergleichung."²⁴

Turning to evidence of a different nature, we will examine some coins that are eloquent testimony of the achievement of one imperial primicerius. In 402 Honorius II, for greater safety, transferred his capital to Ravenna where a schola notariorum was established to service the imperial court. In 423 after Honorius had driven the Empress Placidia and her son Valentinian from Ravenna to Constantinople, he died. At that time the primicerius of the imperial chancery was a certain Iohannes, in origin a lowly civil servant who had worked his way up.²⁵ He may be the same Iohannes "chief of the imperial notaries" who was personally acquainted with Alaric and who was sent to negotiate with him on behalf of the Roman senate in 408. At any rate, our Iohannes derived so much power from his position as primicerius that he was able to mount a nearly successful effort to rid the western empire of Byzantine political influence. With support of the party opposed to Placidia and her son, Iohannes was proclaimed Emperor at Rome. But the Eastern Emperor,

²⁴Eger, "Wachstafel aus Ravenna," p. 462.

²⁵An account of this incident and further references are found in J. B. Bury, History of the Later Roman Empire from the death of Theodosius I to the death of Justinian (395-565) (2 vols; London, 1923), I, 221f.

Theodosius II, decided to support his cousin, Valentinian III. Iohannes may not have received much help from the city of Rome either since the Roman mint did not issue his coins. Below are reproductions of those from the Ravennese mint.



Bust with legend: "D. N. IOHANNES P. F. AUG."
Reverse: "VICTORIA AUGG." Victory holding crown and palm.



Same bust and legends. Reverse shows Iohannes holding a standard and a globe while trampling a fallen enemy underfoot.

FIGURE I: MEDALLIONS OF IOHANNES MINTED AT RAVENNA
(CA. 423-425)²⁶

He did hold out for a year and a half. A large Byzantine fleet sent against him was destroyed by storm. If the 60,000 Huns whom Aetius had procured for Iohannes had just arrived in Italy a few days sooner, the whole course of history might have been very different. As it was the victorious Placidia commanded that Iohannes' right hand be

²⁶

Henri Cohen, Description historique des monnaies frappées sous l'Empire romain (2nd ed; 8 vols; Paris, 1880-92), VIII, 207-8.

cut off -- symbolic perhaps of the fact that he was merely a notary? -- and that he be paraded through the circus on an ass and then executed.

Thus, in origin the tabelliones and notarii (imperial and curial) were closely bound up with Roman law and practice. Throughout the Middle Ages they will retain a close association in people's minds with the Roman Empire, as we shall see. How were these Roman institutions transformed under the impact of the political-social changes of succeeding centuries? There seems to be no better place to observe this transition than at that one-time capital of the Roman world, Ravenna.

V.

Though he considered himself to be a conservative custodian of Roman legal traditions, Justinian was often actually an innovator. Contrary to previous Roman practice, Justinian as lawgiver, acquired the reputation as "the Emperor who never sleeps," conscientiously overseeing every aspect of his subjects' lives. "His ultra-paternal legislation . . . [was] the absolute antithesis of everything that the city state had stood for."²⁷ One of the social services, traditionally left to the municipal authorities, which Justinian sought to regulate was the registration of private documents.

With the growing activity of the tabelliones in an

²⁷Percy N. Ure, Justinian and His Age (London, 1951), p. 252.

increasingly illiterate society,²⁸ it is understandable that the state would begin to make laws to control them. Already in the mid-fifth century, constitutions of Leo I in the East and Anthemius in the West punished tabelliones for drafting certain contracts.²⁹ Similarly, in 531 Justinian subjected such tabelliones to the same penalties as forgers.³⁰ But this was just the beginning of his tinkering with this institution.

Decisive legislation, De tabellionibus et ut protocolla dimittant in chartis (Novella 44), came from Justinian in 536. The preface discusses a confusing case which prompted this legislation. A document had been drawn up for an illiterate woman, "completum autem a tabellione et tabulario." However it was not written according to her wishes and a dispute arose. The tabellio claimed to have delegated to an assistant its drafting and had not even been present at the final signing. The assistant, when summoned, shifted the blame to a third clerk who could not be located. In the future this novella required tabelliones' attendance

28

Even at Ravenna where Theodoric and Justinian maintained chairs of grammar and rhetoric, and where opportunities for lay education abounded, "Die Schreibkenntnis scheint überhaupt in Ravenna nicht besonders verbreitet gewesen zu sein. Von 51 erhaltenen Unterschriften aus dem 5.-7. Jh. sind 18 eigenhändig." Tjäder, Papyri, I, 27ln.2.

29 Code 1. 2. 14. 6 (anno 470); 4. 42. 2 (anno 457-465); 11. 54. 1 (anno 468).

30 Code VI. 23. 29. 7.

throughout the transaction, from the rogatio to the dimissio.³¹

Apparently he was to be a witness as well as a scribe.

Sickness or other business was not an acceptable excuse for absence.³² Tabelliones were permitted one assistant who had to be registered with the magister census (at Constantinople, at least): ". . . damus eis licentiam singulis unum ad hoc constituere gestis apud clarissimum magistrum census felicissimae civitatis sollemniter celebratis . . ." ³³

Perhaps it would not be too much to assume that tabelliones themselves were required to have a license in order to practice. A violator of this novel was punished by losing his statio which fell to his assistant: ". . . si praeter haec aliquid egerint, cadent omni modo his quae vocantur stationibus . . . ipse dominus super stationis auctoritate erit . . ." ³⁴

In justifying this penalty Justinian reveals a sense of compassion as well as confidence in governmental intervention: ". . . hanc intulimus eis poenam, ut ob timorem fiant circa documenta et iusti et cautiores, et non

³¹ Justinian, Novellae, ed. R. Schoell and W. Kroll in Corpus juris civilis, III (4th ed; Berlin, 1912) Nov. 44, p. 273-277. ". . . quatenus praepositis operi tabellionum ipsis per se omnibus modis iniungatur documentum, et dum dimittitur intersint, et non aliter imponatur chartae completio nisi haec gerantur . . .," Nov. 44.1.

³² "Et non fingant tabelliones occasiones, per aegritudinem forte descendentes aut occupationes huiusmodi." Nov. 44. 1. 3.

³³ Nov. 44. 1. 4.

³⁴ Nov. 44. 1. 1.

propter suam requiem et delicias alienas corrumpant vitas."³⁵

As if this was not regulation enough, in 538 Justinian issued a new law, De instrumentorum cautela et fide (Novella 73), which dealt at length with each step in the preparation and authentication of documents.³⁶ It was revolutionary in that this was the first time that clear and detailed norms were laid down which tabelliones were expected to follow. If it is not oversimplifying, the gut issue in Novella 73 seems to be what evidence will be acceptable for probatio, proof. In classical law the two basic types of proof, namely documents and witnesses, were of equal value. Justinian's legislation continued a trend in post-classical law to favor written evidence and debase that of witnesses.³⁷ Admittedly, witnesses were still employed in the acts drawn up by tabelliones. The ideal situation is described in chapter five, which is entitled "Quomodo tabelliones caute debeant instrumenta componere." Witnesses should be present and their names listed: "Sed et instrumenta publice confecta licet tabellionum habeant supplementum, adiciatur et eis antequam compleantur, sicut dictum est, testium ex scripto praesentia."³⁸ However, if need be, the tabellio's completio

³⁵ Nov. 44. 1. 1.

³⁶ Nov. 73, p. 363-369.

³⁷ Adolf Berger, Encyclopedic Dictionary of Roman Law (Philadelphia, 1953), p. 652. "La notion même du témoignage instrumentaire est à ce moment si désagrégée qu'elle s'évanouit en formes hybrides et mal définies," Henri Lévy-Bruhl, Le témoignage instrumentaire en droit romain (1910), p. 207.

³⁸ Nov. 73. 5.

alone could be used:

Si vero neque adnumerator assumptus est et instrumentum ipse tabellio totum per se conscripsit atque supplevit, aut si etiam qui hoc conscripsit non adest aut aliter ipse venire non valet, tamen cum iureiurando propriae completioni attestetur, ut comparationi non fiat locus, sint etiam sic credibilia documenta.³⁹

In short, probative force resides in the completio of the tabellio. The witnesses "ne sont plus des témoins instrumentaires proprement dits" but merely "un des nombreux impedimenta dont l'esprit tâtilon d'une administration bureaucratique encombra la pratique juridique de ce temps."⁴⁰ Behind this devaluation of the testimony of witnesses was the growth of the process of insinuation as we shall see next.

Toward the end of this rather long Novella 73, Justinian observed that all these formalities for authenticating private instruments could be avoided by the practice of insinuation which he recommended as the surest method of proof:

De quibus licebit sese liberare contrahentes, si consenserint utrique ad hoc venire, ut insinuent instrumenta et profiteantur ea sub gestis monumentorum ipsi contrahentes, quatenus priventur nequitia et corruptione et falsitatibus et quaecumque alia mala corrigentes praesentem promulgamus legem.⁴¹

As we saw above certain municipalities were granted

³⁹Nov. 73. 7. 1.

⁴⁰Lévy-Bruhl, Témoignage instrumentaire, p. 208-210. "Dans le mécanisme de l'insinuation, institution bureaucratique, il n'y a pas de place pour le témoignage, issu du principe contraire," p. 207.

⁴¹Nov. 73. 7. 3.

jus gestorum -- the right to open their public registers to the recording (insinuating) of private acts. That insinuation was still necessary even under Justinian's legislation is important to realize. It lays to rest the question often raised as to whether tabelliones' documents during this period had "public faith" in and of themselves. Some historians have been misled by the term instrumenta publica which is applied to their acts by this novella and others. Actually it refers to the practice of insinuation before a municipal curia.⁴² An erroneous interpretation was fostered by later medieval theorists of the notarial art who considered Roman tabelliones "public persons" in their own right. Actually, even under Justinian the tabellionate remained a private profession not a public office. Regarding the authority of their acts, the notarial theorists "volevano avere l'appoggio della legge romana . . . per fondarvi la teoria della pubblicità degli atti notarili delle età posteriori."⁴³ But the most we can say is that Justinian's

⁴²"Die Urkunden nun, welche hier publice confecta genannt werden, heissen nicht so, weil sie etwa von einem Tabellio aufgenommen waren, sondern, weil bei ihrer Aufnahme ein mit dem jus actorum versehener Magistrat concurrirt hatte." F. Oesterley, Das Deutsche Notariat (2 vols; Hanover, 1842), vol I, p. 54. Other arguments, drawn from Novella 73, which Oesterley uses to support this view are: 1. "Hätten nun diese alsdann fidem publicam gehabt, wozu wäre dann noch eine Vernehmung [by magistrates] des Tabellio nöthig gewesen?" (p. 53). 2. "Hätten nun solche Urkunden öffentlichen Glauben gehabt, so würde ein Beweis durch Schriftvergleichung ganz unnutz gewesen sein . . ." (p. 55).

⁴³Durando, Tabellionato o notariato, p. 42.

laws firmly established for tabelliones a public function, supervised their performance of their duties, and even confirmed their acts, but stopped short of conceding to them full public faith, for which insinuation was still necessary.

The time has come to assess Justinian's achievement, taking the positive side first. Tabelliones in classical times were of humble status: their function was originally performed by slaves. Justinian accorded them greater honor and increased society's faith in them by subjecting them to state surveillance. Secondly, tabelliones in the fourth century seem to have been bound (if at all) only by the statutes of their respective corporations. Justinian's spate of legislation formalized their operation. Later emperors eased his regulations. For instance, Leo III (717-741) abandoned the need for insinuation of donations, maintaining only the necessity of redaction in writing. This more lax policy broadened the tabelliones' scope of activity.⁴⁴ Thirdly, as far as the West is concerned, Justinian laid the basis for later legislation on the notariate. His laws were models for many centuries to come. In Italy, at least, he preserved, at a critical time in history, the notion of a private act authenticated by municipal curiae.

Justinian succeeded in preserving Roman scribal

⁴⁴ Excerpta ex Constitutionibus Domini Leonis imperatoris, Novella 50: ". . . Donatio quae quingentos aureos excedit, in literas relata sit (licet non in acta publica notata) rata permaneat: quae vero scripto comprehensa non est, pro eo modo qui quingentos aureos excedit, irrita sit."

traditions. But perhaps his aim was too conservative. He seems to have lacked the imagination required to create a new scribal system. Preoccupied with the idée fixe of insinuation, his mind was closed to the conception that the tabellio himself could be a viable substitute for insinuation. The dean of historians of diplomatics, Alain de Bouard, faults the Byzantines in general for merely borrowing from earlier Greek practice without progressing at all.⁴⁵ But perhaps this is unfair to Justinian. Perhaps this leap to something analogous to insinuation could be taken only in the pioneering milieu of the West, where new conditions permitted the formation of a different (and perhaps superior) scribal culture.

VI.

From our chosen vantage point of Ravenna, we will be able to see these same themes in a fresh light. Byzantinists "have too frequently stared at the Empire from the walls of the capital."⁴⁶ Observation of the impact on Ravenna of Justinian's legislation concerning the tabellionate can be

⁴⁵ . . . Reconnaissance faite par le tabellion de sa completio suffisait, au pis aller, à justifier un instrument par lui dressé. Médiocre avantage, en vérité, dont la portée n'excédait pas dans le temps la durée d'une vie humaine; et l'on s'étonnerait qu'une telle civilisation n'ait rien su tirer de mieux de son propre fonds s'il était démontré que le progrès vint, sur ce point encore, d'un emprunt à la pratique grecque." Bouard, L'acte privé, p. 52. Bouard endorses Steinacker's theory that insinuation was borrowed from the Greek cities.

⁴⁶A. Guillou, "Demography and Culture in the Exarchate of Ravenna," in Studies in Byzantine Italy (Geneva, 1970), p. 219.

an illuminating case study of the importation of Byzantine culture into Italy.⁴⁷ We will find that in this highly cosmopolitan city the "diverse origins [of the population] do not seem to have prevented its cohesion. Latins, Goths and easterners came together quite naturally before a notary, for example, when one of them needed the signatures of the others as witnesses."⁴⁸

From the fifth and early sixth centuries there are comparatively few private law documents anywhere in Italy, and these are very short and simple. A good representative of these pre-Justinian deeds is Odoacer's donation to his Count of the Domestics, dated 489 (appendix I). By contrast, the age of Justinian is richly documented, at least at Ravenna. After the Byzantine reconquest we can see a great change not only in the number but also in the form of the documents, which is clearly due to the influence of Justinian's legislation and Byzantine example. Most of the acts from the mid-sixth century come from the archives of the archbishop. Though comparable records survive only at Rieti and Syracuse, they are considered typical of any city in sixth century Italy.

⁴⁷"Über Ravenna und durch die ravennatischen öffentlichen Schreiber eine Menge griechisch-byzantinischer Bestandteile in das italienische Formular hereingekommen ist," Tjäder, Papyri, I, 278.

⁴⁸Guillou, "Demography and Culture," p. 203.

Tabelliones throughout the empire were required by Justinian to have a thorough acquaintance with formalities that pertained to them in the novels:

Ut autem apertius adhuc causa declaretur, sancimus, si scripta fuerit huiusmodi lex, hanc post duos menses dati ei temporis valere, et in republica tractari, sive in hac felicissima civitate, sive in provinciis, post insinuationem sufficienti hoc tempore omnibus manifestam eam constituere, et tabellionibus eius cognoscentibus virtutem, et subjectis agnoscentibus, legemque servantibus.⁴⁹

As we saw, those novels concerning the tabelliones date from the 530's. But it was 540 when Belisarius entered Ravenna for the first time and not until 552 that the Gothic War ended. Novels which Justinian intended for Italy were usually drawn up in Latin, but these from the 530's may have been composed in Greek. Tjäder reports that "wenn man die einzelnen Formeln darauf hin genau untersuchte, denn viele unter ihnen sind nichts als eine wörtliche Übersetzung aus dem Griechischen."⁵⁰ At any rate, there was a transition period around the year 550 when Justinian's reforms began to take effect.

Justinian's enactments entailed sweeping changes for almost every part of the private charter. Only the statement of the scribe and the subscription of the donor remained the same. Three parts that were especially transformed were: 1) the date, 2) the completio and 3) statements by

⁴⁹Nov. 66.1.

⁵⁰Tjäder, Papyri, I, 278.

the witnesses.⁵¹

In Italian documents prior to 550 the date was:
 1) placed at the end of the document and 2) given according to the consular year. Odoacer's bequest cited below illustrates both of these points. After the reception of Justinian's laws, the date is: 1) placed at the beginning and 2) given according to regnal year, consular year and indiction. This new system of dating was instituted by Justinian on August 31, 537, by Novella 47.⁵² The first Ravennese document that uses this new triple form to indicate the date is from January 3, 552:

Imperante domino nostro Iustiniano perpetuo Augusto anno XXV, undecies post consulatum Basili Iunioris viri clarissimi, sub die III Nonarum Ianuariarum, indictione quintadecima, Ravennae.⁵³

⁵¹"Die Umwandlung der Schenkungsurkunde in Italien im 6. Jh. sehr durchgreifend gewesen ist: von der vorjustinianischen Schenkung ist nur das Skelett geblieben," Tjäder, Papyri, I, 277. In his critique of Tjäder's work, E. Levy dissents, without reason in my opinion: "Ob aber diese formalen Reformen weit über ihren Wortlaut hinaus die Substanz gerade der Schenkungsdokumente so stark alterierten, um eine grundsätzliche Scheidung der Schenkungen in 'vor- und nachjustinianische' zu rechtfertigen, scheint mir mehr als fraglich." SavZRA 87 (1957), p. 480.

⁵²Nov. 47. 1: "Unde sancimus et eos, quicumque gestis ministrant, sive in iudiciis sive ubicumque conficiuntur acta, et tabelliones, qui omnino qualibet forma documenta conscribunt, sive in hac magna civitate sive in aliis gentibus . . ., hoc modo incipere in documentis: Imperii illius sacratissimi Augusti et imperatoris anno tanto, et post illa inferre consulis appellationem, qui illo anno est, et tertio loco indictionem, mensem et diem."

⁵³Tjäder, Papyri, I, 214, B. VI. 12-13. "Frozen" into the date element was this Basilius, who was the last official consul in the West since Justinian abolished the office in 542, retaining only an honorary consul in the East.

Adoption of the reform was gradual but the old use of consular year alone had died out completely by 557.

The so-called completio, another Byzantine innovation, was the subscription of the tabellio stating that he accepted responsibility for the formal and juridical correctness of the document. This is in compliance with Novella 44.1 (quoted above). The first use of this formula at Ravenna is on April 4, 553:

Ego Severus forensis, scribtor, hanc donationem perfectam et completam absolvi die et duodecies post consulatum suprascripto.⁵⁴

Discussion of the scholarly controversies regarding the juridical meaning of completio and absolutio is reserved to a later chapter. Suffice it to say here that the formula "post tradita complevi et absolvi" became a standard one at Ravenna and was "in ihrer ursprünglichen Reinheit bis ins vierzehnte Jahrhundert erhalten."⁵⁵

Regarding witnesses, Novel 73 had much to say. Its regulations continued to be observed at Ravenna long after they went out of use elsewhere, according to Oesterley.⁵⁶

⁵⁴Tjäder, Papyri, I, 308, l. 81.

⁵⁵Oesterley, Deutsche Notariat, p. 306.

⁵⁶Ibid., p. 254. He quotes a document from 1130 complying with these old laws. Nov. 73. 8. was devoted to "Imperiti litterarum quomodo caute contrahant." The remark at the end of this text from 902 seems to refer to it: "signum + jam dicti Ratberti qui propter infirmitatem corporis sui manibus suis scribere non potuit ad omnia jam dicta consensit," cited by Oesterley, ibid., p. 303n4.

The subscriptions by witnesses in post-Justinian documents consist of detailed summaries confirming the content as can be seen from the example in appendix II. Another precaution against falsifications was the use of monograms, although Ravennese tabelliones did not use them until later. Bouard believes "il se rattache à la législation Justinienne."⁵⁷ The locus classicus he may have in mind is Novella 73. 6: "Oportet autem judicantes, et si qua signa invenerint adscripta chartis, etiam haec requirere, et legere niti . . ."

These private law documents were the product of a restricted milieu, only one social group in a very cosmopolitan city. But that narrow society at least, judging from its careful observance of all these formalities, was as sincerely interested in conserving Graeco-Roman culture as Justinian himself was.

⁵⁷A. de Bouard, "Les notaires de Rome au moyen âge," MEFR, 31 (1911), p. 299n.1.

CHAPTER III

LOMBARD AND CAROLINGIAN CONTRIBUTIONS TO THE MEDIEVAL NOTARIATE

"Il est clair que Charlemagne entendait ainsi doter l'Empire d'un véritable notariat public, à la nomination et sous la surveillance des missi comme l'échevinage, et qui devait cumuler les écritures administratives et judiciaires des comtés avec la passation des contrats."¹

Justinian's dreams of restoration and reconquest were shattered by the Lombard domination of Italy from 568 to 774, throughout which period Ravenna remained the citadel of imperial hopes. Politically and culturally reactionary, the Ravennese continued to render their acts according to the traditional Roman-Byzantine system even in the changed circumstances of the seventh and eighth centuries. But for the beginnings of the medieval notariate we must look away from Ravenna (and the other Byzantine outposts) and toward Lombard territory where new notarial groups and processes were springing up. Only by understanding the achievement and influence of the Lombard notariate can we see our subject in proper perspective. At this point three questions logically come to mind. To what extent was the Lombard

¹Bouard, L'acte privé, p. 130.

notariate dependent on Roman antecedents? Was there any "give and take" between the Lombard realm of the notariate and the Byzantine realm of the tabellionate (of which Ravenna was the capital)? Did the later Carolingian notariate owe anything to Lombard example?

I

The question of the continuity of the notariate through Lombard times is really part of the larger problem of cultural continuity in general. Intellectual historians have not yet recognized that the most effective transmitters of classical culture were humbler people than many famous authors traditionally considered great intermediaries. Like the missionaries, the notaries were exporters of a way of life, albeit a practical one.

Historians of the "Romanist" school contend that even the Lombard invasion did not interrupt Roman notarial traditions which triumphed over the oral procedure characteristic of the barbarians. As early as 643, though they had just recently arrived from the forests of Germany, the Lombards acknowledged the importance of authentic documents by this law of Rotharius which imposed a severe penalty for falsification: "Si quis cartolam falsam scripserit aut quodlibet membranum, manus ei incidatur."² Still lacking a precise terminology, the Lombards, like the Ostrogoths, used scriptor at this time. By 727 Liutprand required scribes to have a

²MGH, Legum IV, (Hanover, 1865), p. 60.

knowledge of Roman law as well as Lombard:

De scrivis . . .; nam contra legem langobardorum aut romanorum non scribant. Quod si non sciunt, interrogent alteros, et si non potuerent ipsas legis pleniter scire, non scribant ipsas cartolas.³

Besides these royal edicts, Lombard private acts, too, still used the old Roman formulae.⁴ But behind this facade of terminology had real change taken place? Even Romanists must admit that the tabellio (the term and the institution itself) had disappeared. An examination of the structure of the Lombard notariate will be helpful here because different historians find continuity and creativity in different places among the scribal groups.

Coexistence of a variety of scribes was a hallmark of the Lombard notariate, resulting from the fact that anyone who knew how to write could draw up documents.⁵ The demise

³MGH, Legum IV, p. 144f.

⁴Cf. Durando, Tabellionato o notariato, p. 86; and P. S. Leicht, "Formulari notarili nell'Italia settentrionale," in Mélanges Fitting (Montpellier, 1908), p. 58: ". . . quanto manifesta v'è l'influenza romana! Dotte ricerche dimostrarono già, nel diritto langobardo, le tracce, non solo del diritto romano volgare ma ben anco dei testi giustiniani."

⁵Dissatisfaction with this arrangement is voiced at a slightly later period by Duke Adelchis of Benevento in a law of 866: "Inconueniens usque modo consuetudo extitit, ut quisquis voluisset, si nosset, scriberet brevem, undecumque oportunitas exegisset. A modo autem decernimus, ut soli notarii brebem scribant sicut et cetera munimina. Et quiscumque deinceps brebis fuerunt absque notarii subscriptionem ostensus, nullam retineat firmitate. Quoniam multos ex eis deprehenderimus fuisse falsos, quod deo opitulante cupimus ut ulterius non fiat." Quoted in Bresslau, Handbuch der Urkundenlehre, I, 637n.4.

of insinuation and the loss of public archives turned out to be merely the catalysts of a new order, creation of which during this unhappy time is a lasting testimony to the human spirit. The period 568-774 was one of great inventiveness in the evolution of the private charter, as in that other not-so-glamorous but equally basic field of human activity -- technology.

Antecedents from the late empire are most easily recognizable in our first two categories -- the notarius civitatis and the notarius ecclesiae. The Lombard notarius civitatis probably derived from the Roman exceptor civitatis, the officer of the curia in charge of registering acts. For instance, at Pavia and Piacenza, Lombard towns which retained much of their ancient vitality, an exceptor survived the curia which he once served and continued to attest acts for private citizens in the forum.⁶ A true town notary, he may even have been elected by an assembly of citizens. Similarly at Ravenna the exceptor was head of the tabelliones, though the curia itself may have held out somewhat longer. Notarii ecclesiae were also part of the ancient inheritance. Bishops

⁶Codice diplomatico Longobardo dal 568 al 774, ed. C. Troya (Naples, 1852-9), nos. 334, 476, 576. Cf. Guido Mengozzi, Ricerche sull'attività della Scuola di Pavia nell'alto Medioevo (Pavia, 1924), p. 308-11. "Con la venuta dei Longobardi . . . continuò quasi integralmente il sistema di documentazione che era più diffuso anche prima e cioè quello degli atti che le leggi romane avevan detto publice confecta . . . perchè a redigerli continuarono gli exceptores e i notari in modo e veste non dissimile da quella del periodo anteriore. La figura più importante è quella dell'exceptor . . . [who] continua con la stessa funzione e con un'importanza ben maggiore di quella che aveva nel tempo romano," p. 308.

and abbots (those of Lucca and Farfa are prime examples) continued to have their own notaries, who serviced not only these institutions but private persons as well. In fact the ecclesiastical notary was such a success that some historians such as A. Petrucci depict it as spawning the secular notariate.⁷ At Lucca, for instance, the episcopal school trained both clerical and lay notaries. "Non crediamo che possa essere negata l'assoluta prevalenza culturale del notariato ecclesiastico su quello laico nel periodo longobardo."⁸ In imitation of their ecclesiastical prototype the lay scribes of the Lombards assumed the prestigious title notarius.

These lay notarii constitute our third and most important group which drew up the majority of private charters in Lombard times. They did not have anything to do with the Roman tabellio or his contemporary Ravennese descendant who: 1) belonged to a professional organization and 2) was regulated by law. In contrast the Lombard notarius "è scrittore privato, e non fa parte di una organizzazione riconosciuta dalle leggi."⁹ This new type of scribe was

⁷Armando Petrucci, Notarii: documenti per la storia del notariato italiano (Milan, 1958), p. 8: "A noi sembra piuttosto che . . . il notariato longobardo si ricollegli ai notarii di epoca romana . . . soltanto indirettamente, e cioè attraverso il termine medio costituito dal notariato ecclesiastico, da cui essi derivarono il nome."

⁸Ibid., p. 11.

⁹L. Schiaparelli, "Note diplomatiche sulle carte longobarde. I Notai nell'età longobarda," ASI, 90 (1932), p. 5.

created to meet the chief need of the Lombard military aristocracy, that is, documentation of their property rights. Notarial records by their very nature clearly reflect economic and social change, in this case a veritable revolution. Branded "unspeakables" by their victims, the Lombards (unlike the Goths) dispossessed the old Roman landowning class by murder and exile. To serve their proprietary needs the new landed magnates created their own notaries, imitating the best model at hand -- the church's. The explosive growth of this new scribal group scattered members in every part of the Lombard occupation.

Some of these notarii also held the title of iudex. Three documents (from Rieti and Farfa) record that a notary participated as judge in a tribunal.¹⁰ This has led Bouard to conclude that the notarius et iudex, the overlapping of notariate and judicature, was of Lombard not Carolingian stock: "Le caractère le plus accusé de ce notaire italien est la judicature . . . les premiers exemples de ce cumul apparaissent dans le royaume lombard avant la conquête franque."¹¹ He sees the medieval notary as an emanation of the Lombard tribunal which later (in the twelfth century) made him a magistrate of gracious jurisdiction whose acts

¹⁰Troya, Codice diplomatico Longobardo, nos. 852-3 (Reg. di Farfa); Hübner, "Die Gerichtsurkunden aus Italien bis zum Jahre 1150," SavZGA, XIV, Reg. no. 640.

¹¹Bouard, L'acte privé, p. 162.

were authentic.¹² Thus, in the Lombard period the Roman notarial system was not totally destroyed but was transformed to meet political, social and cultural changes.

II.

The Ravennese, avid continuators of Roman civilization, maintained a pure line of that tradition throughout the chaotic period of the Lombard incursions. Documents continued to be registered with the curia at Ravenna until at least 625. The following is the latest extant insinuation before it:

Imperantibus dominis nostris perpetuis Augustis Heraclio anno XV et post consulatum eiusdem anno XIV atque Heraclio novo Constantino filio ipsius anno XIII, sub die Iunii, indictione XIII, Ravennae. . . .
 "Donus vir spectabilis, notarius et scrinearius sanctae Ravennatis ecclesiae prae foribus est, petet te ingredi, quid iubetis? quare ingredi postulasti?" . . . horticellum in integro positum iuxta domum eis, sed et pistrino atque duo hospitia intra se cum curticla sua, in sancta Ravennate eccl.
 quaeso laudabilitatem vestram, optimi magistratus, uti eadem a me suscepi, relegi actisque indi praesentibus iubeatis . . .¹³

Though the surviving papyri continue down to 700, no gesta protocol is included among them. Contemporary notaries in the Lombard domain did not have to bother appearing before

¹²Bouard, L'acte privé, p. 154: ". . . l'authenticité de l'acte privé . . . postulait deux conditions essentielles: une notion vivace de la valeur de l'écrit, et la floraison de l'institution judiciaire. Au cours du haut moyen âge, c'est assurément dans l'Italie lombarde que ces deux conditions furent au mieux réalisées."

¹³Tjäder, Papyri, p. 356, l. 1-6.

a public body for the lengthy process of insinuation. Could it be that Ravenna's tabelliones were also on their own after 625? For all we know their curia as a college of notaries may have disappeared in the course of the seventh century.

In 737 the city of Ravenna was taken and held by Liutprand for three years. It passed back and forth between Venetian, Lombard and Byzantine hands until 751 when Aistulf's decisive victory dealt the deathblow to the exarchate. Along with Byzantine administration disappeared the long tradition of notaries of the imperial court and exarch. Other than this loss, however, Ravennese notarial traditions seemed to have survived the Lombards. They occupied Ravenna for only four years, 752-756, which was too short a time for them to establish their institutions there even assuming they wanted to. Thereafter the Ravennese scribes picked up where they had left off as the following excerpts from a document dated 767 show:

In nomine Domini Nostri Jesu Christi Dei, & Salvatoris
nostri Imperante piissimo PP. Augusto
Constantino [Byzantine Emperor Constantine V, 741-775]
a Deo coronato magno Imperatore, Anno
Principatus eiusdem tranquillitatis Anno vigesimo quarto 14
. . . Tertio Mensis Marcii, Indictione . . . Ravennae ...

It alludes to "senatoque consulto quod de mulieribus
prestitit." Four of its witnesses bear the title Imperialis
Aule Notarius.

¹⁴ Monumenti ravennati de' secoli di mezzo per la
maggior parte inediti, ed. M. Fantuzzi (6 vols; Venice, 1801-
4), II, 1-4. Hereafter "Fantuzzi."

In the drama of these two societies coming together we should expect both to undergo change, though historians since Gibbon have tended to look solely for "decline and fall." It is true that only fragmentary documentary evidence exists of Ravennese impact on the Lombards. We do know that "the art of the Lombards as it developed over the seventh and eighth centuries, bore increasing evidence of the proximity of Ravenna, city of imperial craftsmen."¹⁵ It is not inconceivable then that Roman law and notarial practice were propagated from Ravenna into Lombard territory.

The revival of Roman law can be seen in Liutprand's edicts fixing the duties of scribes and especially in the one quoted above which made it possible for Lombards and Romans to live together each under their own law. The occasion for this concession may have been Liutprand's conquest of the exarchate; he captured Ravenna in 737.¹⁶ Admittedly Liutprand was the Lombards' greatest king. At the other extreme King Aistulf was "still half-civilized -- none of their kings was more fearsome."¹⁷ Yet at Farfa there survives a concession made to its abbot by Aistulf while he was standing in the palatium at Ravenna. He is described as "Flavius Haistolfus

¹⁵J. M. Wallace-Hadrill, The Barbarian West A.D. 400-1000, Harper edition (New York, 1962), p. 63.

¹⁶Though Durando argues that "si può con eguale probabilità credere che nella stessa Langobardia l'uso del diritto romano vigeva anche prima e che forse non sia mai cessato," Tabellionato o notariato, p. 79-80.

¹⁷Wallace-Hadrill, Barbarian West, p. 64.

Rex excellentissimus."¹⁸ Had the Ravennese captured their ferocious captor?

III.

Did the Lombard notariate inspire the Carolingian development of the institution? Believing that the Ostrogoths, Lombards and Franks represented a graduated descent into barbarism for Italy, Durando asserts that "I Franchi non conobbero i notari ne li nominarono nelle loro leggi prima della conquista dell'Italia fattasi da Carlo Magno."¹⁹ Nor is it just the title notarius that is of Italian origin, according to Durando. Different in kind from the Lombard notaries were the Frankish cancellarii who were primarily secretaries of the prince, only at his leave redacting charters for private persons which were accorded less faith than Italian charters. In my opinion, a more accurate description of the shift in notarial documentation from Lombard to Carolingian is that the former "appare confuso, indeterminato, libero, andrà prendendo sotto i Carolingi chiarezza, ordine, regolarità e avrà riconoscimento dalle leggi."²⁰ Variety is characteristic of Lombard as of Merovingian texts, but uniformity was required by the larger Carolingian world.

Bouard supports the same thesis as Durando but with

¹⁸Fantuzzi, V, 203.

¹⁹Durando, Tabellionato o notariato, p. 96.

²⁰Schiaparelli, "Notai nell'età Longobarda," p. 33.

notably more success. "Lorsqu'en 805 l'empereur [Charlemagne] prescrivit à chaque évêque, à chaque abbé, à chaque comte d'avoir son propre notaire, il ne faisait qu'homologuer et étendre à l'Empire les charges de notarius ecclesiae et de notarius ducis du royaume lombard. De même origine était le notarius regis ou sacri Palatii qui fleurit en pleine période franque."²¹ That these offices were of Lombard stock seems undeniable. It is particularly easy to imagine a Lombard origin of the royal notaries who no doubt emanated from Pavia, the unique Lombard capital where Roman traditions lingered and a school of notaries flourished even in Lombard times. Regarding this Lombard-Carolingian connection, no scholar seems to have noticed the special background of Paul the Deacon. Of noble Lombard blood, he was educated at the royal court in Pavia where he later served King Desiderius as chancellor and notary. A diploma of 762 reads: "Paulus Notarius et Diaconus ex iussione Domini Nostri Desiderii Serenissimi Regis scripsi . . ." ²² From ca. 782 to 787 Paul was at Charlemagne's palace school. Coincidentally, Jordanes, whose Gothic History was an inspiration to Paul, had also been a notary. In his reform of the notariate did Charlemagne draw on Paul just as in other matters he turned to Alcuin? Along with the Insular contribution to the Carolingian Renaissance, that of the Lombards should also find its

²¹Bouard, L'acte privé, p. 159-160.

²²Lorenzi, Notariato Ravennate, p. 13.

rightful place.²³

IV.

In that brief moment of cohesiveness in western Europe called the Carolingian age the basis was laid for many characteristic institutions, such as the public school system and the public notariate. Especially after his coronation as emperor Charlemagne was anxious to revive the Roman attitude toward public institutions. Education had been a public service so he felt it was his duty to foster it. Nor were his efforts limited to bishoprics and royal monasteries. Even ordinary country priests were ordered to establish schools which should be open to all: ". . . non solum servilis conditionis infantes, sed etiam ingenuorum filios adgregent sibi que socient. Et ut scholae legentium puerorum fiant."²⁴ Charlemagne not only attempted to spread a basic literacy but also a scribal culture, as we shall see. His sponsoring of learning in general and the notariate in particular was no idle pastime but a means of survival. Educated clergy were to operate as an arm of the state. Written legal authority provided by notaries was the very cornerstone

²³"L'evoluzione del notaro da scrittore privato e da impiegato di cancelleria alle libere funzioni di tabellione, con autorità di scrivere instrumenti, e di autenticarli con pubblica fede, avvenne sotto il dominio e nel territorio dei Longobardi." Cesare Paoli, Programma scolastico di paleografia latina e di diplomatica (Florence, 1898), p. 80. But Paoli may be swinging a little too wide here. Most scholars would not unreservedly agree that Lombard acts had "pubblica fede."

²⁴Capitularia Regum Francorum, ed. A. Boretius, MGH, Legum II, (2 vols; Hanover, 1881), vol. I, p. 59-60.

of Charlemagne's attempt to create a new society, modeled on the Roman Empire. One of the rewards of analyzing the northern contribution to the genesis of the medieval notariate will be seeing the way it was a function of the form of government and state of culture.

There is a whole series of capitularies, themselves a renovatio of the imperial edicts of the old empire, that concern the notariate. The first one of Charlemagne's, published for Lombardy in 774, concerns clerics: "Ut nullus presbyter chartam scribat, neque conductor existat suis senioribus."²⁵ L. Muratori interpreted this as merely forbidding clerics to draw up acts for laymen, that is to make a profession out of being a notary.²⁶ But modern scholars think that the prohibition was more categorical. In any case this rule was largely ignored in Italy, as can be seen from the great mass of ninth century documents composed by ecclesiastical notaries who indeed held their own until the beginning of the twelfth century.

It is the comital notary, a judicial scribe at public court, that Charlemagne was most interested in promoting. Already in 781 his Capitulare Mantuanum has this to say about the functions of the count's notary at a placitum generale (public court):

²⁵MGH, Legum IV (Hanover, 1865), p. 504.

²⁶Ludovicus A. Muratori, Antiquitates Italicae medi aevi sive dissertationes ..., (6 vols; Milan, 1738-42), I, 664.

Comes vero de illorum parte per testes adfirmet, quod eis iustitiam facere voluisset, et omnia notarium suum scribere faciat, quanti ad se proclamarent vel quantas iustitias factas habent.²⁷

Notarius here is taken as synonymous with cancellarius by those who argue for a Carolingian origin of the Italian notariate. They claim that the clerks of the comital tribunal were based on the Frankish cancellarius.²⁸ Proponents of a Lombard origin deny that this was a new or special category of notary: "Non crediamo che si possa dedurre l'esistenza di un istituto particolare in Italia dello scrittore di placiti, quale è il cancellarius franco. . . . Lo scrittore non è mai detto cancellarius o amanuensis; non sono scritte publice o in mallo publico o ante comitem . . ." ²⁹ It seems to me that judicial scribes, while not entirely new to Italy, nevertheless became much more widespread there under Carolingian rule.

The judicial scribe is brought more firmly under public authority by Capitulare Missorum of 803:

Ut missi nostri scabinios, advocatos, notarios per singula loca elegant et eorum nomina, quando reversi fuerint [ie. to the royal palace at Aachen], secum scripta deferant.³⁰

²⁷Capitularia, I, 190.

²⁸Bresslau, Handbuch der Urkundenlehre, I, 591f, 618f.

²⁹Schiaparelli, "Notai nell'età Longobarda," p. 30-31.

³⁰Capitularia, I, 115.

Charlemagne had replaced the nonprofessional assessors (law experts) with permanent scabini chosen by the missi dominici. Likewise the missi, with the consent of the people and the count, were to elect "aus der Zahl der Notare bestimmte Individuen, welche wie die Scabinen die Pflicht hatten auf den Placitis zu erscheinen."³¹ The missi, representatives of central authority, kept these veritable chancelleries of notaries under their surveillance. Notaries of the comital courts not only wrote administrative and judicial sentences, but also private charters as we shall see later.

That these judicial notaries of the count enjoyed no monopoly can be seen from Charlemagne's last and most important legislative decree (dated 805) regarding the notariate: "De notariis, ut unusquisque episcopus, aut abbas, vel comes suum notarium habeat."³² Charlemagne's adoption of the title notarius seems to me a gesture toward Romanitas. Apparently he wanted to confer special dignity on the secretaries of the heads of the old provinces and dioceses. If a count, bishop or abbot neglected to acquire a notary, the emperor himself appointed one. This law brought the notariate, even that of Italy, "in eine nähere Beziehung zur Staatsgewalt,"

³¹Oesterley, Deutsche Notariat, p. 104. The notaries elected to placita were not those "welche königliche Beamte waren, wie die zur Hofkanzlei gehörigen Notare; es ist hier vielmehr nur von gewöhnlichen Tabellionen die Rede." (p. 102) In fact, "jene Vorschrift Carl d. Gr." tended "das Ansehen der Tabellionen . . . zu vermehren." (p. 101)

³²Capitularia, I, 121.

and tended "den Unterschied zwischen den Notaren der Hofkanzlei und den übrigen mehr und mehr zu verwischen," as Oesterley -- typical of German scholars with statist values -- is quick to observe.³³

Italian historians such as Petrucci may be justified in claiming that Charlemagne merely extended to the rest of his empire an institution which was already widespread in Italy. But he seems to err in asserting that thereby "l'imperatore non creava alcunchè di nuovo . . ." ³⁴ Actually Charlemagne had a new vision of the political and cultural unity of western Europe as a separate people. Complementing his ecumenical notion of empire, suggested to him by his ecclesiastical advisers, was a host of programs for harmonization of law, standardization of script, uniformization of currency and universalization of education. Perhaps we should add to this list of integrationist schemes, the ideal of an ecumenical notariate.

Charlemagne's capitularies are somewhat cryptic and unattractive in style compared with Lothar's which were perhaps inspired by the jurists of Pavia. Though Mengozzi concludes too much from insufficient evidence when he claims that, "Il notariato nacque a Pavia . . . [where the school of law] aver posto le basi della documentazione moderna . . ., creando quell'istituto caratteristicamente italiano che è

³³Oesterley, Deutsche Notariat, p. 107-8.

³⁴Petrucci, Notarii, p. 11.

il notariato."³⁵ Overall, the Pavese school of Roman law was no more than a mini-factor in a story of hybrid growth.

The judicial scribes of the comital court, who were notarii electi, are explicitly called cancellarii by Lothar's Memoria Olonnae comitibus data (ca. 822-823): "Ut cancellarii electi boni et veraces cartas publicas conscribant ante comitem et scabinis et vicarii eius . . ."³⁶ Nominated by public authority and writing before the assembled court, the cancellarius produced charters which were called public. How different essentially was this recourse to tribunal from insinuation before a curia? Perhaps Bouard begs the question by his phrasing of the monumental question: "L'acte notarié authentique du bas moyen âge procède-t-il de l'acte insinué . . . ou bien résulte-t-il d'une évolution d'un concept primitif: le recours aux tribunaux?"³⁷ At any rate, chancellors could draft charters elsewhere under exceptional circumstances:

De cancellariis qui veraces electi sunt: ad homines infirmos veniant et secundum legem instrumenta conscribant e a testibus roborentur; et statim cum scripta fuerit cartula, ostendant eam episcopo, comiti, iudices vel vicariis aut in plebe, ut vera agnoscatur esse.³⁸

³⁵Mengozzi, Scuola di Pavia, p. 198, 317.

³⁶Capitularia, I, 319. The text continues, "et nullis modis hoc facere presumant de pecunia, antequam legitimum precium detur." Does this clause refer to the judicial notary's legal counseling function? He could not draw up a document if he was apprised that the contract was for less than the just price.

³⁷Bouard, L'acte privé, p. 17-18.

³⁸Capitularia, I, 319. In another place Lothar decreed, "Si testes mortui fuerint et notarius supervixerit, cum duodecim iuratoribus ipsam cartam veram et idoneam faciat."

Notice that witnesses are required. The cancellarius by himself cannot win credence for his acts any more than the Lombard notary could.

Along with governmental appointment went regulation. Lothar set the fees that cancellarii were to receive for redacting private and judicial acts. These fees varied with the nature of the document and the means of the client:

Ut nullus cancellarius pro ullo iudicato aut scripto aliquid amplius accipere audeat, nisi dimidiam libram argenti de maioribus scriptis, de minoribus autem infra dimidiam libram, quantum res assimilari possit et iudicibus rectum videtur, accipiat. De orphanis autem vel ceteris pauperibus, qui exsolvere hoc non possunt, in providentia comitis sit, ut nequaquam inde aliquid accipiat.³⁹

This was not the first list of mandatory rates for notaries (Diocletian had set the precedent) but, as with so much else Carolingian, it was pregnant with future growth.

Besides the cancellarii Lothar also sought to govern even private notarii. His Capitulare Papiense of 832 has a chapter directed at notaries in general: "De notariis qui cartulas recipiunt ad scribendum . . ." ⁴⁰ One of its most important provisions is for an oath of office: "Notarii autem hoc jurare debent, quod nullum scriptum falsum faciant . . ." Contemporary Italian records contain no account of any such oath having been taken. This may be merely capricious,

³⁹ Fontes iuris italicici, ed. Padelletti, "Ex Lotharii legibus in Capitulare italico," lex 71.

⁴⁰ Ibid.

or it may mean that Frankish legislation had little impact on Italian notarial custom. However an oath taken by a thirteenth century Ravennese notary does survive, that may have its roots back here in 832. In chapter ten we will examine it in detail. Lothar's capitulary continues:

[nullum scriptum faciant] . . . nec in occulto [that is, nothing besides what transpired at the placitum], nec de uno Comitatu in alio, nisi per licentiam ipsius Comitis, in cuius Comitatu stare debet. Si vero necessitas in itinere aliquem compulerit, aut infirmitas gravis, secundum Capitulare Genitoris nostri faciant. Si Notarius aliter fecerit, illud quod fecerit, apareat inane et vacuum.

Comital notaries had been elected "per singula loca".

Apparently private notaries too were now being restricted to the limits of their contado. Indeed, the decay of the private notariate in Italy at the expense of the notarii comitatus will be a theme for the next century. Finally, a piece of legislation by Louis the Pius prescribes that notaries, like judges, be drawn from the same "noble" (ie. worthy) class by the royal missi:

De iudicibus inquiratur, si nobiles et sapientes et Deum timentes constituti sunt Similiter et notarii legibus eruditi et bonae opinionis constituentur et iusiurandum praebeant, ut nullatenus falsitatem vel colludium scribant . . . ⁴¹

This "oracle" too we will see fulfilled in the following centuries.

⁴¹ Fontes iuris italici, "Ludovici Pii," lex 98.

In contrast to the contemporary poet who called Charlemagne "the lighthouse of Europe," it is now fashionable to regard him as little more than a candle. "There is no evidence of any imagination in him, and no startling innovations in any field can be attributed to him."⁴² Extolling "historical realism," H. Fichtenau's post-war study stresses the problems which Charlemagne and his successors failed to solve.⁴³ Admittedly the Carolingians overreached themselves and tried to do too much. In our case for instance, the missi could never get around to every civitas to gather the names of the official notaries. But does it really matter so much that they failed to do so? More important is the program for the future that the Carolingians left behind -- nothing less than a normative pattern for the medieval notariate. Even in Italy, where the institutional continuity of the notariate has been demonstrated, later Italian princes and communes proved themselves true heirs of the Carolingian missi when they were delegated by imperial authority to create notaries.

V.

At Ravenna, penetration of the Carolingian notariate was a belated development which did not culminate until the thirteenth century. However, already in this charter of 776 we can see the germ of things to come:

⁴²Stewart C. Easton and Helene Wieruszowski, The Era of Charlemagne: Frankish State and Society (New York, 1961), p. 34.

⁴³Heinrich Fichtenau, The Carolingian Empire: The Age of Charlemagne, trans. by Peter Munz (New York, 1964).

In nomine Domini Dei Salvatoris nostri Jesu Christi,
 regnante domno nostro Karolo serenissimo rege,
 Stephanus Notarius scriptor huius Cartule donacionis
 . . . complevi & dedi. Ego Gratianus Dei gratia sacri
 palatii Notarius obtenticum huius cartule vidi . . .⁴⁴

Gratianus was obviously an imperial notary and Stephanus may have been an elected notary in charge of transcribing the record of a lawsuit (placitum). However, another document from 789 speaks of one "Johannes filius Vitaliani notarii de solaria,"⁴⁵ which sounds as if he may have been independent of the judicial system.

Important evidence from Ravenna sheds light on the heated debate concerning comital notaries at placita. The record survives of one such public hearing from 838, held under the aegis of "Adalghisus Comes & Missus Domni Imperatoris," and "Witgerius indignus Sancte Taurinensis Ecclesie Episcopus & Missus Domni Imperatoris." The Carolingians sent their missi, despite papal objections, even into the former Byzantine territories which technically had been ceded to Rome. By the famous Donation of Pepin of 756, the keys of the city of Ravenna had been placed on the tomb of St. Peter, thus inaugurating a period of papal domination of Ravenna which was to last until 891. Though the Pope was represented at Ravenna by his legate (in this case, "Theodorus Episcopus & Missus Sancte Sedis Apostolice"), effective control of the city was in the hands of the archbishop, the beneficiary of this particular proceeding. Crucial for us

⁴⁴Fantuzzi, IV, 157-9.

⁴⁵Ibid., 162. "Stephanus notarius" is also mentioned.

is the fact that the scribe here is a comital notary, Caufolus Ghisulfus, personal scribe to the missus, Count Adalghisus: "Unde harum notitia iudicati deliberationis Caufolo Ghisulfo Adalgisi Comit'is Notario scribere monuimus."⁴⁶ Several tabelliones are mentioned in the text but they are not called notarii which title is reserved for the notarius comitis. This evidence seems to me to cast doubt on Schiaparelli's contention that, "non si ebbe in Italia il notaio speciale di giudicati, come istituto nuovo importato . . ."⁴⁷

Side by side with these non-Mediterranean elements, the traditional tabellio remained:

Vitalianus Tabellio huius Civitatis Ravenne . . .	(anno 767)	}48
Joannes in Dei nomine Tabellionem de Civ Rav . . .	(anno 838)	
Moyses Tabellio Civitatis Ravenne . . .	(anno 855)	

In sharp contrast to the rest of Italy, Ravennese private notaries were not swallowed up by the imperial notariate. Ravenna was a very conservative place and consequently a long incubation period was required before notarius would completely win out over the deeply entrenched tabellio. This transformation would only occur under the thirteenth century archbishops of Ravenna, who acted in effect as heirs of the Carolingian missi.

⁴⁶Fantuzzi, II, 7.

⁴⁷Schiaparelli, "Notai nell'età Longobarda," p. 33.

⁴⁸Fantuzzi, II, 4, 9; IV, 165.

As a coda we are fortunate to have a text showing that our interpretation was shared by medieval Ravennese themselves. On July 1, 1372, at Ravenna, a certain Count Stefanolo de Henzera created some notaries. In order to confirm that this was his prerogative, he presented a document which is surely a forgery. It purported to be a bull of Pope Hadrian I (772-795). We learn from the following citation of it, made by the fourteenth century notary who was present (Belloli), that the privilege of creating notaries was construed as emanating from the plenitude of papal and imperial power:

De sanctissime sedis apostolice ac imperialis plenitudine potestate ab inclito et magnifico imperatore karolo magno in illustres et clarissimos viros dominos comites palatinos de Henzera comitatus Mediolani per universum orbem ac romanum imperium creandorum tabelionum et iudicum ordinariorum iurisdictio noscitur emanasse a SS. ac magnifico apostolico Adriano sub anno domini septingentesimo sexto die X mensis maij in civitate Rome ut ea iurisdictionis gratia apostolice sedis et imperii reffundetur in subiectos ea propter ex indultis eisdem comitibus et eorum domini sub hoc ab apostolica sede et imperiali culmine specialibus privilegiis et in eisdem a me francisco condam ser zintilini de bellolis notario infrascripto de Ravenna visis et lectis evidenter plenius et serius continetur. ⁴⁹

Turning back six hundred years, the forger instinctively recognized Charlemagne as the fount of this ecumenical institution.

⁴⁹"Documenti dell'archivio storico comunale di Ravenna anteriori al sec. XII," ed. S. Bernicoli, FR, Supplemento no. 1, p. 3. Hereafter, "Bernicoli".

CHAPTER IV

THE IMPERIAL NOTARIATE AT RAVENNA

"By origin, the office of notary was closely bound up with Roman law, and with the Roman Empire, and this connection was still jealously maintained; notaries signed themselves imperiali auctoritate notarius. This was not a mere rhetorical flourish; notaries were in fact created from the plenitude of imperial power ... and were entitled to exercise their art 'per totum Romanum imperium.' Deeds recording the creation of a notary echo with the splendid sonority of a greater world."¹

Imperial notaries are overlooked almost completely in the standard histories of the notariate in Ravenna by Buzzi and Lorenzi who each treat only the "Curia arcivescovile" and the "Curia cittadina." Nevertheless, notaries of the Ostrogothic kings and the Byzantine and German emperors were on the scene at Ravenna almost constantly throughout our period and seem worthy of attention.

Notaries of the imperial court at Ravenna were taken over after 476 by Odoacer, and Theodoric and his successors also continued to use them. In a papyrus dated 489 (the oldest surviving from Ravenna) King Odoacer refers to his

¹John Larner, The Lords of Romagna: Romagnol Society and the Origins of the Signorie (London, 1965), p. 149.

notary: "Quam donationem Marciano viro clarissimo, notario nostro, scribendam dictavimus . . ." ² Theodoric's famous master of offices, Cassiodorus, had a grandfather who was a notary under Valentinian III. Among Cassiodorus' formulae (model letters announcing appointments to various offices) is this one concerning the office of imperial notary:

. . . ab illa indictione notarium te nostrum esse censemus, ut ordine decurso militiae ad primiceriatus feliciter pervenias summitatem, honor, qui efficit senatorem, cui patrum aula reseratur, non iniuria: namqui nostris curis militat assidua lucubratione, iuste videtur et curiam Libertatis intrare.³

His use of the word militia here for the idea of service ("decurso militiae", in course of service) calls for some commentary. In late Roman times all service of the state was loosely called militia -- either militia armata (the army itself) or militia officialis (administrative offices). In fact the notarial corps itself was said to constitute a militia -- only an ordinary militia at first but eventually it was upgraded to officer rank. In the beginning, under Constantine, notaries held non-commissioned military grades such as protectores or domestici, but later they rose to be tribunes, that is officers.⁴ What happened was this: the

²Tjäder, Papyri, p. 288, II, 4.

³Cassiodorus, Variae Epistulae, ed. T. Mommsen, MGH, AA, XII (1894), p. 189, I. 8.

⁴Jones, Later Roman Empire, I, 378. Medieval notaries "rappresenta un altro elemento di forza delle società vicino al militare," Durando, Tabellionato o notariato, p. 80.

nobility traditionally associated with the militia armata was transferred to the militia officialis in the person of the notary. Thus Cassiodorus speaks of notarial service as an ennobling militia. Of course, there was a later development of the militia concept.⁵

The first Ravennese notary about whom we know anything in detail is Joannicus, notary of the Exarch Theodorus from 678 to 687 and then notary of Emperor Justinian II until 695.⁶ Writing about a century later, Agnellus of Ravenna (ca. 805-850), Joannicus' great grandson, gives an account which we must remember is family history and as such may try to make a martyr of a celebrated ancestor.

Here is a young man, Joannicus by name, a very experienced scribe, learned in the scriptures, abounding in wisdom, prudent in counsel, truthful in conversation, careful in speech and full of all knowledge, born of a very noble family, trained in Greek and Latin.⁷

Knowledge of Greek was unusual in seventh century Ravenna, although not uncommon among other palace notaries such as

⁵For the fascinating later metamorphosis into militia sacerdotia and militia literata see Hermann H. Fitting, Das Castrense Peculium in seiner geschichtlichen Entwicklung und heutigen gemeinrechtlichen Geltung (1871).

⁶Cf. J.-O. Tjäder, "Die Bestrafung des Notars Johannicius im Liber Pontificalis des Agnellus," Italia medievale e umanistica, II (1959), p. 431-39.

⁷"Est hic adolescens unus Iohanicius nomine, scriba peritissimus, in scripturis doctus, in sapientia fecundus, in consilio providus, in sermone verax, cautus eloquio omnique scientia plenus, nobilissimis ortus natalibus. . . Grecis et Latinis literis qui eruditus est." Agnellus, Liber Pontificalis Ecclesiae Ravennatis, ed. O. Holder-Egger, MGH, Scr rer Lang, (1878), p. 356, l.24-32.

Paul the Deacon, notarius at the Pavese court and Falco of Benvenuto, the later Lombard patriot and chronicler (who took a rather dim view of the Norman invaders). Our Joannicus so distinguished himself at Ravenna that Justinian II (Emperor 685-695 and 705-711) called him to his court in Constantinople. Returning to Ravenna ca. 692, Joannicus was famous throughout Italy. In 695, along with other prominent citizens of Ravenna, he may have assisted in overthrowing Justinian II who was subjected to rhinokopia and glossotomia, mutilation of nose and tongue. In 705 when Justinian returned to power as "the Emperor without a nose" (actually he wore an artificial nose made of gold), he avenged himself on the rebellious Ravennese nobles with characteristic Byzantine cruelty. Here he devises an appropriate punishment for his notary, Joannicus, who had been implicated in the conspiracy:⁸

Therefore Justinian turned to the eunuch and ordered Joannicus brought into his presence saying, "Is not this cur Joannicus, the scribe?" And when he answered that it was he, the imperial anger rose higher. He orders that a reed pen be brought and placed under the nails of all of his fingers; in his anger he commands [it to be driven] up to the second joint. He orders that paper and pen be given to him so that he could write . . . and

8

"Igitur Iustinianus in achameniam versus, iussit deferri ante cunspectum suum Iohanici . . . dicens: "Nunquid iste est Iohanicis scriba?" Et ubi responsum est de eo, quia ipse est, surrexit altius divalia ira. Arundinem deferri iubet et sub unguis omnibus illius digitorum in furore . . . praecepit usque ad secundum articulum; cartam calamoque dari imperat, ut scribat. . . . et praeconem clamari iussit: "Iohanicis Ravennianus ille facundus poeta, quia invictissimo augusto cuntrarius fuit, inter duas fornices murina morte privetur." Ibid. While dying, Joannicus prophesied that his tormentor, Justinian II, would be murdered as did happen, according to Agnellus.

he ordered the public crier to proclaim, "Joannicus of Ravenna, eloquent poet, because he opposed the invincible Augustus, he will be crushed between two walls like a mouse."

Byzantine imperial notaries disappear after the fall of the exarchate in 751. Notaries of the Carolingian emperors, notarii sacri palatii, were used almost exclusively as judicial scribes. In the post-Carolingian anarchy that lasted until the mid-tenth century the notarial system in Italy became disorganized and purely local. Until the mid-tenth century ordinary notaries did not need any authorization in order to draft documents.⁹ Even at Ravenna tabelliones took over the imperial notaries' job of transcribing records of lawsuits (placita). In contrast to the Carolingian placitum of 838 (quoted in our last chapter) which was written by a notarius of the emperor, the following placitum of 950 is made by a simple tabellio who gives no indication of any higher appointment:

. . . in iudicio & in generale placito Dom. Rambertus
gratia Dei Dux Constantinus in Dei nomine
Tabellio de Civitatis Ravenne scriptor hunc iudicatum ...¹⁰

The seal of another tabellio who served in the curia of an

⁹" . . . bis in die Mitte des 10ten Jahrhunderts fast alle Urkunden von gewöhnlichen Notaren ohne Andeutung irgend einer höhern Autorisation verfasst sind;" Oesterley, Deutsche Notariat, I, 138-9.

¹⁰Fantuzzi, IV, 176-179. Another tabellio who belonged to the imperial chancellery and drew up a placitum in 1022 was "Petrus Ravennas in Dei nomine tabellio," Archivio arcivescovile di Ravenna Q8810. Cf. also placita from 1001 and 1030, Fantuzzi, I, 227-9, 263-4.

imperial legate has come down to us.

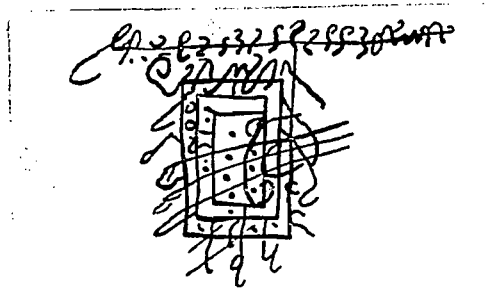


FIGURE 2: SEAL OF DOMINICUS
TABELLIO CIVITATIS RAVENNE
(ANNO 965).¹¹

It is one of the earliest extant seals from Ravenna and may show imperial influence. Of course, all seals and monograms derive ultimately from those of the Roman emperors. But a model closer to hand is that of the Ottonians. In a document drawn up at Ravenna, the seal of Otto III bears the inscription "Renovatio imperii romanorum."¹² The sophisticated imperial ideology of Otto, who had been nursed by his Greek mother on tales of the greatness of Byzantium, outdid even Charlemagne's antiquarianism and may have had great appeal in our city which lived on her own memories of imperial grandeur.

Renewed growth of the imperial notariate in northern Italy commenced in the middle of the tenth century. As part of the centralizing efforts of the Kings of Italy, Hugh (926-947) and Berengar (947-963), resident royal notaries "als Schreiber von Privaturkunden oder Urkunden der Grafengerichte" were introduced into many cities.¹³ Under the Ottonians (963-

¹¹Lorenzi, Notariato ravennate, II, 13-15; plate 1.

¹²See infra,

¹³Bresslau, Handbuch der Urkundenlehre, I, 625. At Ravenna the period of domination by the Kings of Italy (891-963) ends with the fall of Berengar and Adalbert in 963.

1024) imperial notaries, claiming exclusively for themselves the business of private contracts, proliferated to such an extent that they all but drove the private notariate out of existence.¹⁴ "Im 11. und 12. Jahrhundert ist die Masse der Urkunden von notarii sacri palatii geschrieben, d.h. die Masse der Notare ist in den Stand der notarii sacri palatii übergegangen."¹⁵ Thus, a homogeneous notariate was appearing in Lombardy and Tuscany. But if in these places local notaries were being swallowed up by the imperial notariate, that did not happen in the Romagna as a whole and Ravenna specifically. Here, private documents are still the sole preserve of the tabelliones. Representative as any is this donation, calmly composed by a tabellio in the "year of terrors", 1000:

. . . regnante domino piissimo perpetuo agusto Oto a
Deo coronato magno pac. imper. in Italia vero a quinto,
die sextodecimo, mense ianuario, ind. terciadecima, Rav.
. . . . Andreas in Dei nom. tab. huius civ. Rav.
scriptor huius libelli . . .¹⁶

Nevertheless from time to time at Ravenna individual

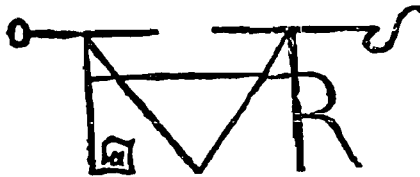
¹⁴According to Petrucci, Notarii, 12-13, "in realtà qui non si tratta di sostituzione di una categoria all'altra, ma piu semplicemente di un cambiamento di titolo . . ."

¹⁵Ernst Mayer, Italienische Verfassungsgeschichte von der Gothenzeit bis zur Zunfttherrschaft (2 vols; Leipzig, 1909), I, 124. "Aber ein Exklusivrecht für diese königlichen Notare hat sich doch nicht gebildet Einigemal sind noch in der ersten Hälfte des 12. Jahrhunderts solche gewöhnliche notarii gerade die notarii einer civitas."

¹⁶Regesto di S. Apollinare Nuovo, ed. V. Federici, Regesta Chartarum Italiae (Rome, 1907), p. 30-32. Hereafter, "Federici".

notaries of the German emperors do draw up certain special documents. (Bear in mind that the city was a favorite imperial residence, especially under Otto III after he was forced to leave Rome.) First of all, placita came to be composed by imperial notaries once again. The first clear example is in 1210, but already in 983 two cancellari participated ". . . in generali placito domnus Otto serenissimus imperator augustus juxta suum palatium justitias faciendas . . ." ¹⁷ Secondly, grants of privileges are instrumented by imperial chancellors as this monogram from a charter of Otto II (in 981) and seal from one issued by Otto III (in 1001) attest:

Signum Domni Ottonis secundi Serenissimi imperatoris



& invictissimi regis

Johannes Cancellarius ad vicem Petri Episcopi & archicancellarii recognovi & ssi.

Sigillum deperditum

FIGURE 3: MONOGRAM OF OTTO II (ANNO 981). ¹⁸

¹⁷Fantuzzi, I, 212. In 990 a placitum was held "in loco qui dicitur sablunaria post tribunal palatii quod olim construere iussit domnus Hotto Imperator." Ibid., I, 219.

¹⁸Ibid., I, 209.

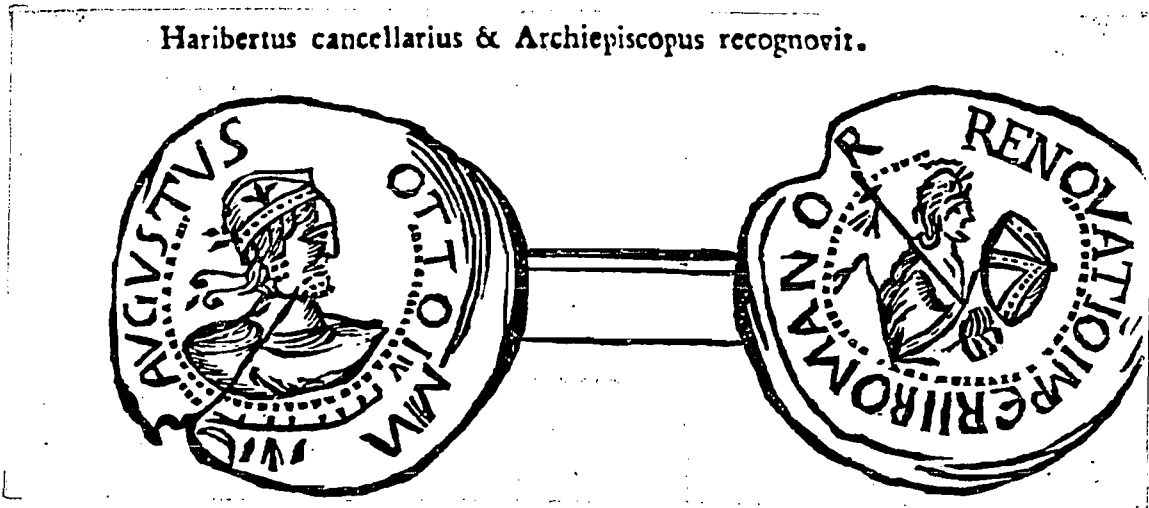


FIGURE 4: SEAL OF OTTO III (ANNO 1001).¹⁹

The female figure on the right is, I think, an allegory of Rome. Thirdly, imperial notaries make authentic copies of documents and serve as witnesses, both of which functions are illustrated in the following legal transaction of September 1, 1037:

Ego Nicolaus quondam Andree Gualfredi de Ravenna Imperiali Auctoritate Judex ordinarius & Notarius hoc exemplum ex Autentico & originali rescripto predicto fideliter sumpsi Ego Facius quondam Ser Doxii Civis Raven. Imperiali Auctoritate Notarius & Judex ordinarius Auscultationi [witnessed the transcription] Ego Liberius quondam Dominici de Guirittis Imperiali Art. Judex Ordinarius & Not. de Ravenna [also witnessed it]²⁰

This moment in history circa 1050 is the critical point in the evolution of the authentic act. Notarial acts

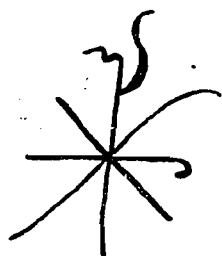
¹⁹Fantuzzi, I, 231. On the iconography, see Percy E. Schramm, Die deutschen Kaiser und Könige in Bildern ihrer Zeit, 751-1152 (Berlin, 1928), p. 99f.

²⁰Ibid., p. 276-277.

acquire publica fides at the same time that the idea takes hold that notaries must be appointed by some universal authority, either imperial or papal. Illustrating this point beautifully is an important text from 1033, "actum in civitate Corneliensi," just outside of Ravenna:

. . . rogans me Notarium, ut de iis conficerem publicum Instrumentum Ego Arardus quondam Arardi Imperiali auctoritate Notarius predictis omnibus interfui, & ea publica rogatus scribere, publice scripsi, & subscripsi.²¹

This text, in its adoption of the word publica and in its allusion to imperial authority, signals important advances made outside of Ravenna. For the latter, per contra, the following subscription is representative, in its use of the old term tabellio and the conspicuous absence in it of any reference to imperial appointment: "Albertus de Ravenna publicus tabellio [anno 1114]."²² Admittedly, tabellio gave way to notarius in this precocious act of 1153:



"Rodulfus publicus notarius [anno 1153]."²³

FIGURE 5: SEAL OF RODULFUS.

²¹Fantuzzi, VI, 21. ²²Ibid., II, 106.

²³Lorenzi, Notariato ravennate, II, 32; plate 6. From the same year (1153), "Ego Joannes Notarius & Tabellio scripsi, complevi & absolvi," Fantuzzi, IV, 268.

But it is not until the mid-thirteenth century that the complete formula, "imperiali auctor. ac Sanc. Rav. Ec. notar. . . . in publicam formam redegi"²⁴ becomes standard at Ravenna. It is true that the pope also had the right to create notaries. This proved less ideologically offensive to most Italian republics. But Ravenna was habitually anti-papal so that it is not until the fourteenth century that even joint authorization of the pope with the emperor is admitted: "Ego Antonius . . . publicus apostolicae Sedis et imper. auctor. notar. . . . [anno 1303]." ²⁵

The stubborn persistence throughout the twelfth century of the title tabellio epitomizes an important truth: the basic affiliation of the scribes at Ravenna was not to the emperor, nor to the pope, nor even to the archbishop, but to the ancient collegia. In some Italian cities the notarial guilds were already under the direct control of the emperor.²⁶ As we shall see, the Ravennese college of tabelliones, independent hitherto, became subjected to arch-episcopal and imperial authority in the thirteenth century.

The imperial power to create notaries was delegated not only to barons, to cities and monasteries, but also to bishops. Just when the archbishops of Ravenna began appointing lay tabelliones is uncertain, but we know that he did so in

²⁴Fantuzzi, I, Nr. 171 [anno 1264]. ²⁵Ibid., V, Nr. 73.

²⁶Annali Bolognesi, ed. L. Savioli (Bassano, 1784-95), vol. I, pt. I, p. 176; vol II, pt. I, p. 135.

the year 1200:

. . . dictus Archiepiscopus accepit calamarium & pinnam & cartam propria manu & investivit dictum Lauterium ex auctoritate Domni Imperatoris ut de cetero liceat ei operari dictam artem tabellionatus . . . ²⁷

Note that imperial authority is invoked. However, a special grant to exercise this right, such as Otto I made to the bishops of Parma in 962, may never have been made to the episcopate at Ravenna. Certainly not in 1200 when "es keinen Kaiser gab." Bresslau attributes it "an die allgemeinen kaiserlichen Privilegien," but I think that Ficker gets to the heart of the matter when he observes: "Es scheint sich da doch um ein eigenthümliches, althergebrachtes Recht des Erzbischofs zu handeln."²⁸ Apparently at Ravenna the appointment of notaries was not traditionally considered the exclusive right of the emperor.²⁹ It is significant that in this text Lauterius is not called notarius and is said to

²⁷Fantuzzi, V, 300. In 1288 the archbishop of Ravenna, alluding to "auctoritate nobis ab imperiali maiestate concessa," empowers one to practice the officium tabellionatus "ubique per imperium," Appendice ai Monumenti Ravennati del Secolo di Mezzo del conte Marco Fantuzzi, ed. A. Tarlazzi (2 vols. in 4; Ravenna, 1869-85), I, 394. Hereafter "Tarlazzi".

²⁸Bresslau, Handbuch der Urkundenlehre, I, 629. Julius Ficker, Forschungen zur Reichs- und Rechtsgeschichte Italiens (4 vols; Innsbruck, 1874), II, 82. He adduces the additional evidence (p. 97) that the archbishop likewise was not acting as a representative of the emperor in a legitimation in 1214.

²⁹After all, Frederick Barbarossa was the first emperor to insist on it as a royal right. Before the Diet of Roncaglia (1158), many cities (Genoa is a prime example) named their own notaries, and after the Lombard League others jealously usurped the right.

exercise the ars tabellionatus. Notarius and tabellio still remained distinct offices though it was becoming popular to hold both simultaneously as this title from 1216 demonstrates: "Donus imperialis aule notarius et Ravenne tabellio."³⁰

There were many titles besides that of imperiali auctoritate notarius that a Ravennese scribe could hold. Later we will examine the origin and evolution of each.³¹ Once granted a title, the scribe was usually reluctant to give it up. Nevertheless, the unmistakable trend in the following roster of titles is toward assimilation of the Ravennese tabellio to the imperial notarius of the rest of Italy. All along, the basic distinction was between the tabellio's allegiance to his schola and the notarius' to the emperor (or to the archbishop in the case of ecclesiastical notarii). This distinction started to blur already at the end of the twelfth century:

Ego Johannes Pesadri dei misericordia Imperialis
Majestatis & Aule Notarius scripsi. [anno 1197]

Bonifacius Communis Ravenne Tabellio, atque Sacri Palacii
Notarius . . . [anno 1198]³²

Many communes, such as Bologna, obtained the formal right to

³⁰Fantuzzi, III, Nr. 43. Also, in 1233: "Ego Notalis Dei gratia imperialis aule tabellio et notarius Communis Ravenne," ibid., Nr. 51. And in 1246: "Ego Guido Mathaei tabellio imperialis et Ravennas notarius," ibid., IV, Nr. 119.

³¹The origin and evolution of each will be examined in chapters five and six.

³²Fantuzzi, IV, 298-99. Compare "communis Bononiensis et imperatoris F. auctoritate constitutus notarius" (1186), Annali Bolognesi, II, 148.

create notaries, though there is no record of it for Ravenna. J. Mundy has shown that by 1200 the basic affiliation of most Italian notaries was with the town-licensed guild; nonetheless imperial appointment "remained useful because scribes who were granted [it] . . . could service an 'international' clientele."³³

Petrus tabellio comunis Arimini, notarius sacri palatii
Mediolanensis et missus d. Ottonis Rom. imperatoris.
[anno 1216]³⁴

Missus here means judge. Through the centuries at Ravenna we could cite many examples of judex et notarius.

Ego Nomaeus Dei gratia Ravennae et imperialis Aulae
atque etiam communis Cerviae notarius. [anno 1220]³⁵

Nomaeus belonged to the Ravennese schola, was authorized by the emperor and worked for the community of Cervia. By 1233 simple scribes were dropping tabellio and boasting of their imperial qualification: "Dominicus imperialis aule de Ravenna notarius [anno 1233].³⁶ Judge-notaries did likewise: "N. sacri imperii judex ordinarius et notar. [anno 1235].³⁷ After 1250 most notaries abandon the ancient formula for the more prevalent and prestigious title:

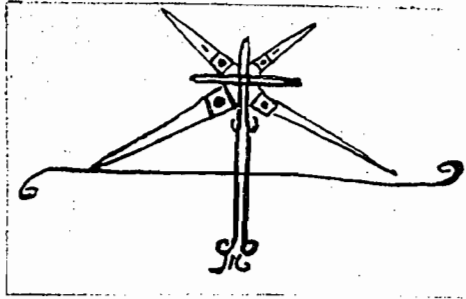
³³John H. Mundy, Europe in the High Middle Ages 1150-1309 (London, 1973), p. 2-3.

³⁴Fantuzzi, V, 317, 320.

³⁵Ibid., IV, Nr. 101.

³⁶Fantuzzi, III, 79.

³⁷Ibid., II, Nr. 111-2.



"Almericus Imperiali auctoritate
notarius [anno 1259] ".³⁸

FIGURE 6: SEAL OF ALMERICUS.

Thus even at Ravenna the idea eventually triumphed that the notary is an emanation of imperial authority. From being a private professional, the notary became a public person licensed by public authority. The evolution we have traced at Ravenna could be compared with that at Naples, where a free notariate successfully resisted Frederick II's attempts to abolish it and to substitute an imperial notariate.³⁹

³⁸Lorenzi, Notariato ravennate, II, 35; plate 7.

³⁹See the perceptive work of A. Gallo, "I curiali napoletani del medioevo," ASPN, 44 (1920).

CHAPTER V

THE ARCHEPISCOPAL NOTARIATE AT RAVENNA

" . . . the Gregorian enthusiasts' ambition to free the clergy from lay power resulted not only in churchmen temporarily leading western Europe, but also in the creation of . . . a lay sense of profession that, in the long run, enabled laymen to take the leadership of Europe from the clergy itself."¹

One of the oldest institutions in this city filled with antiquities was the church of St. Apollinare, named for a legendary companion of St. Peter. By the fifth century at the latest the successors of Apollinarius had their own notaries. The greatest of episcopal chanceries, however, was that of Rome. Desiring to give as ancient an origin as possible to notaries of the Roman church, the anonymous compiler of the Roman Liber Pontificalis claimed that Bishop Clement in 98 A.D. divided the city of Rome into regions under seven notaries who were to collect gesta martyrum.²

¹Mundy, High Middle Ages, p. 31.

²"Hic fecit VII regiones et dividit notariis fidelibus Ecclesiae, qui gestas martyrum sollicite et curiose unusquisque per regionem suam diligenter perquireret." Liber Pontificalis, ed. T. Mommsen, MGH, Gest Pont Rom, I (1898), p. 7. This section was compiled ca. 514-524, probably by a papal notary. The Romanist historian, E. Mayer, associates these notarii regionarii with the civil decuriales who were supervised by the magister census, Italienische Verfassungsgeschichte, II, 102.

But notaries who assisted bishops with their temporal business probably appeared only at the beginning of the third century when churches became corporations and owned property.³ Under Constantine, scholae of notaries under primicerii were formed in the bishops' courts.⁴ An additional impetus at Ravenna must have been the proximity of the imperial chancery after 402.

Comparison between Rome and Ravenna is invited by another interesting passage from the Roman Papal Book which concerns Pope Julius (337-352), who reorganized the papal archives ravaged in the persecutions:

Hic constitum fecit . . . notitia quae omnibus pro fide ecclesiastica est per notarios colligeretur, et omnia monumenta in ecclesia per primicerium notariorum confectio celebraretur, sive cautiones vel extrumenta aut donationes vel conmutationes vel traditiones aut testamenta vel allegationes aut manumissiones, clerici in ecclesia per scrinium sanctum celebrarentur.⁵

At issue here may be a jurisdictional dispute between the episcopal and municipal courts at Rome. Julius is ordering all clerics to register their deeds in his court.⁶ By

³Reginald L. Poole, Lectures on the History of the Papal Chancery Down to the Time of Innocent III (Cambridge, 1915), p. 6-7.

⁴H. Leclercq, "Notaire," Dictionnaire d'archéologie chrétienne et de liturgie (1936), XII, 2, coll. 1628. Augustine dedicated his Enchiridion to "Laurentius primicerius Romanae Ecclesiae," and other primicerii are found at Alexandria in 431 and Constantinople in 451.

⁵Liber Pontificalis, Mommsen ed., p. 75.

⁶Louis Duchesne, Le Liber Pontificalis, Texte, Introduction et Commentaire (2 vols; Paris, 1886), I, 206n.10.

contrast, contemporary bishops of Ravenna were very much overshadowed by the civil administration. Witness their passive submission to the gesta municipalia in this donation from 491:

Ego hanc epistulam donationis Jobino Noto meo scribendam dictavi dono contuli sancto ac venerabili Johanni Ep[iscop]i hujusce Urvis Defensores sanctae Eccl[esi]ae catholicae Civitatis Rav. dd. Petimus ut gesta nobis edi jubeatis ex more. ⁷

Of course as archbishops (the title they acquired from Justinian) of the Byzantine capital in Italy, their ecclesiastical, economic and political fortunes improved. Archbishop Maximian (546-556) was made virtual primate of Italy, was showered with confiscated Arian property and was granted broad administrative powers. His annual income was twelve thousand gold pieces. Nevertheless even at the height of episcopal power under Justinian, all donations to the Ravennese church had to be proved before the city magistrates as in this insinuation from January 13, 552:

Domesticus, primicerius notariorum, et Thomas secundocirius idem notariorum, una cum Cypriano et Thomate defensoribus ecclesiae sanctae catholicae Ravennatis, per unum ex se, Thomatem secundocirium, dixerunt: "Gratias agimus gloriosae potestati vestrae, quia petitionem nostram ad effectum congruum per duxistis. Nunc petimus, ut ex his, quae acta sunt, gesta nobis edi propitii censeatis. ⁸

With these church officials appearing before the municipal curia we cannot speak of replacement of civil by episcopal

⁷I papiri diplomatici raccolti ed illustrati dall' Abate Gaetano Marini . . . (Rome, 1805), p. 130-1. Hereafter "Marini"

⁸Tjäder, Papyri, I, p. 216, B, VIII, 1-3.

authority at Ravenna, which is quite unusual considering that almost everywhere else in the west by this date the bishops had inherited the civil side of Roman administration. In fact after 552 no further mention of episcopal notaries is made in Ravennese documents until 625 and 639.⁹

Compensating for this brief interval of obscurity in the documents is a rather personal epitaph, inscribed on marble, of an episcopal notary of Ravenna from the year 571:

+ hic requiescit in pace Petrus notarius sanctae Ecclesiae Ravennatis, quem misericors deus justum recepit antequam malitia mutaret etiam cor ejus et quamvis gravem luctum suis reliquit parentibus juvenali susceptus in aevo, ipse tamen exultat in Christo. . . Vixit in saeculo annis XXVII et dies XLVIII. Depositus sub die XV kalendas iulias indictione IIII imperante domino nostro Iustino perpetuo Augusto anno III; juxta quem reposita est soror ejus Ze..nia, non inpar mentis, rapta teneris in annis, quae vixit annis VII mensibus X diebus V . . . 10

Mention in the same breath of his seven-year-old sister "not unequal in mind" makes one wonder how long Petrus had been a notary. Adolescents held the office of notarius in the church of Rome at the beginning of the fourth century.

⁹Tjäder, Papyri, I, 356, l. 2-4; p. 419, n.49. Was their sudden revival at this time perhaps prompted by this decree of Emperor Heraclius in 628? "De numero definito clericorum magnae ecclesiae . . . syncelli duo, Cancellarii duodecim, Defensores decem, Referendarii duodecim, Notarii quadraginta . . .;" quoted by Oesterley, Deutsche Notariat, I, 84n.23. Bresslau remarks that "im Abendland ist mir nichts dergleichen bekannt," Handbuch der Urkundenlehre, I, 19ln.2.

¹⁰Corpus Inscriptionum Latinarum, ed. T. Mommsen et al. (Berlin, 1862), vol XI, no. 315. Cited by Leclercq, "Notaire," coll. 1639-1640.

In gesta proceedings of 625 the double title notarius et scrinearius appears. The court usher tells the presiding officials: "Donus vir spectabilis, notarius et scrinearius sanctae Ravennatis ecclesiae prae foribus est, petet te ingredi, quid iubetis?"¹¹ "È stato controverso se in questo vocabolo di scriniarius sia inclusa necessariamente l'idea di archivista, e se, per conseguenza, debba farsi una netta distinzione di senso tra notarius e scriniarius."¹² Did Donus, for example, both write documents and keep records? In the contemporary Roman chancery these offices were not distinct, the titles were used interchangeably.¹³ So too Ravennese scribes were called by the combined title or by either of the two titles separately. As late as 782 we hear of a Ravennese scriniarius: "Scriptum per manus Iohannis scriniarii . . ."¹⁴ However, by the ninth century, ecclesiastical scribes there forsook the latter appellation in favor of notarius which is used solely: ". . . Petro clerico & Notario Sancte Ravennatensis Ecclesie . . . [anno 858]."¹⁵ They probably were following the lead of the Pope.

¹¹Tjäder, Papyri, I, 356, l. 2-3.

¹²Paoli, Paleografia latina, p. 95.

¹³Poole, Papal Chancery, p. 15-16. Scriniarii are also found at Grado, Milan and Terracina. The combined title Not. et scrin. appears in the papal manual Liber Diurnus (ca. 685-751), but already "au IVE et au VE siècle, le scrinium . . . [of Rome was organized] sur le modèle du scrinium et des administrations civiles du Sénat et du préfet urbain." Leclercq, "Notaire," col. 1633.

¹⁴Bernicoli, p. 5.

¹⁵Fantuzzi, II, 12.

Scriniarii wielded considerable authority in Ravenna especially it seems during the eighth century which was a time of troubles for the archbishops, what with their rivalry with Rome, the contumacy of their vassals, the Lombard invasions and iconoclastic controversy to boot. We will document how one scriniarius chose to aid his beleaguered prelate and how another tried to grab the pallium for himself. The former incident is recounted by Agnellus who had access to the episcopal archives of Ravenna. Indeed there is a certain "archive-consciousness" about this affair itself. In 742, after the city was taken by the Lombards, a struggle broke out between orthodox iconophiles and Greek-sympathizing iconoclasts who sent into exile the archbishop of Ravenna (Johannes) among the Venetians, who also opposed the Greek "heresy".¹⁶ The hero of the story, Epiphanius, is called scriniarius. The text does not give him an ecclesiastical title and he may even have been a layman. However, against Bacchini who saw him as an official of the exarchate,¹⁷ I think N. Tamassia is right to claim him as an ecclesiastical archivist. Engineering a coup d'état, Epiphanius secured the return of the archbishop and the fine of the lay vassals of the church who had bribed the exarch to exile him:

¹⁶For the mise en scene of this episode, see N. Tamassia, "L'enfiteusi ecclesiastica ravennate e un racconto di Agnello," ADSPR, Ser. 4: 10 (1920), p. 109-20.

¹⁷Bacchini, in RIS, ed pal., II, p. 172.

Tunc Epiphanius scriniarius, videns excidium sanctae istius ecclesiae et patrem patriae in angustia et matura detinere afflictionem, eum per huius civitatis exarchum ad hanc propriam revocavit sedem. Post autem in pontificali solio restitutus, quadam die praedictus Epiphanius scriniarius ait ad eum: "Domine pater, non te pigeat in palatium ad exarchum ire et offerre illi ex argirion palaream magnam; et postula ab eo, ut coartet viros illos ad iudicium, qui te in exilium miserunt, ut vindicemus nosmet de illis. Et hoc, quod das, decuplum ex eis restituam. Tu pontificalis tenes mores, ego cum eis litigabo, etscio (sic) iuvante Domino de hostibus reportabo triumphum." Factumque est, ut superius audistis. Et ut mox recepit se praedictus Johannis pontifex infra maternum ecclesiae sinum, alia vero die, auctor cunsilii, idem Epiphanius scriniarius cum singulis hominibus in cunflictum stans, ita aiebat: "Praeceptum ex rebus exaratum habes, ut nunquam contra sanctam hanc ecclesiam aut contra huius sedis pontificem de quacumque causa agas, aut ore mussites. Dic nunc, qualis ovis tu es, quia pastorem tuum, dum ille te foveret et per gramineos duceret campos, tu cornu percussisti et contra eum cirographa cunscriptisti?" Convincti in iudicio, vigies collegit, quod exarcho dedit. His itaque gestis, venerunt humiliter omnes unanimes ad eum, petentes misericordiam; et nullus eum postmodum in amaritudinem deduxit.¹⁸

Aping that fifth century primicerius of the imperial notaries who usurped the imperial throne, Michelius, scriniarius of the church of Ravenna, claimed the archepiscopal seat even though he was a layman! In a disputed election in 769, Michelius was opposed by Leo archidiaconus but supported by Mauricius, Duke of Rimini:

[Pope] Stephanus III Michaelio (scriniario eccl. Rav.), brachio forti a Mauricio duce Ariminensi in episcopio Ravennatis eccl. introducto, una cum eodem Mauricio et iudicibus Ravennantium consecrationem a se postulanti, obtestationis ac praedicationis litteris atque missis praecipit, ut ab eodem iniusto proposito recedat.

¹⁸ Agnellus, p. 376.

Pope Steven proceeded to raise an armed force ("missi Caroli M. regis Francorum et patricii Romanorum Ravennae") against Michellius who was brought to Rome in chains.¹⁹

In Carolingian times the successors of Apollinarius fared better, inheriting property of the Byzantine government. Administering this vast patrimony, the episcopal notaries no doubt acquired greater prestige. An interesting description of their duties is contained in the chronicle of the lives of the patriarchs of Ravenna down to 846 by Abbot Agnellus, who was himself educated by the cathedral clergy: "Notarii vero iuxta ordinem matriculae, primicerii, secundicerii, tertius, quartus, quintus, sextus et septimus, . . ." Could this be in conscious imitation of the seven regional notaries at Rome who also formed a schola under a primicerius?

suo periculo in cunspectu presbiterum et diaconorum documenta ecclesiastica sub fidelium brevium discriptione suscipiant, ut, quotiens exigerit causa, fideliter proferantur, cuntradant atque recipiant. Omnia tamen cum iussione, et cum ordinatione episcopi sui eosdem iubemus efficere. Ideo enim universa describenda sunt ecclesiastica documenta, ne ullo modo aut suscepta pereant, aut tempore, quo sunt necessaria utilitatibus ecclesiasticis, exhiberi non possint. Qui tamen notarii in officio suo observantes strenue, cunsequantur sine inminutione commoda sibi vel prioribus suis antiquitus deputata. Ipsi etiam, sicut exigit ratio et antiquitas ordinavit, libellos et securitate totius patrimonii ecclesiastici, quorum interest, subscriptas episcopi manu cuntradant.²⁰

Conspicuous by its absence is any reference to performing

¹⁹Liber Pontificalis [of Rome], Duchesne ed., I, 477-8. Cf. F. Crosara, "Le 'scole' ravennati dell'alto Medioevo e la carta piscatoria del 943," AG, 137 (1949), f. II, p. 16.

²⁰Agnellus, p. 320, l. 34-44.

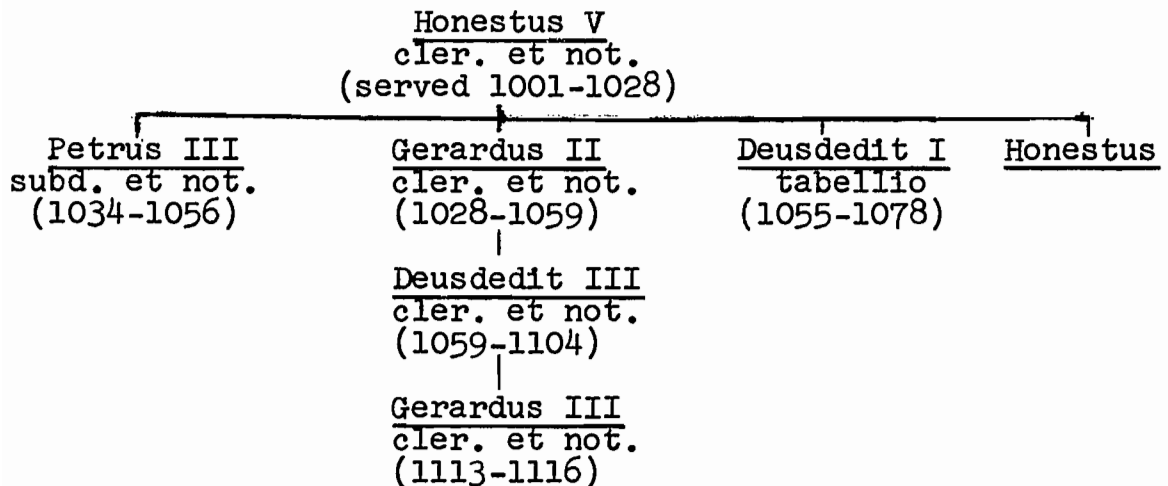
services for private individuals which, as we shall see, was emphatically not one of their functions. Besides caring for the patrimonium histrianum of the see, experienced archepiscopal notaries were employed as apocrisarii, diplomatic envoys, in imitation of papal and imperial practice. Pope Hadrian I (ca. 780-795) granted a privilege ". . . ab Epiphanio qd. religioso notario et scriniario et apocrisario s. Rav. eccl. . . ." ²¹

For the period 850-1118 Buzzi demonstrates convincingly that the archepiscopal chancellery of Ravenna resembled a communal or princely chancellery in internal organization and jurisdiction. The interrelation of spiritual and lay power of the archbishop may even have contributed to the emergence of notaries as public officials. During their struggle for independence from the temporal power of Rome in the years 855-888, the archbishops of Ravenna organized their chancellery in imitation of the Roman curia. Its two branches were a secretariat and the notarial chancellery proper. Presiding over the latter was the primicerius notariorum who was always a deacon. ²² The ordinary notaries of the chancellery, never less than three, were all clerics with the exception of two

²¹Regesta Pontificum Romanorum. Italia Pontificia, ed. P. F. Kehr (8 vols; Berlin, 1910), V, 37.

²²He was at the same time treasurer of the Camera (financial organ). Officials of the Camera wrote in miniscule while notaries of the chancellery used cursive. The primicerius thus had to vary his script to suit the occasion, as documents of Pietro I (932-941) show. Cf. Buzzi, "Curia arcivescovile e Curia cittadina," p. 15-16.

laymen -- John II (who served 919-931) and John III (942-968), about whom we will have more to say below. Though many are styled simply clericus et notarius, others are acolutus, presbiter, subdiaconus and diaconus. "Benchè chierici, i notai erano tutti coniugati."²³ In fact their sons often inherited the office, and even a particular style of handwriting. A good example of a dynasty of notaries is that of Honestus, cleric and notary:²⁴



For members of noble families the office of notary was often an honorary one, a stepping stone to higher positions in the ecclesiastical hierarchy. The alliance of the local aristocracy with the archepiscopal curia is exemplified by the following two examples. "Sergius clericus et notarius sancte Ravennatis ecclesia et abbas monasterii S. Georgius" (964-972) was the son of Duke Adalbertus and the

²³Buzzi, "Curia arcivescovile e Curia cittadina," p. 24.

²⁴Adapted from Buzzi, ibid., p. 46.

brother of Duke Johannes II.²⁵ "Honestus clericus et notarius . . ." (982) was the son of Andreas, Magister Militum and was related to the Dukes of Traversara and to the archbishop himself, Honestus I (971-983) in whose chancellery he served.²⁶

Most striking is the fact that episcopal notaries of Ravenna were restricted to episcopal affairs. Like the ancient Roman imperial notaries, they were stenographers attached to a special organization. By contrast at Parma after 962, ". . . die bischöflichen Notare sollen das Recht haben, für jeden, für den sie das tun wollen, Urkunden aufzunehmen . . ." ²⁷ Throughout the Lombard domain a notary of a church or monastery served not only that particular institution but private persons as well. "Questo notaio . . . è scrittore ufficiale quando stende i documenti proprii della chiesa, privato negli altri casi."²⁸ In fact the church in Italy pretty well monopolized the documentation of property right during the ninth and early tenth centuries -- that is, outside of Ravenna where it remained half secular. Of course when the Ravennese church was the beneficiary in the mutations of properties and rights, it was also the agency of record. The majority of the acta drawn up by episcopal notaries are

²⁵Buzzi, "Ravenna e Roma," p. 198. ²⁶Ibid., p. 202, 208.

²⁷Bresslau, Handbuch der Urkundenlehre, II, 621n.2.

²⁸Schiaparelli, "Notai nell'età Longobarda," p. 12; for example, "Agaf. clericus notarius publico Bergomates ex die . . . post tradida complevi et absolvi," (anno 773).

actually rent controls, livello and enfiteusi.²⁹ But even a sizable number of these, although in favor of the church, were nevertheless done by lay tabelliones. The diplomatic of the following document is secular rather than ecclesiastical. Note also that, following the ancient Roman manner, the donor rather than the recipient requests that the act be recorded by a third party:

Petimus a vobis Domno Costantinus Sanctissimo
 Archiepiscopus Sancte Raven. Ecclesie vero
 livellos uno tenore Conscriptos Johannes Tabellionus
 Civ. Raven. Scrivendum rogavi [anno 918] ."³⁰

Thus lay society at Ravenna was not dependent on the episcopal archives.

Rather it was the other way around -- the archbishop had to fit into the rest of society and employ municipal scribes. Although his own penmen could handle all private documents to which he was a party, tabelliones civitatis had to be called in for public documents. One example of these is the carta refutationis, or re-investiture. "Ego Riculpus in Dei nomine tabellio Ravennas scriptor hanc refutationem . . . [in favor of the archbishop of Ravenna, anno 1014] ."³¹

²⁹By a livello concession the Ravennese church retained ownership and received an annual payment in kind "in palacio episcopii." The emphyteutic lease was the long lease (for three generations) of Roman law. Generally given at nominal rents in the Romagna, it virtually alienated proprietary rights and exacted none of the military obligations customary in other feudal societies. From the tenth century on, these contracts were used to transfer control over the land from the church of Ravenna to lay lords and communes.

³⁰Fantuzzi, I, 112-113. ³¹Ibid., III, 18.

A second type of public document is the placitum, or record of a lawsuit. Given the interpenetration of ecclesia and mundus at Ravenna, its archbishop in 990 participated in the following proceedings:

. . . foris civitatem Ravenne in loco qui dicitur
 sablonaria post tribunal palacii quod olim construere
 iussit domnus Hotto Imperator in generali
 placito ego Iohannes Deo largiente tabellio
 civitatis Ravenne . . . [scripsit]." [anno 990]³²

Moreover, lay tabelliones actually became notaries of the archbishop. In the rest of northern Italy ecclesiastical notaries poached on the field of private notaries, but at Ravenna the opposite happened -- private scribes invaded the archepiscopal chancellery. Already in 919 "Iohannes [II, 919-931] tabellio huius civitatis Ravenne" and in 943 his son Iohannes III (942-968), bearing the same title, served as notaries of the archbishop.³³ This lay penetration of the chancellery must be seen in the context of the unstable political conditions that led up to Emperor Otto I's intervention in Italy starting in 937. "Nel decennio 928-938 l'Esarcato si costituì di fatto come principato indipendente con capitale Ravenna sotto il governo dell'arcivescovo; . . ." ³⁴

Just as Buzzi's study of the archepiscopal curia

³²Fantuzzi, I, 218.

³³Buzzi, "Curia arcivescovile e Curia cittadina," p. 24, 63-65.

³⁴Buzzi, "Ravenna e Roma," p. 160.

neglects a rich ancient inheritance by beginning in 850, so by ending in 1118 (the year Ravenna and Rome were reconciled), it misses the important period when the archbishops exerted their greatest influence on the entire Ravennese notariate which became their vassals. In the twelfth and thirteenth centuries, it seems to me that the traditional distinction between ecclesiastical notarius and secular tabellio breaks down.

Et Ego Ubaldus Ravennatensis Tabellio et Notarius S.
Rav. Ecclesie . . . [anno 1043]

Ego Ubaldus Ravennae Tabellio & Notarius Sanctae
Raven. Ecclesiae . . . [anno 1176]

Ego Marcoaldus S. Raven. eccles. tabellio . . . [anno 1220]³⁵

Regarding an analogous situation at Rome, scholars debate whether a fusion of the two separate scholae of tabelliones and papal scriniarii took place after the ninth century. Only there it is the tabelliones that disappear in the eleventh century: "Or ils [tabelliones] étaient si loin d'avoir, avec les scriniarii des intérêts communs, que cette disparition semble bien s'être produite par suite d'une invasion de leurs offices faite par ces mêmes scriniarii."³⁶
At Ravenna the denouement occurred in 1127 when a tabellio

³⁵Fantuzzi, IV, 209; No. 100; I, 326.

³⁶Bouard, "Notaires de Rome," p. 300. In their turn the pontifical scriniarii were swept away by imperial notaries and notaries of the urban prefect. In most Italian episcopal chanceries by the thirteenth century, "the keeper of the bishops' records was a notary public, usually by imperial authority." Robert Brentano, Two Churches: England and Italy in the Thirteenth Century (Princeton, 1968), p. 294.

was in charge of the chancellery:

. . . ego Ugo Tabellio Ravenne & primicerius atque
Magister Notariorum Sancte Ravennatis Ecclesiae . . .³⁷

Indeed, by that time Ravennese ecclesiastical notaries do not seem to have much of a function within the city or even within their own community.

The decline of the clerical scribe and the emergence of the secular notariate in general we will discuss in greater detail later. Here we wish merely to place in perspective the weakening of the Ravennese archepiscopal chancellery. At Lucca, the crisis arose way back in Carolingian times. Although Charlemagne ordained that both bishops and counts were to have their own notaries, comital notaries displaced those of the bishop of Lucca. "Die Laiennotare seit der Zeit Bischof Petrus' [early ninth century] auch bischöfliche Urkunden zu schreiben begannen, also die Geistlichen aus ihrem ureigensten Bereich verdrängt haben."³⁸ Of course, at Ravenna, the archbishop was also the greatest imperial feudatory and no such conflict was possible. At Milan ecclesiastical notaries never were very important and were restricted to episcopal business, as at Ravenna. It is revealing that the wills of the Milanese bishops themselves were drawn up by laymen. "Dafür hat der Erzbischof die notarii s. ecclesiae das ganze 9. Jahrhundert

³⁷Fantuzzi, III, 37.

³⁸Schwarzmaier, Lucca und das Reich, p. 268.

hindurch behalten."³⁹ At Bologna John (1101-1133) was "clericus primicerius et notarius sancte Bononiensis ecclesie," but he was the last notary of the Bolognese bishop who was a cleric.⁴⁰ Even he, in contradistinction to his Ravennese counterparts, instrumented for the lay population. Finally, at Rome the renovatio Senatus in 1144 led to the rise of lay notaries who were appointed by the prefectus Urbis.⁴¹

The Gregorian reform contributed to the emergence of a secular notariate throughout Europe. The best pages on this important but hitherto neglected subject occur in the various writings of J. Mundy.⁴² Let us attempt to assess the significance of the many-sided reform movement at Ravenna. In the first place, the demand for libertas ecclesiae generally prevented clerical involvement in the professions. An old cliché attributed the appearance of lay professional services to a maturing society; "But what is important is

³⁹H. Keller, "Der Gerichtsort in oberitalienischen und toskanischen Städten," QFitAB, 49 (1969), p. 31. Wills in Codex diplomaticus Langobardiae (Torino, 1873), nos. 287, 290.

⁴⁰Il notariato nella civiltà Italiana: Biografie notarili dall'VIII secolo al XX (Milan, 1961), p. 276.

⁴¹Petrucci, Notarii, p. 14.

⁴²In Liberty and Political Power in Toulouse, 1050-1230, p. 36f, he shows the impact of Gregorian ideology on the genesis of secular scribes there, especially through the decline of ecclesiastical jurisdictional rights over laymen. A more general theory is woven in Europe in the High Middle Ages, p. 31f.

that the clerical order did not expand to provide these services itself in the twelfth and thirteenth centuries."⁴³ This is confirmed at Ravenna where archepiscopal notaries lost their raison d'être. Another theme of this first world revolution was the Gregorians' attack on nicolaitism, the marriage of clergymen. We know that Gelasius had regarded notarii and defensores of the Roman church as minor orders and that Gregory the Great actually forbade defensores to marry. But at Ravenna not only notaries and defensors but even one archbishop himself was married!⁴⁴ It is not surprising then that "nel sec. XI e a principio del XII, quando cioè le lotte contro il matrimonio e il concubinato dei chierici erano vivissime, i chierici e notai della chiesa di Ravenna erano coniugati . . ."⁴⁵ This was the situation notwithstanding Saints Romuald and Peter Damiani, both of whom were born and active at Ravenna.⁴⁶ Remember that the

⁴³Mundy, High Middle Ages, p. 32.

⁴⁴Gelasius, Ep. 14:2, "continuo lector vel notarius aut certe defensor effectus, post tres menses existat acolythus." The chronicle of Farfa (Muratori, RIS, vol. II, pt. 2, p. 642) reports: "B. Gregorii dispositionem . . . quos etiam non Laicos, sed Clericos censuit esse debere . . ." As Ravennese archbishop, Sergius (mid-eighth century) consecrated his wife a deaconess, according to Agnellus.

⁴⁵Buzzi, "Curia arcivescovile e Curia cittadina," p. 25.

⁴⁶Atoning for his wild youth, Romuald (d. 1027) reformed the monastery of St. Apollinare in Classe before founding the Camaldulian order (cf. Peter Damiani's Vita in PL, vol. 146, p. 955f.) Damiani debated the Roman jurists of Ravenna on the prohibited degrees of marriage, "De parentelae gradibus," Opera Omnia, v. 3, op. 8, c. 5-7.

Ravennese, especially jurists like Peter Crassus actively fought Gregory VII and that Henry IV had the archbishop of Ravenna (Guiberto) elected antipope. Perhaps after Ravenna's reconciliation with Rome in 1118 the attack on "harlotry" took its toll in the Ravennese chancellery too; one notices that Anselm of Havelberg (author of Liber de ordine canonicorum) was archbishop from 1155 to 1158. More importantly, in the post-Gregorian age many families of priestly notaries produced members that switched out of clericature and took up new secular careers that were opening up. It is interesting that in the four-generation dynasty of Ravennese notaries cited above on page eighty-nine, one member Deusdedit I (1055-1078) did become a lay tabellio.

Paradoxically, though his notaries were in rout, the archbishop of Ravenna was in triumph. In fact he exercised full authority over all tabelliones of the city. His power resembled that of the Pope over the public scribes in the city of Rome: it was all that was left of his temporal rights over the city. Or perhaps he acted by virtue of Byzantine traditions of episcopal sovereignty. Or to choose a more contemporary cause, perhaps he shared in the general governmental expansion that characterized the thirteenth century.⁴⁷ At any rate, amidst the archival deposit at Ravenna is this instructive description of a ceremony of

⁴⁷ "Like every other European magnate, the [thirteenth century] bishops became the masters of an elaborate jurisdictional and administrative machine." Richard W. Southern, Western Society and the Church in the Middle Ages (London, 1970), p. 189.

investiture of a tabellio. The setting is the archepiscopal palace, the time is 1200:

In nomine Domini. Anno ab Incarnacione ejus mill. duecent. die quartodecimo intrantis Septembris Indicione tertia Ravenne in palacio Domni Archiepiscopi Rav. in antica capelle Domni ipsius Archiepiscopi in presentia Petri Traversare. [The Traversari was a pro-Guelf family dominating Ravenna at this time.] Rodolfini judicis. Salinguerre, & Bernardi Gambuli, & Scarlacti, & presbiteri Martini, & Blandi subdiaconi, & Benvegnuti, & Bulgarini dagulgnarino. Et Domni Guilielmi Sancte Rav. Ecclesie Archiepiscopi Rav. & mei Bartholomei Dei gratia Rav. Tabellionis jussione suprascripti Archiepiscopi,

The archbishop proceeds to administer the "master's oath" of office, as it were. Remember that Lothar's capitulary of 832 required an oath of office. Also there is Byzantine precedent for this quasi-religious ceremony of investiture.⁴⁸ The ink pot, pen and parchment with which he is invested were the symbolic attributes of the notarial craft.

& ejus auctoritate Lauterius juravit artem tabellionatus de cetero facere hoc modo, videlicet quod cunctis diebus quibus vixerit et que audierit inter contraentes bona fide sine fraude scribet & ea recte que ipsi hostensa fuerint a litigatoribus recte bona fide sine fraude leget, & ea que ipsi per credenciam patefacta erunt, & sentencias & testaciones quas scribet per credenciam tenebit donec patefacta fuerint. Et postquam hec omnia dictus Lauterius juravit se observaturum donec vixerit, in continuo dictus Archiepiscopus accepit calamarium & pinnam & cartam propria manu &

⁴⁸"Der neue Tabellio wurde dann, mit einer ephestris bekleidet, zum praefectus urbi geführt, wo man ihn in dessen Secretarium unter Darreichung eines Siegelrings promovirte. Hierauf verfügten sich die übrigen Tabellionen mit dem neuen Tabellio, in einer der feinigen gleichen Kleidung in die Kirche, wo ihm der Priester unter Hersagung eines Gebets ein weisses φελωνιον statt der ephestris gab." Oesterley, Deutsche Notariat, I, 190.

investivit dictum Lauterium ex auctoritate Domni
Imperatoris ut de cetero liceat ei operari dictam
artem tabellionatus ut superius legitur perpetuo
quousque vixerit.⁴⁹

Moreover, all Ravennese tabelliones became vassals of the
archbishop and their society was bound by his arbitration,
as we shall see in chapter ten.

⁴⁹Fantuzzi, V, 300.

CHAPTER VI

THE SECULAR TABELLIONATE AT RAVENNA

Part One: Scribes and Officials of the Municipal Curia

"Sino alla seconda metà del X secolo i contratti fra i privati vennero a Ravenna rogati e autenticati sostanzialmente secondo il tradizionale sistema romano, e cioè prima scritti da un tabellione e poi 'insinuati' da un 'exceptor'".¹

The remnant urban notariate that appears in the sixth century Ravennese papyri can be classified into two groups, clerks who served the municipal curia and simple tabelliones. Reserving discussion of the private scribes to another section, we will now see how the municipal curia provided yet another strand for the base of the notariate at Ravenna.

It is not too often that a technical study such as ours broaches a controversial, indeed, momentous, subject. But the curia as a symbol of the transformation of society is such an issue. The question of the continuity of Roman municipal institutions is one over which such great scholars as Savigny, Troya, Hegel and Diehl have labored. The Roman school, represented by Savigny, holds that Roman republican institutions survived through the darkest night of the Middle Ages to the dawn of communal freedom in twelfth century Italy.

¹Petrucci, Notarii, p. 17.

A recent spokesman for the anti-Roman school, M. Hammond, in The City in the Ancient World, contends, "Even for North Italy, pending more evidence, it seems reasonable to regard the rebirth of municipal self-government as a phenomenon unmotivated by Roman antecedents . . ." ² For the Romagna in particular, no scholarly consensus has yet been reached. Italian humanist historiography (revived as late as 1909 by E. Mayer) claimed every relic of the Roman civil magistracy as proof of the continued existence of civic institutions: "Die Bezeichnung consules für Kommunalbeamte findet sich weitaus am frühesten in dem römischen Teil Italiens. . . . Vor allem sind in Ravenna die consules seit der Mitte des 9. Jahrhunderts Beamte der Stadt . . ." ³ However, the most recent student of the problem of communal origins in the Romagna, A. Vasina, believes that "nel caso degli scrittori municipalisti e romanisti si aveva un'arbitraria retrodatazione di fatti ed istituti caratteristici dei secc. XI e XII a tempi antecedenti . . ." Abreast of current trends, Vasina approaches the communal phenomenon "non sotto il profilo meramente giuridico-istituzionale" but under "gli aspetti economico-sociali, particolarmente sullo sfondo delle relazioni fra clero

²Mason Hammond, The City in the Ancient World (Cambridge, Mass., 1972), p. 338-9. However, appropos of our study, Edith Ennen emphasizes in Frühgeschichte der europäischen Stadt (Bonn, 1953), "Auf die Existenz der Notare ist deshalb noch besonderes Gewicht zu legen, weil sie darauf hinweist, dass wesentliche Merkmale der Stadtkultur . . . erhalten geblieben sind." p. 230.

³Mayer, Italienische Verfassungsgeschichte, II, 532.

e laicato nel mondo cittadino."⁴ Recognizing that this field is "così arduo e complesso e perciò stesso ancora aperto ad imprevedibili, ampi sviluppi,"⁵ we will re-examine civic structures at Ravenna which, if they were not the germs of later communal organs, at least perpetuated ancient notarial traditions.

Augustus had promoted Ravenna from a civitas foederata to a self-governing municipium. However, the activity of its magistrates was restricted already in the early fifth century by the commander of the fleet (the praefectus classis mentioned in the Notitia Dignitatum) and later by the comes Ravennae (first a Roman, then a Goth). The Ravennese curia, a regular session of which is documented for 625, lasted longer than the Roman senate, which was mentioned for the last time in 603. All agree that "Die Kurie von Ravenna hat den Ruhm, unter allen aus der antiken Städtefreiheit erwachsenen Organismen am längsten der Zersetzung standgehalten zu haben."⁶ But its fate after 625 is uncertain. E. Stein argues for its disappearance with the growing influence of the church and "eine systematische . . . Enteignung des Kurialbesitzes" in

⁴Augusto Vasina, "Le Autonomie Cittadine in Romagna," in Romagna medievale (Ravenna, 1970), p. 164. "A Ravenna come nelle altre città della regione, veramente decisivo fu il periodo seguente alla morte dell'arcivescovo-antipapa, dal 1100 sin verso la fine del secondo decennio secolo." p. 173. "Fu pertanto in assenza, o, quanto meno, per incapacità o indisponibilità del vescovo che i cittadini più influenti ed attivi giurarono insieme con patto volontario e temporaneo mutua assistenza . . .," p. 175.

⁵Ibid., p. 165.

⁶E. Stein, "Die Munizipalverfassung von Ravenna vom IV. Jahrhundert bis zum Ende der oströmischen Herrschaft (751)," Klio, XVI (1919), p. 67.

the popular revolt of 710, which was led by Georgius, son of the primicerius Joannicus who had been tortured by Justinian II.⁷ However, Buzzi is convinced that a municipal senate, composed of dukes and consuls, continued to exist in the eighth and ninth centuries: "dal silenzio delle poche fonti narrative e diplomatiche pervenute ci non se ne può concludere la sua soppressione."⁸ Moreover, in 878 Pope John VIII wrote "sacerdotibus et senatui populoque Ravennati."⁹ Starting with the ninth century, the record is much fuller and will be considered below.

From the fifth century the city council of Ravenna was merely a bureau for the registration of private acts, an example of which appears in appendix IV. Records of such curial proceedings continue down to 625. They reveal that the machinery of Roman law was still working, that formalities and titles were still carefully observed. But behind this facade of terminology real change had taken place. Perhaps even the great Savigny thought of the continuity of Roman institutions too abstractly and romantically. Sixth century Ravenna's municipal institutions can be said to show continuity; but the same could be said of its streets. Both only survived because they still performed some function -- even if a new one -- in that society.

⁷Stein, "Munizipalverfassung von Ravenna," p. 69n.2.

⁸Buzzi, "Curia arcivescovile e Curia cittadina," p. 55.

⁹MGH, Ep, vol. VII, pars 1a, nos. 95 & 131.

Since the curiae had been reduced to mere courts of registration lacking any real power in the city, did the curiales become bored with their notarial functions? Only a small number (often four) ever take part. The affairs dealt with are rather petty: donations, bills of sale, appointments of guardians. In the following passage a quinquennalis' father presides in his absence and two other principales' sons are missing.

Valerio viro clarissimo consule, sub die III Nonarum Iuniarum, Ravennae apud Flavium Florianum virum laudabilem, agentem vices Severi filii sui quinquennalis et iterum magistratus, praesentibus Firmano Urso viro laudabili, Melminio Tranquillo viro laudabili pro Iohanne filio suo, Studentio viro laudabili et Pompulio Severo viro laudabili pro Melminio Cassiano Iuniore principalibus, . . . [circa anno 552]."¹⁰

These three absentees are not unusual and may suggest that the spirit behind this Roman-Byzantine institution was already dead. Indeed the gesta disappeared from northern Italy comparatively early, according to B. Hirschfeld.¹¹ The last extant insinuation before the Ravennese curia was 625 but G. Bognetti points to a "hole" in the record between 555 and 625: "Per riempirlo abbiamo i nomi di cinque notai: in Francia per lo stesso periodo conosciamo 52 referendari."¹² In contrast, even Gallic cities can boast curial proceedings

¹⁰Tjäder, Papyri, I, 210, B. IV. 6.

¹¹Hirschfeld, Gesta municipalia, p. 69.

¹²Gian P. Bognetti, "L'exceptor civitatis e il problema della continuità," in L'Età Longobarda (4 vols; Milan, 1968), IV, 677.

from the latter half of the seventh century and the Neapolitan curia survived as a college of notaries until the fifteenth century.¹³

Did the Ravennese curia die out in the seventh century and with it the practice of insinuation? Let us reconsider the evidence for the uninterrupted continuance of the old curia at Ravenna. First of all the term itself is applied to a building, the meeting place of the old municipal council as Savigny would have it. A passage from 954 mentions "curia publica non longe a basilica S. Agnen."¹⁴ It is perhaps significant that the basilica, indicated by number 51 on the map on page 106, was located in the ancient Roman quarter. From other texts we learn that it was ". . . in regione quae dicitur Caput porticis . . . [anno 978]", and that it was fortified with towers [ca. 980].¹⁵

The exceptor of the curia continues to be cited. In the fifth century every curia included this minor official who was leader of protocol. He took minutes of the proceedings and gave certified copies to interested parties. At Ravenna the exceptor "wurde aus den Bureaux des Präfekten von Italien

¹³Eg. Le Mans (615, 642), Orleans (651) and Poitiers (677-678).

¹⁴Archivio arcivescovile di Ravenna F2303. There are still ruins of this palace where the curiales resided, cf. Corrado Ricci, Guida di Ravenna (4th ed; Bologna, n.d.), p. 15. The palatium communis and palatium potestatis were not constructed until the late twelfth century.

¹⁵Fantuzzi, I, 202; Archivio arcivescovile di Ravenna F2348.

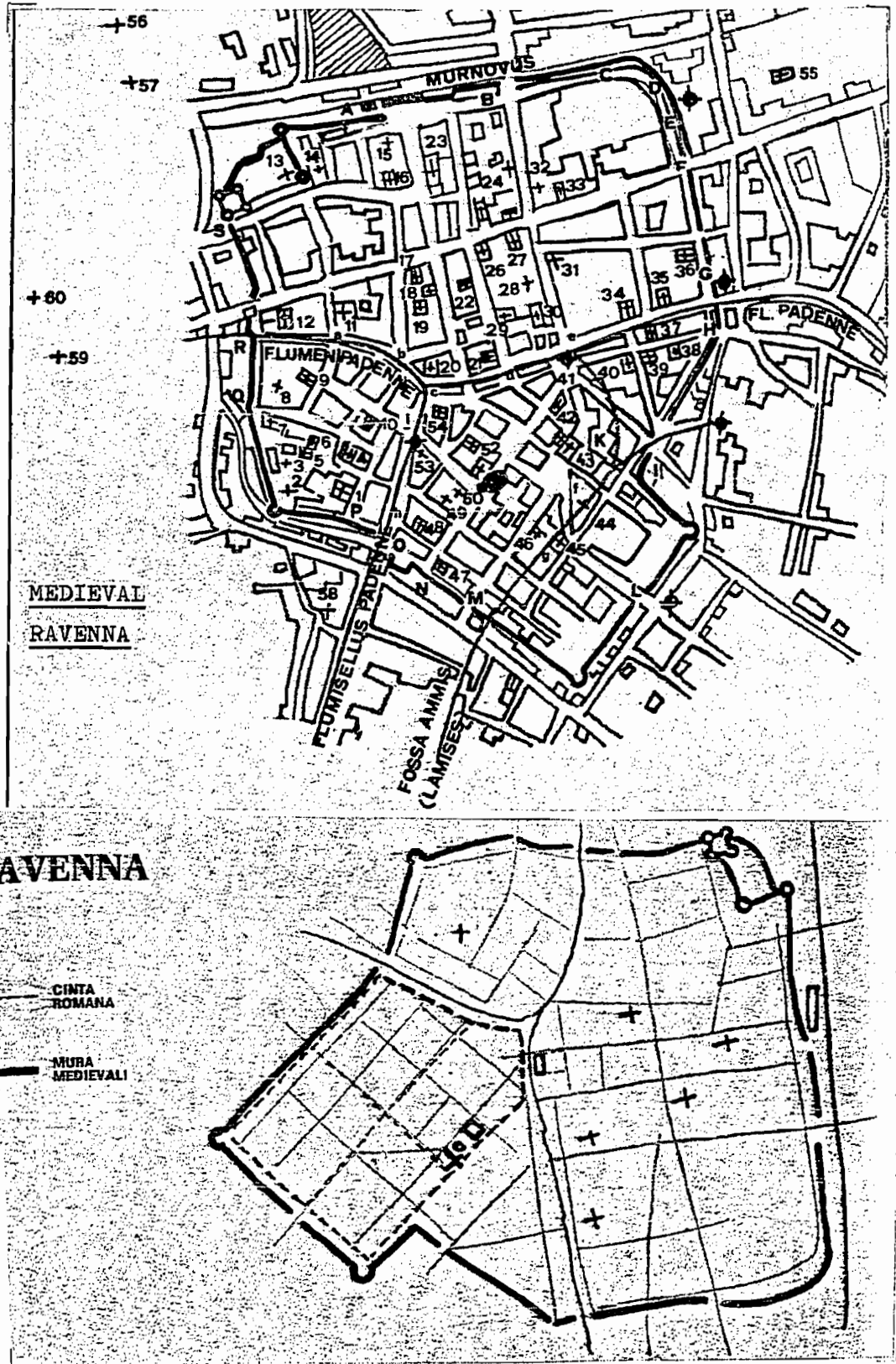


FIGURE 7: MAPS OF RAVENNA IN THE MIDDLE AGES.
From: Vasina, Romagna medievale, p. 167.

von diesem zur ständigen Dienstleistung zugewiesen."¹⁶ The papyri name three individual exceptores:

Flavius Severus exceptor pro Bonila praerogativario edidi. [anno 552-575]
 Gunderit exceptor curiae civitatis Ravennatis his gestis edidi. [anno 572]
 Deusdedit exceptor civitatis Ravennatis . . .¹⁷

That the title survived and retained its old association with the curia is demonstrated by the following examples from the ninth and tenth centuries:

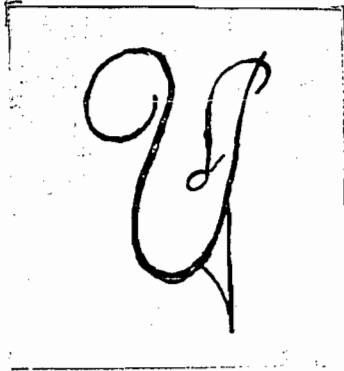
Moyse Tabellionem et Exceptorem Curiae hujus Civ Rav [ca. 850]
 Dominicum Tabellionem Extractorem Curie publice hujus Civ. Rav. . . . [anno 903]¹⁸

Whether or not the medieval exceptor continued to register acts is a moot point. It is certain that this time-honored scribal functionary became head of the corporation of tabelliones. He is frequently styled prototabellio et curie exceptor in the tenth century:

¹⁶Stein, "Munizipalverfassung von Ravenna," p. 67. In classical times an exceptor was a private shorthand writer (often a slave), but by the fifth century it became the general term for a clerk of a court. The Lombard exceptor is the subject of much dispute. A. Gaudenzi "congiunge il notaio all' exceptor della curia," in "Sulla duplice redazione del documento italiano nel Medio Evo," ASI, CCL (1908), p. 352. But G. Bognetti ("Exceptor civitatis," p. 679-80) objects that the curiae themselves disappeared and that the two crucial exceptores at Piacenza in 721 and Pavia in 730 were both clerics, i.e. episcopal officials.

¹⁷Tjäder, Papyri, p. 216, B. VIII. 6; p. 316, III, 13; papyrus 31, cf. p. 120.

¹⁸Marini, p. 314, l. 47; Fantuzzi, I, 103.



"Petrus prototabellio et exceptorem curie huius civitatis Ravenne." (anno 958)¹⁹

FIGURE 8: SEAL OF PETRUS.

The close relation thus established between the tabellionate and the curia may "spiega perchè così rapidamente i tabellioni ravennati acquistassero, in confronto di quelli di altre città, carattere di pubblici ufficiali."²⁰

The title curialis reappears in the tenth century with a conscious Roman reminiscence: "Leo in Dei nomine ab Urbe Ravenne Tabellione & curialis Provinciis Romanorum . . . [anno 955]."²¹ But Savigny himself concedes that by this time the term curialis was used to signify the exceptor of the curia and not a civic magistrate.²² Indeed the tenth century curialis seems closer to a mere registrar than a town oligarch. There may have been three stages of advancement in the scribal profession -- tabellio, tabellio et curialis, and exceptor.

¹⁹Lorenzi, Notariato ravennate, II, plate 2; Bernicoli, p. 19.

²⁰Buzzi, "Curia arcivescovile e Curia cittadina," p.56.

²¹Fantuzzi, II, 20. Likewise at Naples from the beginning of the tenth century curiales are "die einzigen städtischen Schreiber, die zur rechtsgültigen Vollziehung von Urkunden berechtigt sind . . .", Bresslau, Handbuch der Urkundenlehre, I, 585.

²²Savigny, Roman Law during the Middle Ages, I, 354.

This progression seems confirmed in the career of Dominicus, who in 909 was "tabellione et Curiale hujus Civitatis Ravenne," but by 940 is "superna illustricione protontabellionem et in eliminium curie exseptorem [irremovable registrar of the curia] huius civitatis ravenne . . ." ²³

With the title of consul we reach the crux of the issue. Although this title was not forgotten at Ravenna, its significance has been much debated. Was consul a public official, an honorary title, or both? Savigny, with his theory of the endurance of the old municipal constitution, equates Ravennese consules with the ancient decurions. "The Ravenna-Consuls are members of a deliberative assembly -- Consilium, where they participate in the consultations and decrees." ²⁴ On the other side, V. Franchini contends that ". . . in Ravenna questo titolo di consul non avesse più che un significato nobiliare od onorifico senza corrispondenza alcuna con l'esercizio effettivo di un determinato ufficio." ²⁵ There is considerable evidence on both sides. The papyri from the sixth and seventh centuries mention no consular magistrates. But other sources do and even the papyri's dating by consular year may have helped perpetuate the title. Some ninth century

²³Fantuzzi, I, 106; Bernicoli, p. 19.

²⁴Savigny, Roman Law during the Middle Ages, I, 354.

²⁵V. Franchini, "Il titolo di consul in Ravenna a traverso l'alto Medio Evo," Bull. d. Soc. Filologica Romana XI (1908), p. 42.

deeds list consuls among private persons:

Notitiam Testium idest
 Gregorius uh [vir honorabilis] Consul
 Johannes uh filius condam Johis Call.
 Gregorius uh filius quondam Petrus Neg. [anno 844]²⁶

However, other documents associate the consul with public officials: "Petrus dux civitatis Ravennae, Theodoratus consul civitatis Ravennae, Bonushomo vicedominus Ravennae [anno 859]."²⁷ It seems to me that Savigny's case for a primitive communal magistracy before 1150 is ultimately unconvincing. Before that date there is no evidence that the Ravennese curia ever met as an administrative body.²⁸ The curia of the age of particularism (ninth through eleventh centuries) was probably very different from its ancient republican self.

That consul could be a noble, hereditary title is admitted by all. Use of ex genere consulis is frequent in the tenth and eleventh centuries: "Iohannes ex genere consulis et tab. Rave. scriptor. [anno 1005]."²⁹ But even in Roman times

²⁶Fantuzzi, I, 88. ²⁷Ibid., II, 355.

²⁸From 1150 there is an interesting text that documents the rise of a genuine consulate as the chief magistracy at Ravenna: "Nos consules Ravenne, scilicet . . . [list of names] pro nobis et pro toto communi istius civitatis Ravenne et suburbiorum eius statuimus et ordinamus ad onorem et utilitatem totius communis istius civitatis Ravenne et suburbiorum eius quod . . . [the moats of the city be maintained], cited in Vasina, Romagna medievale, p. 209. On the origins of the republican consulate in general some "hanno pensato che centro di irradiazione sia stata la Romagna," Gina Fasoli, Dalla civitas al Comune (Bologna, 1961), p. 143, a recent summary concerning "comuni e consoli."

²⁹Federici, p. 35. One family even bore the title as a family name, the references to which are in Mayer, Italienische Verfassungsgeschichte, II, 533-4.

the decurionate was hereditary. Accordingly, the derivative title consul may refer to the character of the family: one was born "consular" but became consul on the death of one's father. Some members of consular families were also tabelliones and even negotiatores: "Petrus in Dei nomine Consul & Tabellio huius Civitatis Ravenne . . . [anno 977]." ³⁰ At this point Franchini is right to ask, "Come parlare di magistrature personali rispetto a uomini che si qualificavano consoli per 'Dei Nutu' o in 'Dei Nomine' . . ." ³¹ Even more telling is this example: "Johannes Dei nuto ex genere consulis et tabellio . . . [anno 978]," ³² where both divine grace and family stock are invoked.

Though most frequently combined with the exercise of the tabellionate, the consular title was also held by those active in commerce: "Severo Consul et Neg. . . . Andrea Consul et Neg. . . . [anno 949]." ³³ These individuals may be from new bourgeois families who were coming into their own in the middle of the tenth century. Until that time, the Ravennese aristocracy was composed of two groups, duces (the great families) and consules (secondary members). The latter nascent bourgeoisie began to be excluded from power and restricted to notarial and commercial practice. Thus in the second half of the tenth century we start to get consuls who were also

³⁰Fantuzzi, I, 195.

³¹Franchini, "Consul in Ravenna," p. 42.

³²Fantuzzi, II, 303. ³³Ibid., I, 128.

tabelliones: "Joh̄nes in Dei nomine Consul & Tabellionem . . . [anno 971.]"³⁴ "Esclusa dal senato, è assai probabile che la borghesia penetrasse nella curia sostituendo nei vari uffici i curiali e gli eccettori."³⁵ In fact after 968 neither title -- curialis or exceptor -- is used, having been supplanted by the consular tabelliones. The latter in their turn disappear after 1059 with the establishment of the aristocratic commune.

Is there any hard evidence that wills and the like were ever probated before the Ravennese curia after 625? After all, many historians, such as A. Gaudenzi, argue that the authentic notarial act in Italy derived from those acts insinuated before the ancient curiae.³⁶ One text which seems to me to touch on this question dates from 1037:

Coram sapienti Viro D. Bartholomeo de Perindinis de Mutina
 Judice & Vicario Magnifici Militis D. Guidonis de Polenta
 potestatis Ravenne pro Tribunali sedente in Pallatio
 Comunis Ravenne, diligenter ipsum exemplum cum predicta
 Auctoritate ascultavi, atque ipsum d. Judici insinuavimus
 & per utrumque recordare invenimus. Ideo de mandato
 ipsius Judicis suam & Comunis Ravenne Auctoritatem &
 decretum interponentis, ut adhibeatur de cetero plena
 fides huic exemplo me subscripsi . . .³⁷

What is the meaning of "insinuavimus" in this context? The

³⁴Fantuzzi, II, 36.

³⁵Buzzi, "Curia arcivescovile e Curia cittadina," p. 58.

³⁶"Come l'istrumento notarile Italiano, al pari della carta augustana, si colleghi all'atto insinuato presso la curia romana." A. Gaudenzi, "Sulla duplice redazione," p. 259.

³⁷Fantuzzi, I, 276.

standard expressions for insinuation in the papyri are actis indi, gestis municipalibus allegare and documentis adscribi. However, it is possible that this process, now out-dated but deeply ingrained in the Ravennese consciousness, lingered on at Ravenna which was in many ways a retrograde place. We know for certain that in the fourteenth and fifteenth centuries notaries were required to enter their acta in the registry books of the commune of Ravenna.³⁸ "This not only gave greater validity to the contract, but also served as a check on the payments to be made to the commune. Every year there was a ceremony in which the notaries swore to do this."³⁹ Widespread revival of the ancient practice of insinuation was suited to the late medieval climate of intense social regulation. Indeed, insinuation always served two functions -- one archival, the other regulatory, that is the way in which the government found out who was rich.

"If ever 'the state as a work of art' existed . . . it was the public notary who made it possible."⁴⁰ Although most notaries were involved with the affairs of private individuals some worked on public business. The commissioning of notaries by various Italian communes has been studied by

³⁸A fifteenth century Ravennese statute decreed: "Qui notarii statim dictam notam in memoriali et registro comunis Ravenne scribere teneantur ponendo nomen notarii qui de predictis rogatus fuerit facere instrumentum. Cui memoriali et registro credatur sicut originali instrumento." Cited by Lorenzi, Notariato ravennate, I, 47.

³⁹Larner, Lords of Romagna, p. 169.

⁴⁰Ibid., p. 148.

P. Torelli.⁴¹ The Ravennese commune employed notarii communis, massarii, investitorum, existimatorum.⁴² The podestà himself usually had two notaries to assist him in executing his office. However, all notaries were forbidden to perform certain types of business for him or his family by this late twelfth or early thirteenth century statute of Ravenna with the rubric Quod potestas, nec aliquis de sua familia, possit iniungere per sacramentum, nec bannum ponere alicui notario:

Statuimus et ordinamus quod potestas sive rector civitatis Rav. vel aliquis de sua familia non injungat vetet per sacramentum neque bonum imponat nec imponere possit alicui notario rogant. aliquam protestationem appellationem vel presentationem scribere coram eo et si injunxerit aut per sacramentum vetaverit aut bonum imposuerit tale bonum non valeat nec ipsi notario auferri possit et investigatores communis Rav. pro qualibet vice teneantur potestatem sive rectorem sive familiarem ejus de suo feudo condepnare communi Rav. pro qualibet vice C. solidos Rav. et item dicimus de iudicibus communis Rav. et notarius teneatur unde rogatus fuerit salvo quam quod commune Rav. non possit scribere not.⁴³

Illicit contact between Florentine notaries and their podestà or his judges was likewise prohibited in a statute of 1475.⁴⁴

Another interesting chapter of these early Ravennese

⁴¹" . . . intorno alla metà del secolo XII, in tutte le città dell'Italia settentrionale il periodo in cui il notaio non era impiegato del comune fosse già compiuto," P. Torelli, "Studi e ricerche di diplomatica comunale," Atti e memorie della R. Accademia Virgiliana di Mantova, n.s. vol. 4, pt. 1 (1912), p. 96.

⁴²Fantuzzi, IV, Nr. 1, cap. 50, 51, 135, 148.

⁴³Ibid., cap. 14.

⁴⁴Archivio di Stato di Firenze, "Statuti di Firenze," 29, f. 411r.

statutes, which have reached us in a redaction of 1253, concerns the procedure to be followed if a tabellio died after making a rough draft but before actually registering the act. Another tabellio could make valid acts from the rough drafts of his deceased confrère provided that the tabellio to whom the documents were left had sworn in the presence of the podestà and the curia that:

ipsa protocolla complere et facere secundum quod in eis continetur nulla addito vel diminuto quod sententiam instrumenti mutet aut mutare possit.⁴⁵

Given all of these dealings with public officials and councils, it is no wonder that by the mid-thirteenth century, Ravennese notaries were voicing their affiliation with the commune:

Ego Notalis Dei gratia imperialis aule tabellio et notarius Communis Ravenne . . . [anno 1233].⁴⁶

⁴⁵Fantuzzi, IV, Nr. 1, cap. 28. The statute adds that "wenn der verstorbene Notar seine Protocolle keinem andern Tabellio vermacht habe, dieselben als solche gültig sein und für authentische Urkunden gehalten werden sollten." A private act from 1259 illustrates how this legislation was implemented: "[Ego Artusinus filius q. D. Cambii imperiali auctoritate S. R. E. et Rav. notar.] ex commissione et auctoritate Communis Rav. ut inveni in suscepto sive protocollo, seu rogatione facto et facta per dictum Cambium . . . fideliter transcripsi . . ." Fantuzzi, V, Nr. 64.

⁴⁶Fantuzzi, III, Nr. 51.

Part Two: Private Tabelliones

"As literate laymen on a large scale, the notaries represented an extremely important and distinctive element in the towns' precocity, their presence being incompatible with the conventional picture of a medieval society comprising literate clergy and illiterate laity."⁴⁷

In classical times the tabellionate consisted of popular scribes free of public appointment or regulation and even after the imposition of Justinian's controls the profession remained a private rather than an official, public employment.⁴⁸ Roman-Byzantine tabelliones were never quite public persons in the way medieval public notaries were. However, the public function of tabelliones was recognized throughout the transition period from late ancient to early medieval civilization. Most eloquent is Cassiodorus' attribution of this public quality to scribes of Ravenna in a letter addressed to one of them, Deusdedit, dating from ca. 533-537. The public service ethos he espouses is typically late Roman.

Scribarum officium securitas solet esse cunctorum,
quando ius omnium eius sollicitudine custoditur.

⁴⁷Daniel Waley, The Italian City-Republics (New York, 1969), p. 29.

⁴⁸In an unusual moment of poor judgment Crosara speaks of "notai della città nominati dall'autorità pubblica . . . i quali si firmavano: 'in Dei nomine tabellio . . . huius civitatis Ravennae.'" "Scole ravennati," p. 64. But it seems to me that they are simply stating their place of residence. Favoring the latter view is the evidence from a deed of 1017, drawn up "in palacio Ducatus Venetiae" by Johannes Dei nunc tabellio Ravennas" (RIS, I, 241).

alios enim depopulantur incendia: alios nudat furtiva subreptio: nonnullis negligentia perit quod diligens auctor acquirit: sed de fide publica robustissime reparatur quicquid a privatis amittitur. diligentior est in alienis quam potest esse cura de propriis. . . . et ideo tantae rei iugiter praecipimus esse custodem, ut qui hactenus de integritate placuisti. nulla debeas varietate fuscari. vide quod tibi committitur antiqua fides et cotidiana diligentia. dirimis iurgantium litem . . . et tu potius iudicas, qui causarum vincla dissolvis . . . da petentibus quae olim facta sunt, translator esto, non conditor antiquorum gestorum. exemplar velut anulum ceris imprime . . . ita manus tua ab authentico nequeat discrepare publicum est omne quod feceris, dum aut laudatus gratiam aut accusatus invenire possis offensam.⁴⁹

The above passage complements Cassiodorus' later, better known efforts to preserve ancient literary writings.

In the papyri tabellio and forensis were alternate titles for private scribes.

Ego Severus forensis scribtor . . . [anno 553]
 . . . Vitalis tabellio huius civitatis Ravennatis . . .
 [ca. anno 600]
 . . . Deusdedit tabellio urbis Ravennatis . . . [anno 613-41]
 Vitalianus forensis civitatis Ravennatis . . . [anno 639] ⁵⁰

The latter title derived from the fact that their offices (stationes) were originally in the forum or other public places such as churches:

Iulianus vir honestus, scribtor huius cartulae et adiutor
 [remember that supervision of assistant scribes was sanctioned by Justinian] Iohannis forensis, habens stationem apud sanctum Iohannem Baptista, suscriptum conplevi.
 [anno 575] ⁵¹

⁴⁹Cassiodorus, Variae, p. 377-378.

⁵⁰Tjäder, Papyri, I, p. 308, 1.82; p. 322, 1.15; p. 396, 1.5; p. 366, 1.47.

⁵¹Ibid., p. 222, 1.28-9.

But just as scriniarius was usual at Rome and notarius in Lombard Italy, so tabellio became the accustomed title for ordinary scribes at Ravenna with the discontinuation of forensis:

Vitalianus Tabellio huius Civitatis Ravenne [anno 767].
Johannes Tabellio Civitatis Ravenne [anno 889].⁵²

Side by side with the imperial schola notariorum and that of the ecclesiastical notaries, was a schola tabellionum. These collegial organizations are mentioned in Justinian's laws. By chance, documentary evidence has survived only from the schola at Classis, a suburb of Ravenna, whose scribes had their own independent corporation: "[...]us primicerius scholae forensium civitatis Ravennae seo Classis . . . [ca. anno 650]."⁵³ The survival of a college of tabelliones at Ravenna is substantiated by tenth century references to its president (prototabellio), successor to the primicerius and forerunner of the maior:

Dominicus prototabellione uis civitatis Ravenne
[anno 927]

⁵²Fantuzzi, II, 4; I, 91. At Rome, the antique tabellions subsisted until the eleventh century: "scriniarii et tabelliones appartenaient à deux collèges distincts . . . le seul fait de l'infériorité des tabellions explique qu'ils aient disparu de bonne heure." Bouard, "Notaires de Rome," p. 300.

⁵³Tjäder, Papyri, I, p. 376, 1.38. Also, a will of 552 was written by "Deusdedit, forensis civitatis Classis Ravennae", p. 214, B, VII. 2.

Apollenaris in Dei nomine Proto Tabellio hujus
Civitatis Ravenne [anno 977.]⁵⁴

Moreover, a remarkable text from 1227, whose importance we will investigate more fully later, alludes to competing societies that may be offspring of the ancient schola:

Nos Simeon Ravennatis Ecclesiae Archiepiscopus recepta compromissione a Ravenna Tabellione, et sua societate ex una parte, et a Casanola, et Petro Ganzio, et sua societate ex alia restando, . . .⁵⁵

The ecclesiastical/lay division of society was more important to people of the Middle Ages than to their ancient forebears or modern descendants, and was in many ways the most fundamental division. It is therefore somewhat surprising that study of the progressive laicization of European society, while acknowledged by all, has been so neglected.⁵⁶ Investigation of the birth of the lay spirit could well start with the notaries, whose profession was among the earliest, most self-conscious (with its classical associations), and certainly the largest of all secular vocations.

A secular tradition among the Ravennese tabelliones

⁵⁴Archivio arcivescovile di Ravenna, F2326; Fantuzzi, I, 195.

⁵⁵Fantuzzi, IV, 347.

⁵⁶"While the fact of secularization is undisputed, the reasons for this great change in European opinion and the way in which the change was brought about are not clear . . . it is an interesting example of the ways in which public opinion are changed." J. Strayer, "The Laicization of French and English Society in the Thirteenth Century," Speculum, 25 (1940), p. 76.

is demonstrable from the sixth through the thirteenth centuries and even beyond. That our tabelliones are laymen can be seen in the following list from a synod of 955. The clerics are mentioned first then,

De Laici autem idest . . . Petrus Tabellio & Curialis
 [notice that not every tabellio is also curialis],
 Joannes Tabellio de porta triani. [the Emperor Trajan
 had constructed an aqueduct at Ravenna] Joann. Tabellio
 qui vocatur uter. Dominicus Tabellio fil. Leo Petrus
 tabellio . . .⁵⁷

In contrast, Viterbo had a clerical tabellio in 767: ". . .
 dictavi sergio humili subdiacono, et tabellario castris
 viterbii notario rogatorioque meo."⁵⁸ Statistics substantiate
 our subjective impression that the scribal culture at
 Ravenna was overwhelmingly lay in character. Of the 364
 private documents dating from 751 to 1200 that have been
 edited by Fantuzzi, 70% were composed by tabelliones. I
 could not identify the scribe in 32 documents.

FIGURE 9: SCRIBES OF RAVENNESE PRIVATE DOCUMENTS (751-1200)

I. <u>Tabellio (Ravennae)</u>	220
tabellio et curialis.....	4
tabellio et exceptor.....	1
tabellio et consul (or, ex genere consulis)..	8
prototabellio.....	1
tabellio Ravennatis et notarius sancte Ravennatis Ecclesie.....	10
tabelliones of neighboring towns ⁵⁹	11
	Total 255 (70%)

⁵⁷Fantuzzi, III, 2.

⁵⁸Il regesto di Farfa, ed. J. Giorgi and U. Balzani (Rome, 1879-88), II, 49, n. 48, p. 249.

⁵⁹Arimini, Bagnacavalli, Cessene, Cervia, Savignano.

II. <u>Notarius Sancte Ravennatensis Ecclesie</u>	55
<u>primicerius</u>	1
<u>presbiter</u>	4
<u>diaconus</u>	6
<u>clericus</u>	1
	Total 67 (18%)
III. <u>Imperial, royal, comital and other notarii</u>	
<u>Imperiali auctoritate Notarius</u>	
(or Sacri Palatii).....	9
<u>Cancellarius (imperial)</u>	12
<u>Comiti Notarius</u>	4
<u>Judex et Notarius</u>	2
<u>Notarius regis</u>	2
<u>Notarii of neighboring towns</u> ⁶⁰	11
<u>Scriba</u>	2
	Total 42 (12%)
	Grand Total 364

How many different tabelliones were there? The documents Buzzi consulted (for the period 850-1118) were composed by 28 archepiscopal notaries and 120 tabelliones. By comparison, at Lucca "bis 800 sind es rund 100 Namen, . . . bis 850 zählt man 54 neue Notare, von 850-900 sind 24, von 900-950 weitere 55 Namen belegt."⁶¹ Schwarzmaier estimates that about 20 Luccan notaries were active at any one time. Obviously the record there is much fuller than at contemporary Ravenna. One Luccan notary drew up 80 documents, which dwarfs the Ravennese record setter, "Ugo Dei gratia Ravennas

⁶⁰Arimini, Bagnacavalli, Cessene, Faventia, Forimpopulo, Livienne, Imola.

⁶¹Schwarzmaier, Lucca und das Reich, p. 293. ". . . Schwerlich mehr als etwa ein Fünftel der damals tatsächlich geschriebenen Urkunden auf uns gekommen ist." p. 294. Proportionately for Ravenna, Buzzi calculates "che le carte notarili che ci sono giunte, possono essere . . . non oltre il quarto di quelle che una volta dovevano costituire l'archivio della chiesa Ravennate. . ." "Curia arcivescovile e Curia cittadina," p. 22.

tabellio" (1069-1117), with 44 (not all of which have been edited).

How does Ravenna's secular tabellionate compare with the rest of northern Italy? The prevailing opinion seems to be that churchmen drafted most of the documents. "Infatti è risaputo che, nella grande maggioranza, gli atti privati dei nostri Archivi, anteriori alla metà del sec. XIII, provengono da enti ecclesiastici . . ." ⁶² A statistical analysis, similar to ours, of Lombard documents has recently been made by G. Costamagna.

FIGURE 10: SCRIBES OF LOMBARD PRIVATE DOCUMENTS ⁶³

Ecclesiastics or persons dependent on ecclesiastical authority

Notarius Ecclesiae.....	3
Presbiter.....	21
Archidiaconus, diaconus, subdiaconus.....	31
Clericus.....	28
Others (Episcopus, monachus, acolitus, vir devotus, lector, amicus).....	15
	98
Subtotal	98

⁶²M. Moresco and G. P. Bognetti, "Per l'edizione dei notai liguri del secolo XII," Documenti e Studi per la Storia del Commercio e del Diritto Commerciale Italiano, 10 (1938), p. 2.

⁶³Adapted from a table in Mario Amelotti and Giorgio Costamagna, Alle origina del notariato Italiano (Rome, 1975), p. 157, whose conclusion is: "Le persone in qualche modo dipendenti da una autorità ecclesiastica rogano prevalentemente chartae i cui autori e destinatari sono ecclesiastici [lay notaries] rogano prevalentemente chartae documentanti rapporti tra privati . . .," p. 156-158. The documents analyzed were those edited by L. Schiaparelli, Codice diplomatico longobardo in Fonti per la Storia d'Italia (2 vols; Rome, 1929, 1933).

Others

Notarius.....	48
Notarius Regis, Notarius Regiae Potestatis...	3
Vir clarissimus.....	12
Exceptor.....	1
Scriptor.....	12
Nepos.....	1

Subtotal	77
Grand Total	175

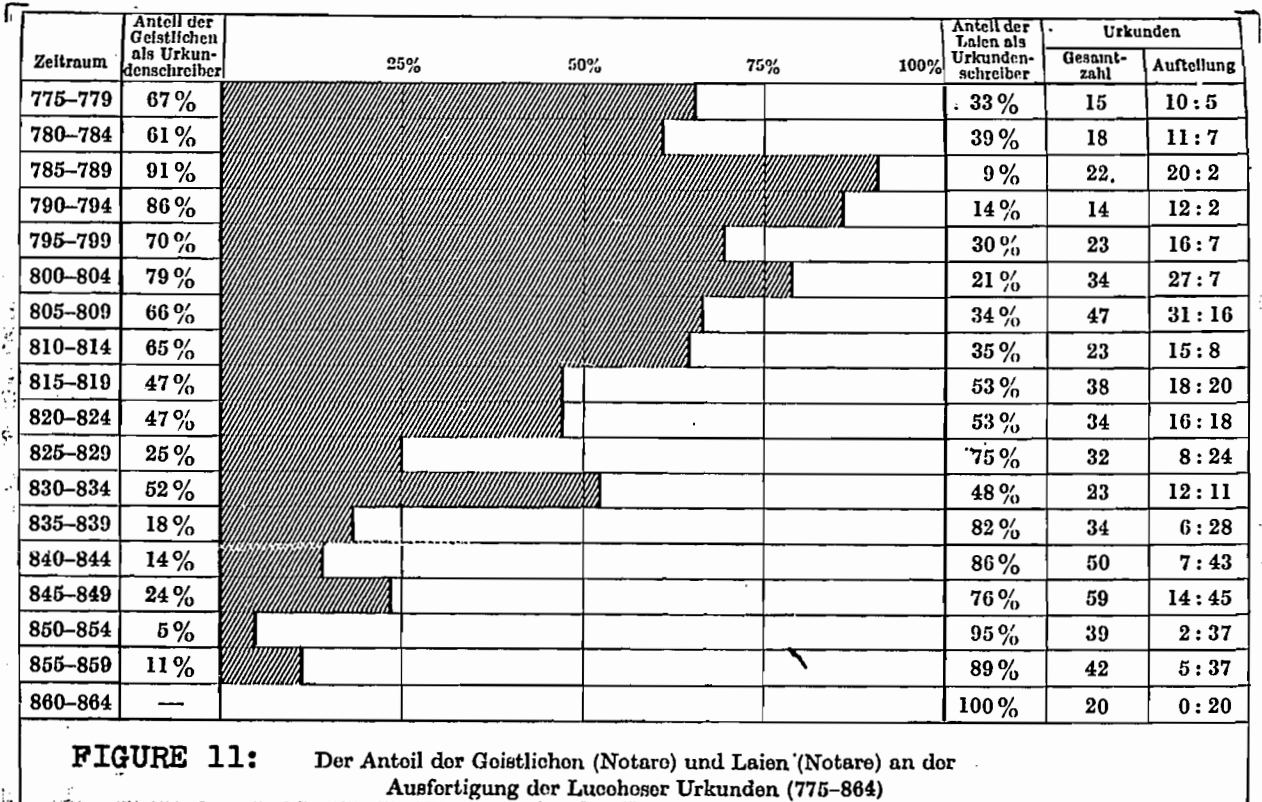
Approximately one third style themselves simply notarius, and may be laymen since they hold no ecclesiastical title or affiliation with any particular church. Informal Lombard procedure permitted any literate person to draw up charters; hence the large number of writers and the possibility that there were even more lay documents that have been lost. The carefully preserved ecclesiastical records tend to impose a certain bias on us. Moreover, laymen may often have held even the office of notarius ecclesiae, judging from this case in which no ecclesiastical title is given: "Magnus notarius Sancte Ticinensis ecclesie."⁶⁴

But can a continuous lay notariate be established for any northern Italian city other than Ravenna? Apparently not. At Pisa no ecclesiastical documents survive, but that may be accidental and does not prove that a lay tradition endured. At Varsi, in the province of Parma, a lay writer of private contracts was active from 735 to 762.⁶⁵ The first lay scribe

⁶⁴Schiaparelli, Codice diplomatico longobardo, no. 48.

⁶⁵Notariato nella civiltà Italiana, p. 378.

at Bergamo appears only in 830.⁶⁶ Lucca is the best studied so far. H. Keller illustrates the emergence of a lay notariate there in the ninth century by means of the following graph.⁶⁷



The dramatic decline of clerical notaries from 91% to 0% can be explained by deliberate repression on the part of the counts of Lucca, whose power increased at the expense of the bishops'. A similar and contemporary trend can be documented at Viterbo and Spoleto. For the latter, H. Zielinski's findings are conveniently illustrated using the same graph.

⁶⁶Codice longobardo, Schiaparelli ed., nos. 60, 72, 79, 80, 92, 109, 111-112. After 856 lay notaries predominate at Bergamo.

⁶⁷Keller, "Gerichtsort," p. 13.

Period	% of clerics as Draftsmen					% of laymen as Draftsmen
		25%	50%	75%	100%	
718-39	0					100
740-49	25.0					75.0
750-59	25.0					75.0
760-69	46.2					53.8
770-79	23.1					76.9
780-89	16.7					83.3
790-99	12.5					87.5

FIGURE 12: THE SHARE OF ECCLESIASTICAL AND LAY SCRIBES IN THE PREPARATION OF SPOLETAN DOCUMENTS (718-799)⁶⁸

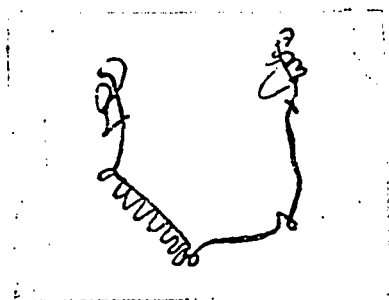
Notice that Spoletan clerics retired from public scribal activity slightly earlier (770-799) than those at Lucca. At Rome the demise of the clerical, and rebirth of the lay, scribe was associated with the revival of the senate in 1144 and with nomination of notaries by the prefectus urbis. In contrast to all these cases, Ravenna's unique lay tradition was never lost.

Was the Ravennese tabellio at all conscious of being a laicus with a calling? Later we will examine notarial

⁶⁸ Composed from data compiled by Herbert Zielinski, Studien zu den Spoletinischen "Privaturkunden" des 8. Jahrhunderts und ihrer Überlieferung im Regestum Farfense (Tübingen, 1972), p. 140. "Was die Verteilung der verschiedenen Schreibergruppen im Regnum anbelangt, so ähneln die Verhältnisse in Norditalien denen in Spoleto, während in Mittelitalien mit Ausnahme von Lucca kirchliche Schreiber geringer vertreten sind."

seals as early expressions of their prise de conscience of being in a secular profession. But even the titles they chose hint at a certain self-justification and even sanctification. Between the sixth and ninth centuries they began adding in Dei nomine to their names, as if to raise themselves to a sphere of quasi-holiness: "Dominicus in Dei nomine Tabellius huius Civitatis Ravenne . . . [anno 844]"⁶⁹

There are countless variations:



"Sergius Divini Splendoris Tabellio . . . [anno 964]"⁷⁰

FIGURE 13: SEAL OF SERGIUS.

Dominicus Divini Luminis Tabellio . . . [anno 967 or 997]
 Dominicus divino nutu Tabellio . . . [anno 1014]
 Guido Dei misericordia Tabellio . . . [anno 1115] 71

The Christianization of titles starting with the emperor's (whose sacred character was derived directly from God) is usually construed by historians as filtering slowly down the

⁶⁹Fantuzzi, I, 87. The idea of the priesthood of the profession may have been suggested to these secular Levites by the Roman law ideology in the Exceptiones Petri, a text possibly Ravennese in origin.

⁷⁰Fantuzzi, I, 161. Lorenzi, Notariato ravennate, II, plate 2.

⁷¹Fantuzzi, II, 49, 246, 385. The early church "had no idea of a 'calling', in the sense in which that word was used in the central period of the Middle Ages . . .," Ernst Troeltsch, The Social Teaching of the Christian Churches, trans. by Olive Wyon (2 vols; New York, 1960), I, 121.

hierarchical scale. But we very soon have simple tabelliones, "divina gratia," who evidently considered themselves worthy of divine approbation. Did perhaps cosmopolitan Ravenna engender a more positive evaluation of the world and with it a new idea of the secular calling? The essence of the lay spirit bursts through in these rather enthusiastic subscriptions:

Dominicus in Dei nomine Tabellione huius splendidissime Urbis Ravenne . . . [anno 973]
 Ravennus [named after the town itself?] christi
 misericordia preclare urbis Ravenne tabellio . . . [anno 1150] ⁷²

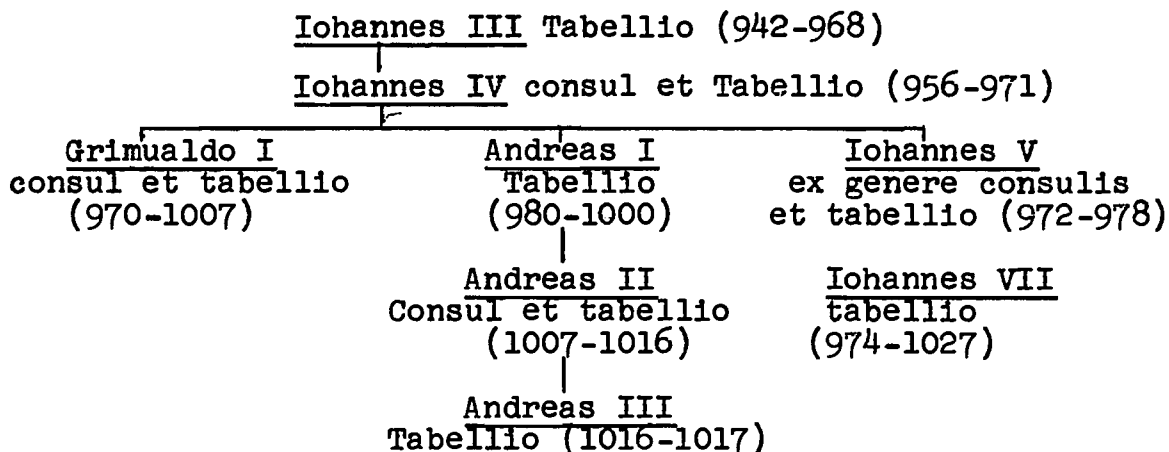
They anticipate the "cosmos of callings" of Thomist social philosophy about which E. Troeltsch has written: "The organization according to class and profession is not something which has been produced by sin and the perversion of the world, but something which has been willed by God in accordance with the harmony of the world and in line with His purpose of Grace."⁷³

Limitation to that special calling in life is seen in the fact that the profession of tabellio could be inherited. In addition to outright statement of kinship in the texts, relationship can also be established on the basis of diplomatic peculiarities and linguistic affinities. Often a

⁷²Fantuzzi, I, 185; Lorenzi, Notariato ravennate, II, 29. Compare the humility of this cleric's subscription from 728: "Ego Gaudentius indignus Notarius sancte Ecclesie Lucensis Civitatis." RIS, V, 375.

⁷³Troeltsch, Social Teaching, I, 294.

particular style of handwriting was cultivated and handed down from father to son. Using all of these means, Buzzi has reconstructed elaborate genealogical trees of Ravennese families that specialized in the notarial profession.⁷⁴



The above is representative of the dozen or so major dynasties of notaries that monopolized the Ravennese tabellionate during the period 850-1118. I have found that more than half of Buzzi's 120 tabelliones belonged to these families. For comparison's sake, Schwarzmaier discovered that in ninth and tenth century Lucca "nicht mehr als 6-8 Familien die Notars-tradition gepflegt haben."⁷⁵ Finally, not only writing styles but also clientele were inherited. One notices that the following three generations of tabelliones all served the monastery of S. Andrea Maggiore:

⁷⁴Buzzi, "Curia arcivescovile e Curia cittadina," p. 68.

⁷⁵Schwarzmaier, Lucca und das Reich, p. 294.

Constantinus I (tabellio 950-991)
 Constantinus II (tabellio 1005-1034)
 Constantinus III (tabellio 1031-1039)⁷⁶

Some Ravennese combined the profession of tabellio with other business activity. It was not uncommon for Italian townfolk to engage in more than one craft or trade. By the late thirteenth century when towns such as Bologna had as many as 2,000 notaries, many of them must have been part-time. But much earlier at Ravenna trade was quite compatible with the notariate: "negozianti sedentari potevano così svolgere l'ufficio non meno sedentario del Tabellone ed insieme appartenere alla Scola . . ." ⁷⁷ Pursuing both careers was "Dominicus in Dei nomine Tabellio & negotiator huius Civitatis Ravennae scriptor huius pagi vinditionis . . . [anno 927.] " ⁷⁸ One recalls that in classical times contracts were drawn up by businessmen themselves, as instanced by that wax tablet from the second century. Even after the sixth century Ravennese merchants had to be literate and no doubt often doubled as scribes. The absence of later examples may be explained by the fact that "nel corso del sec. IX . . . la società ravennate viene perdendo la sua fisionomia cosmopolita, commerciale e marinara per 'ruralizzarsi' . . ." ⁷⁹

⁷⁶Buzzi, "Curia arcivescovile e Curia cittadina," p. 66, 79, 87.

⁷⁷Crosara, "Scole ravennati," p. 64. In thirteenth century Bergamo even barbers served as notaries on the side, cf. G. Poletti, Il notariato a Bergamo nel secolo XIII (Bergamo, 1912), p. 31-39.

⁷⁸Fantuzzi, IV, 172.

⁷⁹Vasina, Romagna medievale, p. 151.

In form and value how do the acts of tabelliones compare with those of other notaries at Ravenna and elsewhere? The acta of ecclesiastical notaries and those of private tabelliones follow two different traditions -- the classical Roman and the vulgar Roman, according to Buzzi. He even goes so far as to compare the meter used in each.⁸⁰ However, the main difference between them is the vulgar Roman formula traditio chartae -- the handing over of something tangible on which transfer of ownership depended. There is a large literature on this Roman practice and how it later became associated with the oaths and swearing on the Gospels that occur in the papyri of the sixth century. In notaries' acts the corroborating clauses derived from the classical Roman tradition, ie. they were executed by order. For example, this livello concession of the archbishop is made by fiat in the manner of a sovereign grant.

Quam petitionis vestre paginam Iohanni Notario S.
Vestre Raven. Ecclesie scribendum iussimus in qua nos
subscriptissimus sub die, mensis, et Indictione supta
Raven. [anno 918] 81

There is no reference to a delivery of documents despite the fact that in reality there always was, even in this case; it is simply not mentioned. In tabelliones' acts the corroborating clauses derived from the vulgar Roman tradition, that is, they feature witnesses and an exchange of some kind,

⁸⁰Buzzi, "Curia arcivescovile e Curia cittadina," p. 144.

⁸¹Fantuzzi, I, 115.

usually a handing over of documents, but often of money or symbolic objects. The following enfiteusi concession refers to a delivery of documents and money.

Quam vero paginam Sergius divini luminis tabellio huius civitatis Ravenne scribendum rogavimus in qua nos subter manus nostras propria firmavimus testibusque a me rogatis obtulimus roborandam eorum presenciam eam nobis contradidimus sub die
 Petrus negotiator uic paginam petitionis de omnibus sicut supra rogatus tt SS [teste superscripto] et calciarie dante et accipiente vidi. [anno 964] 82

The importance especially to the illiterate, of a corporal handing over is suggested by this imperfect copy of a livello transaction from 1110:

. . . hanc paginam vendicionis a nobis factum, & traditam vobis per legitimam & nostram corporalem tradicionem, quamque eciam per istum nostrum Missum nomine Ubertum quem de nostris manibus in vestris mittimus, ut ipse vos inde investiat in nostra . . . 83

Finally, regarding script, that of the tabelliones is recent cursive, while that of scribes attached to the curia is ancient cursive.

The question of the value of the acts drawn up by tabelliones leads to several intricate problems that will be handled in our next chapter on notarial practice. Suffice it to say here that tabelliones' documents may have lacked the executive force enjoyed by those of other notaries elsewhere

⁸²Fantuzzi, I, 163.

⁸³Ibid., IV, 236.

in Italy. We have seen that the domain of the notariate was the land of Lombard law while that of the tabellionate coincided with Roman law -- that is, Rome, Ravenna, and Naples. "Grace à la persistance tardive à Rome de l'institution des antiques 'tabelliones', dont, on le sait, les écrits n'avaient pas la valeur d'authentiques, la force exécutoire de la charte Romaine demeura, pendant très longtemps, inférieure à celle des autres chartes italiennes."⁸⁴ Bouard is arguing here that the tabelliones' traditional methods retarded their juridical evolution into magistrates of voluntary jurisdiction. Presumably the Ravennese too, gradually assimilated the advanced ways of their neighbors just as they eventually adopted the Lombard title notarius.⁸⁵

⁸⁴"Bouard, "Notaires de Rome," p. 305-306.

⁸⁵"I tabellioni ravennati avevano già completata nel secolo XII la loro evoluzione nel campo giuridico . . . la trasformazione del nome di tabellio in quello di notarius . . . fu soltanto un puro e semplice cambiamento di nome . . .," Lorenzi, Notariato ravennate, p. 23, 28.

CHAPTER VII

NOTARIAL DIPLOMATIC

"Lord! So many things are written of no purpose or use . . . as do the notaries who with great pomp and caution summon witnesses and write their words so that they will be remembered and held authentic." ¹
Federigo Visconti, Archbishop of Pisa (d. 1277)¹

Since legislation on the notariate after the Carolingians is nonexistent, we are thrown back on notarial practice. Initiation into the mysteries of diplomatics is the prerequisite for any understanding of these notarial records. Even this work of apprenticeship of ours cannot be intelligently pursued without mastery of a voluminous special literature on subjects of great complexity. However such a close criticism of the documents gives us the real rather than the novel, puts us in the notaries' place, and tells us what really concerned them. The Ravennese love of notarial records has made the latter our most important source for understanding the genius loci. By casting our nets wide (sixth through thirteenth centuries), I hope to catch both classical reminiscences and contemporary

¹Quoted (without reference) by David Herlihy, Pisa in the Early Renaissance (New Haven, 1958), p. 1.

compromises with the changed conditions of the Middle Ages.

1. External Characteristics

Because he wished to minimize forgeries, Justinian required tabelliones at the city of Constantinople to use a certain quality of papyrus, though the provinces were exempt from this decree.² The earliest documents from Ravenna are preserved on papyri dating from the fifth through tenth centuries. The latter date is significant when we remember how much importance Pirenne attached to fluctuations in the use of papyrus in Gaul after 677.³ Like the popes, who still used papyrus until 1057, the Ravennese obtained it either from their old stocks or through Byzantine ports. The poor state of preservation that these records are in today is explained by the fragility of papyrus in the wet northern climate. The notarial documents from the rest of our period are parchments,⁴ the writing material par excellence until the thirteenth century when paper was introduced for notarial use in places like Lucca, Pisa and Venice (after 1225). However, Ravennese notaries, like their Pavese colleagues,

²"Haec itaque quae de qualitate talium chartarum a nobis decreta sunt, et de incisione eorum quae vocantur protocolla, valere in hac felicissima solum civitate volumus, ubi plurima quidem contrahentium multitudo, multa quoque chartarum abundantia est . . .," Novella 44. 2.

³Henri Pirenne, Mohammed and Charlemagne, Meridian edition (New York, 1939), p. 92, 170.

⁴13,000 parchments in the Archivio arcivescovile and 7,000 in the Archivio di Stato, most are from the ninth through thirteenth centuries and many are notarial documents.

apparently continued to use parchment even for their minutes.

Through their calligraphy our notaries identify themselves as children of the classical past. Most of the papyri is written in "recent cursive" (descended from "ancient cursive"), which was used from the fourth century on.

"Imperial cursive" is reserved for the protocol of the gesta.⁵ A second classical vestige in the orthography of these early texts is the use of Tironian notes. This system of tachygraphy (shorthand) whose invention is traditionally attributed to Cicero's scribe, Tiro, crops up in the subscriptions to several of the papyri.⁶ Ravenna's role in perpetuating these parts of the ancient legacy can be guessed from Merovingian diplomas borrowing "recent cursive" and Carolingian ones employing Tironian notes.

Can any evolution be detected in the handwriting of Ravennese manuscripts? The handwriting on the papyri remains very homogeneous and classical throughout. Even witnesses who autograph documents rarely disfigure letters. The formal unity to the papyri over an impressively long period (445-700) contrasts with the later Middle Ages generally when writing styles changed very rapidly even over the course of a century. Turning to the parchments, little paleographical

⁵On the classification of script, cf. Tjäder, Papyri, I, 120f.

⁶Ibid., III, plate of papyrus 6 (anno 591); Marini, no. 15 (anno 540); no. 88A (anno 572). The key to Tironian abbreviations has been lost, but see the table given in A. Mentz, "Die tironischen Noten. Eine Geschichte der römischen Kurzschrift . . .," Auf, 17 (1941-42), p. 169-171.

analysis has yet been undertaken. However, the following cross section of examples from the ninth through thirteenth centuries would, I believe, be classified as cursive hand.

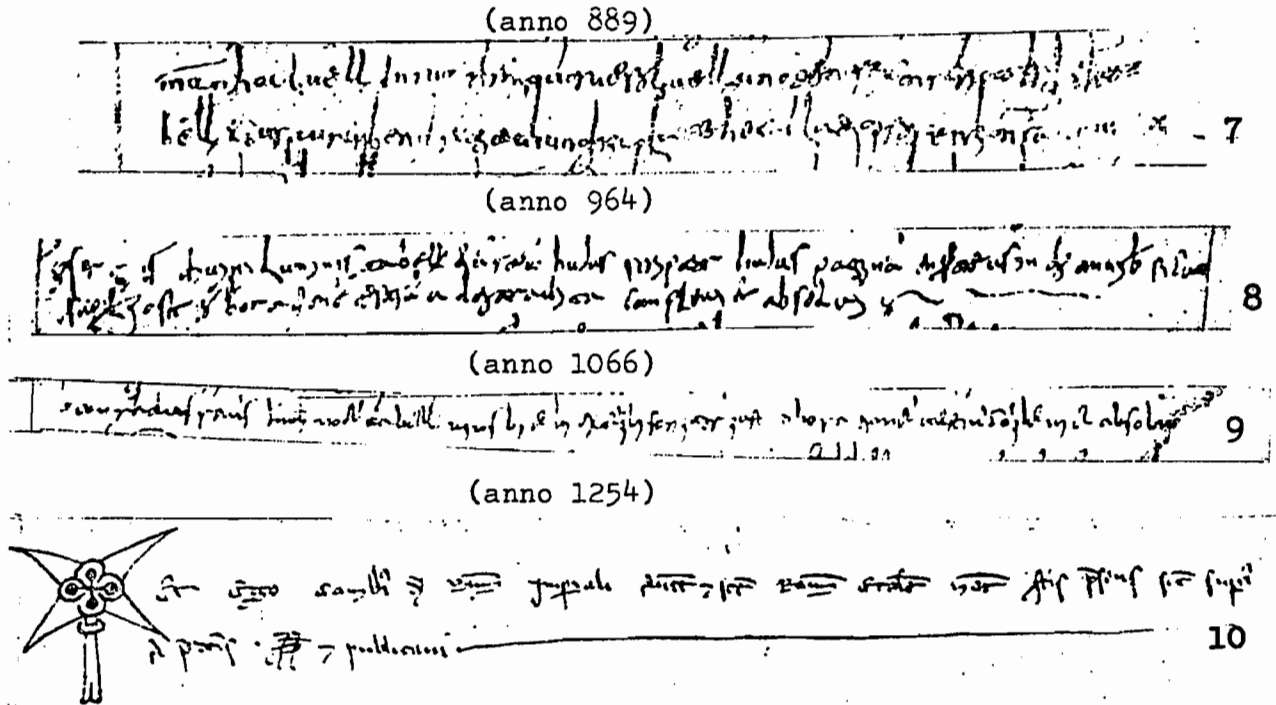


FIGURE 14: EXAMPLES OF CURSIVE HAND (NINTH THROUGH THIRTEENTH CENTURIES).

7" . . . maneat hoc livellum in sua firmitate, quos vero Livelli. uno tenore conscriptos Johannes Tabellio Civitatis Ravenne Scribendum rogavi, unde sic placet hec oblatio professione nostra unum . . ." Lorenzi, Notariato ravennate, I, pl. 3; transcription from Fantuzzi, I, 91.

8" Sergius divini luminis tabellio Civitat. Rav. Scriptor huius paginam . . ." Lorenzi, I, pl. 5; Fantuzzi, I, 161.

9" Conradus Ravennatensis in Dei nomine Tabellio hujus brevi exempli scriptor post roboracionem testium & absolvi." Lorenzi, I, pl. 11; Fantuzzi, IV, 212.

10" Et ego Cambius de Ravenna Imperiali auctoritate et sanctae Raven. ecclesiae notarius superscriptis personis sicut superius predictis subscripsi et publicavi." Lorenzi, II, pl. 39; my transcription.

North of the Alps a contemporary shift in script signals a much more significant break. "The change from the cursive to the minuscule is indicative of a changed order of society: from one in which writing is indispensable to the collective life, to one in which the art of writing is confined to a select, professional group - the clergy."¹¹ Not until the thirteenth century, when conditions again called for widespread literacy, does cursive reappear in northern Europe. "Corsiva nuova ravennate" is the normal hand of both lay tabelliones and clerical notarii throughout this period, and we will see examples of Roman minuscule and "minuscola libraria" in autograph signatures.

The quality of Latinity is another gauge of the borrowers and what is borrowed. The papyri perpetuate the tradition of the Roman imperial chancery, with the addition of many Greek derivatives and constructions. Remember that Ravenna became a Greek enclave with the Lombard invasion. Some of the Greek-speaking participants even write out the Latin formulae using Greek characters:

Εγὼ Πέτρος υ(ιρ) η(onestus) κολεκταριῶς ὄνει τῆσταμηνητων ρογατος α Μαννα[νη].
 [υ(ιρο) δ(ενοτο)] τῆστατωρη, φίλιως κωμδα Ναρδερη, ηψου πρησεντη ετ σουσκριμεν[τη],
 [ατκο]η ει τῆσταμεντω ρηλεκτου, περ κου κουσσιτουετ ερηδε σανατα ηκλισια.
 [καθο]λεκα Ραυεννατη, τῆστης σουσκριψιν. [anno 575]¹²

¹¹James W. Thompson, The Literacy of the Laity in the Middle Ages (Berkeley, 1939), p. 28.

¹²Tjäder, Papyri, I, 222. The Latin formula is as follows: ". . . huic testamento rogatus a Mannane viro devoto testatore, filio quondam Nanderit, ipso praesente et suscribente, atque ei testamentum relictum, per quo constituit heredem sanctam ecclesiam catholicam Ravennatem, testis suscribsi."

Thereafter one must distinguish between the vulgar and classical traditions. The tabelliones' documents reflect a low state of culture: their crude style and barbarized but living Latin of everyday conversation is almost unintelligible to us. The contrasting high literary art of the Ravennese archepiscopal notaries is attested by their use of the ancient cursus. This system of rhetoric, first developed by the Athenian orators and later adapted by Cicero, prevailed until the sixth century A.D.¹³ According to Buzzi, it still "vigesse in Ravenna, il primo e più grande centro di cultura in Italia nei secoli X e XI . . ." ¹⁴ The papal chancery's codification of the rules in the eleventh century is well known to medievalists. But this Cursus Curiae Romanae was not a new invention.¹⁵ Most important for us, the cursus was used in Ravennese notarial documents very early. The Roman cursus, according to R. L. Poole, "was in fact more slowly introduced into the more solemn documents than it was into Letters. Probably the notaries were reluctant to alter the traditional forms of Privileges, all the more since the beneficiaries would not welcome a document the style of which did not accord with what they had been in the habit of

¹³Albert C. Clark, The Cursus in Medieval and Vulgar Latin (Oxford, 1910), p. 26f.

¹⁴Buzzi, "Curia arcivescovile e Curia cittadina," 144.

¹⁵"Its author started from the study of the classical or sub-classical writers on rhetoric; but he adapted their rules to the facts of the pronunciation of his own day. He thus reflected an historical development: . . .," Poole, Papal Chancery, p. 93.

seeing."¹⁶ At Ravenna the rules of cursus are applied especially in the variable parts of the charter, ie. the harangue and clauses of validation.

Another relic -- this time Christian and Greek in origin -- occurs in a charter of 1258, drawn up by "Giraldus . . . imperialis auctoritate & sanctae Ecclesiae Ravennatis notarius." Often in Ravennese documents the initial protocol and eschatocol are written in the margin, as a kind of frame around the text, and are preceded by the letters "I.C." and a fish, symbol of the Redeemer. Thus in the facsimile on page 140, "La presenza del I'Χ ροϋς ci richiama l'uso comune nella epigrafia cristiana di disegnare a destra ed a sinistra dell'epitaffio simboli cristiani, quali un fiore, un genio alato, l'uomo orante, il gallo e il pesce."¹⁷ Incidentally, one medieval innovation, namely the introduction of the year of grace, was not adopted at Ravenna until the twelfth century. Instead of the widespread incarnation or nativity style, Ravennese scribes went on dating according to the regnal years of emperor and pope.

2. Signum Tabellionatus

The custom of using seals in private documents goes back at least to the sixth century B.C., the time of the prophet Jeremiah. The earliest seals at Ravenna are monograms

¹⁶Poole, Papal Chancery, p. 95.

¹⁷Vincenzo Federici, Archivio Paleografico Italiano, vol. VII, fasc. 49., commentary to plate 67.

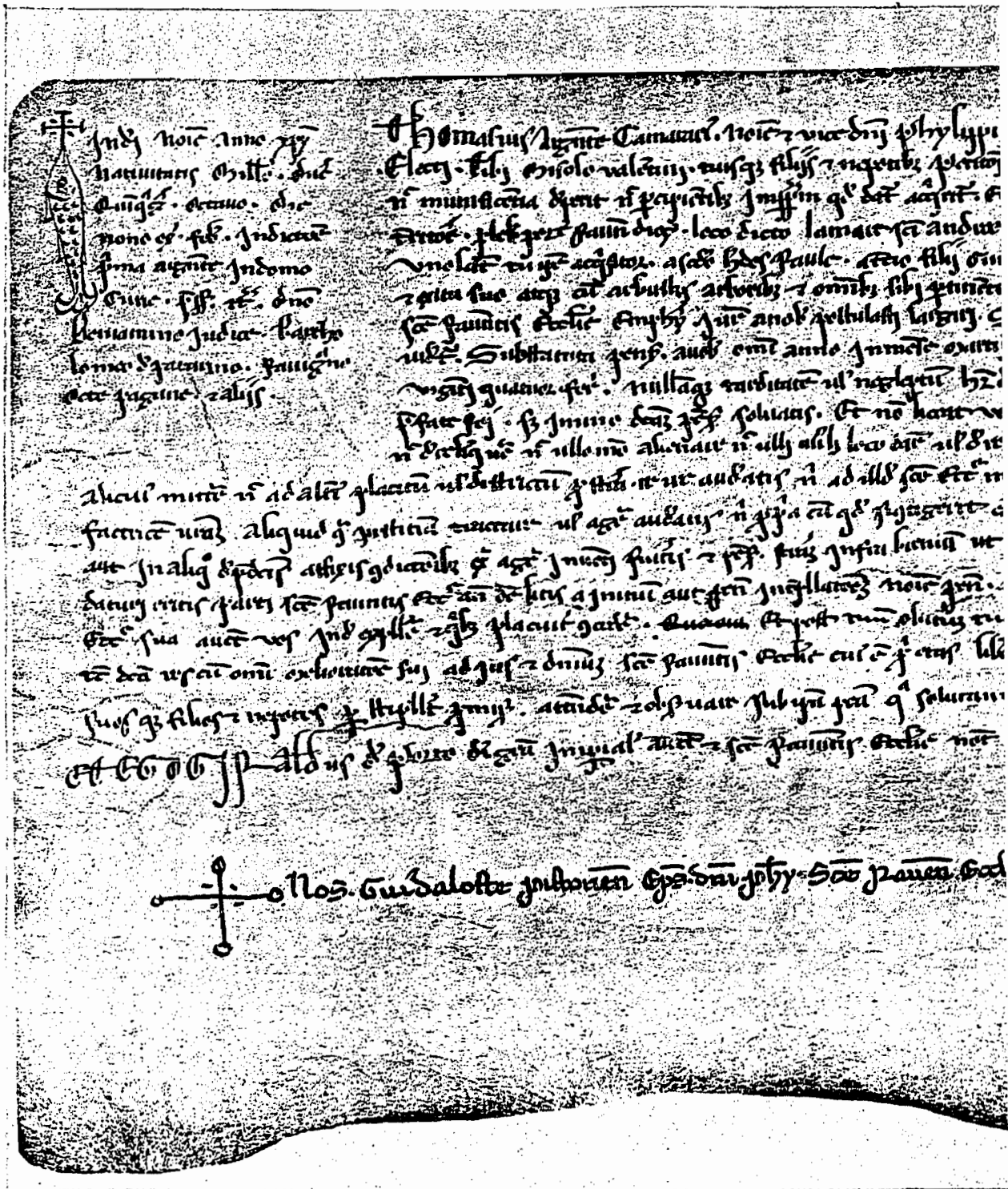


FIGURE 15: USE OF CHRISTIAN SYMBOL IN RAVENNESE MS OF 1258. From: Archivio Paleografico Italiano, vol. VII, fasc. 49, plate 79.

which were popular on sarcophagi, capitals and governmental documents. In a will on papyrus dated 575, the following enigmatic monogram of the forensis Johannes appears.

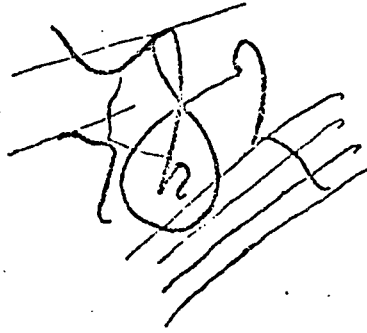


FIGURE 16: MONOGRAM OF FORENSIS JOHANNES (ANNO 575).¹⁸

The way to read it, according to G. Costamagna, is to break it down into individual penstrokes,



which turn out to be the Tironian syllabic signs for the word notarius. Technically however, "non si può ancora parlare di segno del tabellionato" in the Ravennese papyri.¹⁹ Only in the late tenth century do Ravennese tabelliones begin to use

¹⁸Marini, Nr. 75; G. Costamagna, "Influenze tachimografiche sulla formazione del segno del tabellionato nell'Italia Settentrionale (secoli IX-XI)," Atti della Accademia Ligure di Scienze e Lettere, vol. VII, (1951), p. 102.

¹⁹Ibid., p. 114.

monograms. The origin of the signum tabellionatus is attributed by one school to the prevailing use of signum manuale by illiterates. Another theory derives it from the practice of invoking divine aid before making a contract. We have seen how witnesses made a cross before their subscriptions, perhaps following the Apostle Paul in Colossians 3:17, "Whatever you do, in word or deed, do everything in the name of the Lord Jesus . . ." "In ambedue le teorie, quindi, ci sarebbe una parte di vero . . .," according to Costamagna.²⁰ I think for Ravenna it is necessary to add a third factor, namely, imperial influence. The earliest monograms used by our tabelliones reveal "il desiderio di imitare in questo, come nelle lettere allungate, le stesse particolarità dei diplomi imperiali e reali . . ."21



FIGURE 17: SEAL OF SERGIUS TABELLIO
RAVENNE, ANNO 977. 22

²⁰Costamagna, "Segno del tabellionato," p. 126.

²¹V. Federici, "Prefazione" to Regesto di S. Apollinare Nuovo (Rome, 1907), p. XIV.

²²Ibid., plate 1.



FIGURE 18: SEAL OF DOMINICUS TABELLIO CIVITATIS RAVENNE, ANNO 965. He "fece parte della Cancelleria imperiale, ma rogò anche come pubblico Tabellione." ²³

By the eleventh century fantastic animals and serpents creep in (literally!).

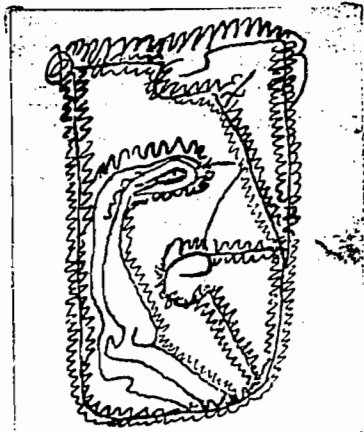


FIGURE 19: SEAL OF GUIDO TABELLIO CIVITATIS RAVENNE, ANNO 1001. ²⁴



FIGURE 20: SEAL OF LEO TABELLIO CIVITATIS RAVENNE, ANNO 1047. ²⁵

According to Lorenzi they "rispecchiano i tempi oscuri e tetri di quei secoli."²⁶ But that judgment is purely subjective.

²³Lorenzi, Notariato ravennate, vol. II, plate 1.

²⁴Ibid., plate IV. ²⁵Ibid., plate III.

²⁶Ibid., p. 5.

Aside from the practical need for a system of trade-marks, symbols of their juridical personalities, tabelliones really identified themselves with their notarial signs. Here was one means (style of handwriting was another) by which they could attract attention to themselves, expressing their prise de conscience of being in a secular profession.

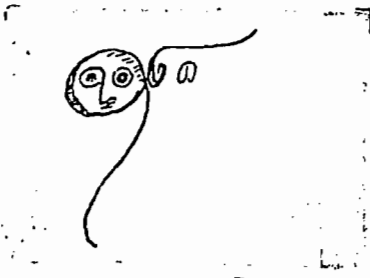


FIGURE 21: SEAL OF PALMERIUS "SACRI IMPERII ET PUBLICUS RAVENNE NOTARIUS", ANNO 1250. 27

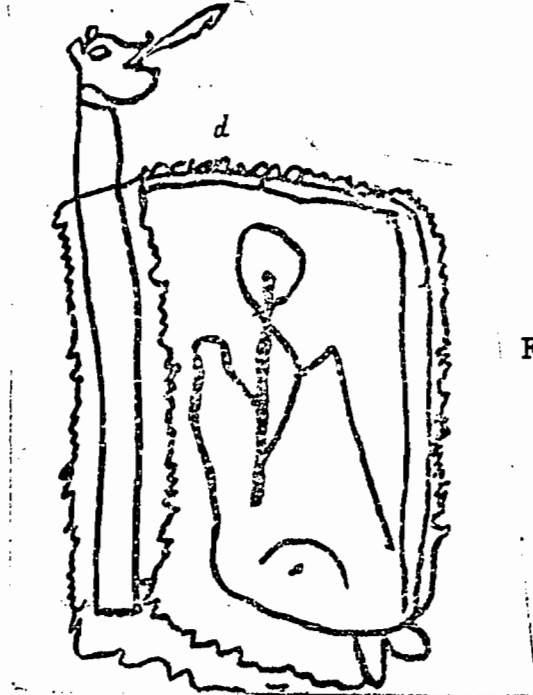


FIGURE 22: SEAL OF RAIMBERTUS TABELLIO RAVENNE, EARLY TWELFTH CENTURY. 28

Ravennese seals "dimostra molto più chiaramente che nelle bolognesi la sua derivazione dalla croce originaria."²⁹

²⁷ Lorenzi, Notariato ravennate, plate VII.

²⁸ Federici, Regesto di S. Apollinare, plate II.

²⁹ Palmieri, "Carte giudiziarie," p. 409.

That had been the inspiration all along of ecclesiastical notaries' seals, borrowed from the Greek Chi-Rho monogram. But it is not until the thirteenth century that the cross became the basic motif, adorning almost all documents down to 1600.



FIGURE 23: SEAL OF NATALIS "IMPERIALIS AULE TABELLIO ET RAVENNE NOTARIUS," ANNO 1253.³⁰

This sea change too, seems to be connected with growing imperial influence and adoption of the title notarius.

3. The Authentic Notarial Act

Sometime between the mid-tenth and twelfth centuries³¹ the documents of Ravennese tabelliones can be said to have acquired public faith -- that is, they functioned as private law, regulating the persons named in some particular way. Notarial contracts are actually called "lex" later on in the twelfth century. Attributing this special quality of public faith to the documents is a medieval innovation not found in Roman law, not even in Justinian's legislation which still required insinuation before a curia. How did notarial acts

³⁰Lorenzi, Notariato ravennate, II, plate VII.

³¹"... généralement au XIIe siècle . . . dès la fin du Xe siècle, en Romagne . . . les notaires qualifient leurs écrits d'authentiques, les disent rédigés en forme publique." A. de Bouard, "Etudes de diplomatique sur les actes des notaires du Châtelet de Paris, BHE, fasc. 186 (1910), p. 5.

attain public faith? The cause of this important development is still unclear. Some theories advanced so far are diametrically opposed. "Gleichzeitig mit der obrigkeitlichen Ernennung erlangen die Notare die publica fides . . . Die beiden Erscheinungen müssen zusammenhängen . . ." ³² But to an Italian scholar such as Torelli: "Il documento notarile, che non godeva della fides publica [under Justinianic, Lombard or Frankish rule] . . . l'acquisto per sè stesso, per naturale forza di cose in Italia appunto in quel periodo in cui il potere pubblico andava sempre più allontanandosi, attenuandosi, frangendosi in cento autorità di competenza troppe volte non nettamente determinata." ³³ Secondly, why did Ravennese tabelliones acquire it earlier than other notaries? I think the answer to both these questions lies (partially, at least) in the revived study of Roman law, first at Ravenna whose law school preceded that of Bologna. Scholars should carefully re-examine the sources, starting with Ravenna's which are among the oldest and most numerous.

An explication de texte of two documents from 942 and 1147 respectively will illustrate the profound change that occurred in the functioning of the notarial instrument between these two dates.

³²Mayer, Italienische Verfassungsgeschichte, I, 125.

³³Torelli, "Diplomatica comunale," p. 15.

Quam uero paginam dominicus in dei nomine tabellio huius civitatis rauenne scribendam rogavi in qua et ego subter manus mea propria firmaui testibusque a me rogatis optulit roborandam eorum presencia eam tibi qui supra contradidi sub die et mense et indicione suprascripta quintadecima rauenne.³⁴

Emphasis of the role of witnesses underlines the limited value of this early tabellio's act. The number of witnesses varies, but is usually five as here. Notice too that it is the transacting party who calls them. Later the rogatus is taken over by the notary himself, as can be seen in this Florentine deed of 1199 and less clear Ravennese example from 1059:

Ego Oldebrandus . . . notarius hec rogavi et scripsi
. . .³⁵

Signa ++++ manibus Johannis qui vocatur de Calbitto & vidonus de bonaldo & Ursonis qui vocatur Tauzo & Bernardi testibus huius pagine & me presente Bulgarum tabellione Rogatorum.³⁶

The four crosses, marks of each witness, are all that remain of personal signatures. The tabellio wrote the whole document, including any subscriptions of the witnesses. This may suggest a general decline in lay literacy.

The next element in the protocol of our tenth century source is a long summarizing statement by each witness.

Signum + manus mea suprascripta maria deo dicata
donatrice a me facta cui relectum est

³⁴Bernicoli, p. 22-23.

³⁵Cited by Bouard, L"acte privé, p. 19n.4.

³⁶Fantuzzi, III, 25-26. Often tabelliones themselves served as witnesses, eg. ibid., I, 134 (anno 953).

- + petrus medicus uic pagina donacionis transfersionis sicut superius legitur facta in sergia abbatissa monasterii sancte marie suisque successoribus ad maria deo dicata qui me presente firmaui et eis relectum rogatus ab eadem testes subscripsi
- + Iohannes filio quondam petrus uic paginam donacionis . . . [identical statement]
- + leone . . . [etc.]
- + petrus filio quondam Iohannes . . . [etc.]
- + Iohannes filio quondam lëo . . . [etc.]
- + dominicus in dei nomine tabellio huius civitatis rauenne scriptor huius pagina donacionis transfersionis sicut superius legitur post roboracionem testium atque traditam complevi et absoluit ³⁷

The origin and significance of the traditio is much disputed. On the first point, Tjäder's recent theory has won wide acclaim: "Ist nicht die traditio schlechthin der alte Stipulationsakt, der durch das Eindringen christlicher Gedanken umgewandelt worden ist."³⁸ According to Ficker the formula signified simply the delivery of the document to the witnesses for signature. But to Brunner it meant the symbolic transfer of immovable property through the handing over of a document. The ancient traditio corporalis (the physical transfer of a symbolic object) was transformed into the medieval traditio cartae (in which the instrument itself was all important). On this point Palmieri "confessa sinceramente che non è facile sostituire a queste una spiegazione

³⁷Bernicoli, p. 22-23.

³⁸"Der Unterschied ist nur, dass es sich bei der Stipulation um einen altrömischen Rechtsakt, bei der traditio (über den Evangelien) um einen religiösen Akt handelt." Tjäder, Papyri, I, 278.

convincente."³⁹ In any event the traditio gradually drops out of use by the twelfth century.

Quite distinct from the traditio was the completio ("complevi et absolvi"). We saw that Justinian required the tabellio's presence at this final ritual in the drawing up of a document.⁴⁰ Much of this play acting required by Roman law was reduced in the early Middle Ages. "Il diritto longobardo respinse, come una sottigliezza giuridica, la necessità della tradizione corporale dell'immobile . . ."⁴¹ And concerning the simpler medieval completio G. Cencetti comments: "indotta dal progressivo raffinarsi dello spirito religioso a una sempra maggiore considerazione dei fondamenti etici delle norme giuridiche, sempre piú si staccava da un formalismo che non trovava corrispondenza nel mondo della morale."⁴² Carrying this argument a step further, imaginative German scholars of the nineteenth century (such as Brunner) saw the glories of Roman law as "juristische Subtilitäten,"⁴³ and praised the reduction of such fictions, thus making a virtue out of the return to primitive simplicity.

³⁹Palmieri, "Carte giudiziarie," p. 42. The most recent treatment of this topic is H. Steinacker, "Traditio cartae und traditio cartam. Ein Kontinuitätsproblem," AfD, 5-6 (1959-60), p. 1-72.

⁴⁰" . . . si per tabellionem conscribantur, etiam ab ipso completa, et postremo a partibus absoluta sint . . .," Code IV. 21. 17.

⁴¹Gaudenzi, "Sulla duplice redazione," p. 354.

⁴²Cencetti, "Notaio medioevale Italiano," p. xiii.

⁴³Heinrich Brunner, Zur Rechtsgeschichte der römischen und germanischen Urkunde (Berlin, 1880), p. 148.

The final element in our document from 942 is the notitia testium which indeed is standard at Ravenna from the sixth through twelfth centuries.

Noticiam testium

petrus	uir clarissimus	medicus
iohannes	uir clarissimus filio quondam	medicus
leo	uir clarissimus	negociator
petrus	uir clarissimus filio quondam	iohannes
iohannes	uir clarissimus filio quondam	leo ⁴⁴

Paleographically, the Ravennese tabellio begins on the left with a large monogram "N" of the word notitia⁴⁵ and makes three columns for the name, title and family or profession of each witness. The schema is as follows:

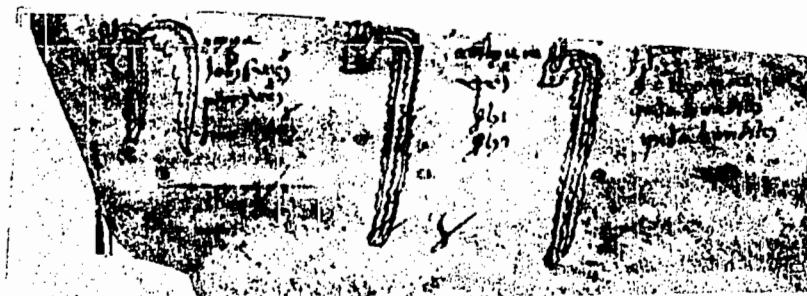
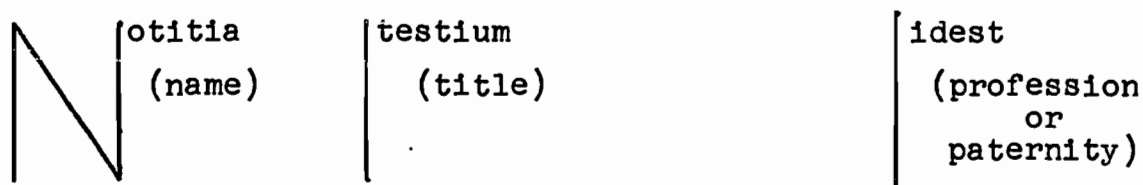


FIGURE 24: NOTITIA TESTIUM (ANNO 942).⁴⁶

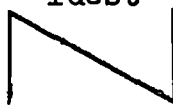
⁴⁴Bernicoli, p. 22-23.

⁴⁵Some tabelliones interlace their own names into the monogram, cf. Archivio Paleografico Italiano, VII, plates 9,12, 14.

⁴⁶Lorenzi, Notariato ravennate, I, plate 10, anno 1047. The Venetian notitia testium, "privo di ogni svolazzo o gioco

Although the notitia testium is peculiar to documents from Ravenna and Venice, L. Zdekauer claims an ancient Roman origin for this practice.⁴⁷ There are lists of witnesses on wax writing tablets from Pompeii in which the witnesses signed on the left-hand column and affixed their seals next to their signatures. But Pagnin sees the notitia testium as a local custom of the scribes of Ravenna ("nè romana nè bizzantina sia l'origine") that arose from the nature of the document itself ("è più chiara la derivazione da esse dei signum manus e delle firme autografe").⁴⁸ More importantly, what was the function of the notitia testium? Two rival theories dispute the field. According to Pagnin the tabellio was simply verifying the identity of the witnesses (by giving their title, profession, family, etc.) much as our contemporary notary public does. He emphasizes that the "N.T. . . . è strettamente unita alla redazione definitiva dell'atto e veniva scritta contemporaneamente ad esso, di cui era parte

di penna come si osserva nelle notitiae ravennati," can be schematized as follows:

signature of author		idest	
signatures of witnesses	witness witness witness		witness witness witness
+Signature of the <u>tabellio</u> .			

Adapted from B. Pagnin, "La Notitia testium nel documento privato medievale italiano," AIV, 97 (1938) parte II, p. 4.

⁴⁷" . . . la derivazione romana della Notitia testium è incontestabile," L. Zdekauer, "Sulla notitia testium nei documenti notarili del Medio Evo," AG, n.s. V (1900), p. 141.

⁴⁸Pagnin, "Notitia testium," p. 13. But Tjäder is "nicht völlig sicher" and adduces "ein unzweideutiges Beispiel für die Anwendung der notitia in Rom vor, was Pagnin ganz verkannt hat," Papyri, I, 277.

integrativa."⁴⁹ As proof that the notitia was written at the same time as the rest of the act, he points out that both are in the same ink.

On the other hand, A. Gaudenzi argues that additional information about the witnesses could have been inserted into the text itself, if that was all that was at stake. Moreover, why should the notary write out their names a second time? To account for this Gaudenzi offers a novel and important theory of his own. "L'impressione che si riceve esaminando la notitia testium e l'elenco dei testi contenuto nell'atto, è semplicemente che l'una e l'altro siano stati scritti in tempi diversi."⁵⁰ Indeed, the names in the notitia are not always the same as those mentioned in the document.⁵¹ Those listed must therefore be the witnesses who assisted at the second redaction of the act: "la notitia testium è l'elenco di quelli, che assisterono alla redazione della scheda."⁵² The scheda was the rough draft, usually scribbled on the back of the selfsame parchment. This notitia dorsalis we will discuss at greater length below. But examination of the color of the ink explodes Gaudenzi's theory.⁵³ Furthermore,

⁴⁹Pagnin, "Notitia testium," p. 15.

⁵⁰Gaudenzi, "Sulla duplice redazione," p. 318.

⁵¹A notitia testium from 1024 (Fantuzzi, II, 64) names only four of the five witnesses recorded in the act.

⁵²Gaudenzi, "Sulla duplice redazione," p. 318.

⁵³"L'esame accurato del colore dell'inchiostro dell'atto, della NT e della notizia dorsale che ho avuto occasione di fare nel trascrivere i documenti, m'ha convinto del contrario . . ." Buzzi, "Curia arcivescovile e Curia cittadina," p. 141.

the most damaging evidence of all against it is a case in which the dorsal notitia and the definitive redaction were done by different tabelliones, and "la N.T. è di chi ha disteso l'istrumento."⁵⁴

How very different from all of the above is the structure and function of our next document (dated 1147), which reflects the growing importance and authority of the tabellio.

Quam vero paginam donacionis ego Ugo Ravennas Tabellio scripsi post traditam complevit & absolvi. Signa manus Sti Villani donatoris ad omnia Sta Marcus. Petrus de Marco. Astolinus de Guidone. Johannes brusamercatus. Bonus filius de sclavo interfuerunt.⁵⁵

The formula "post roborationem testium" has been omitted. Gone are the long explanatory statements by the witnesses. They do not sign or even make a cross. The tabellio declares who was present. Gone, too of course, is the notitia testium (it last occurs in 1167) which was obsolete now that the tabellio's signature alone validates the act.

The notarial act became authentic with the appearance of these formulae which emphasized the importance of the notary's presence: "interfui," "audivi et vidi," "in presentia mea facta sunt."⁵⁶ Using this rule of Bresslau's we have to wait until 1201 when a Ravennese scribe wrote:

⁵⁴Pagnin, "Notitia testium," p. 15

⁵⁵Fantuzzi, II, 128.

⁵⁶Bresslau, Handbuch der Urkundenlehre, I, 493.

"his omnibus interfui et scripsi."⁵⁷ Significantly enough the words "publica forma" and "publicavi" are first used at Ravenna by notarii -- true public persons licensed by public (ie. imperial) authority:

Quam vero paginam libelli ego Gerbinus divina gracia Ravennas Notarius ut legitur superius scripsi, & in publicam formam adduxi contrahencium mandato. [anno 1224]

Quam vero paginam libelli ego Johannes de Pusterla auctoritate Imperialis & Ravenne Notarius ut supra legitur ambarum partium mandato scripsi, & complevi & publicavi. [anno 1232, underlining mine].⁵⁸

Their instruments are as creditable as an imperial diploma itself.

For the sake of completeness, a word concerning the notitia dorsalis will bring our discussion of the evolution of the notarial instrument to its logical end. After witnessing a contract, a scribe would scribble down the essential points in this dorsal minute which he later could engross into final, public form. To illustrate we will cite part of a Ravennese donation with its dorsal minute, dated 30 June 1127.

Dorsal Minute

... ultimo mensis Junii
indictione quinta,
Ravenne.

Fully Redacted Parchment

In nomine Domini, anno ab incarnatione Domini millesimo centesimo vigesimo septimo, tempore Honorii papae anno tercio, die ultimo mensis Junii, indictione quinta, Ravenne. ... causa perpetue salutis tribuitur. Id celesti magestati decorari videtur.

⁵⁷Fantuzzi, IV, Nr. 88. ⁵⁸Ibid., p. 349, 356.

Dorsal Minute

Facio contractum dona-
cionis pro remedio et
indulgencia . . . et
quondam parentum meorum
tibi domno Johanni, humili
priori hac rectori . . .

Fully Redacted Parchment

Et ideo ego quidem in Dei nomine
Selvangnus quondam Johannis
Dominicini, pro redencionem anime
mee et quondam parentum meorum do et
 dono tibi domno Johanni humili
priori hac rectori . . . 59

The editor, F. Kern, wanted to show that "die Anfänge der Imbreviatur [or chartulary] an die Dorsualnotiz angeknüpft haben."⁶⁰ Until the final parchment was written the rough draft was the only record and eventually it was accepted as sufficient legal evidence by itself. Notaries then bound their minutes into chartularies. These private registers became the locus credibilis of the medieval world much as the public archives had been in antiquity. "La notizia dorsale era un atto delle parte."⁶¹ This was especially true at Ravenna where dorsal notes were often signed by witnesses; see an example on page 156. By contrast, the imbreviatura was an act of a notary. We may conclude this chapter by observing that, "tutta la rivoluzione, che si operò nel notariato tra il secolo XI e il XII, consistè appunto in questa trasformazione [of dorsal minute into chartulary]."⁶²

⁵⁹Fritz Kern, Dorsualkonzept und Imbreviatur: Zur Geschichte der Notariatsurkunde in Italien (Stuttgart, 1906), p. 72-75.

⁶⁰Ibid., p. 62.

⁶¹Gaudenzi, "Sulla duplice redazione," p. 336. ". . . mentre la notizia dorsale longobarda ci rappresenta l'antico instrumentum (testium), la ravennate ci riproduce fedelmente il chirografo romano, cioè a dire il documento scritto tutto di mano del suo autore, e che non ebbe mai bisogno di essere sottoscritto." p. 313.

⁶²Ibid., p. 336.

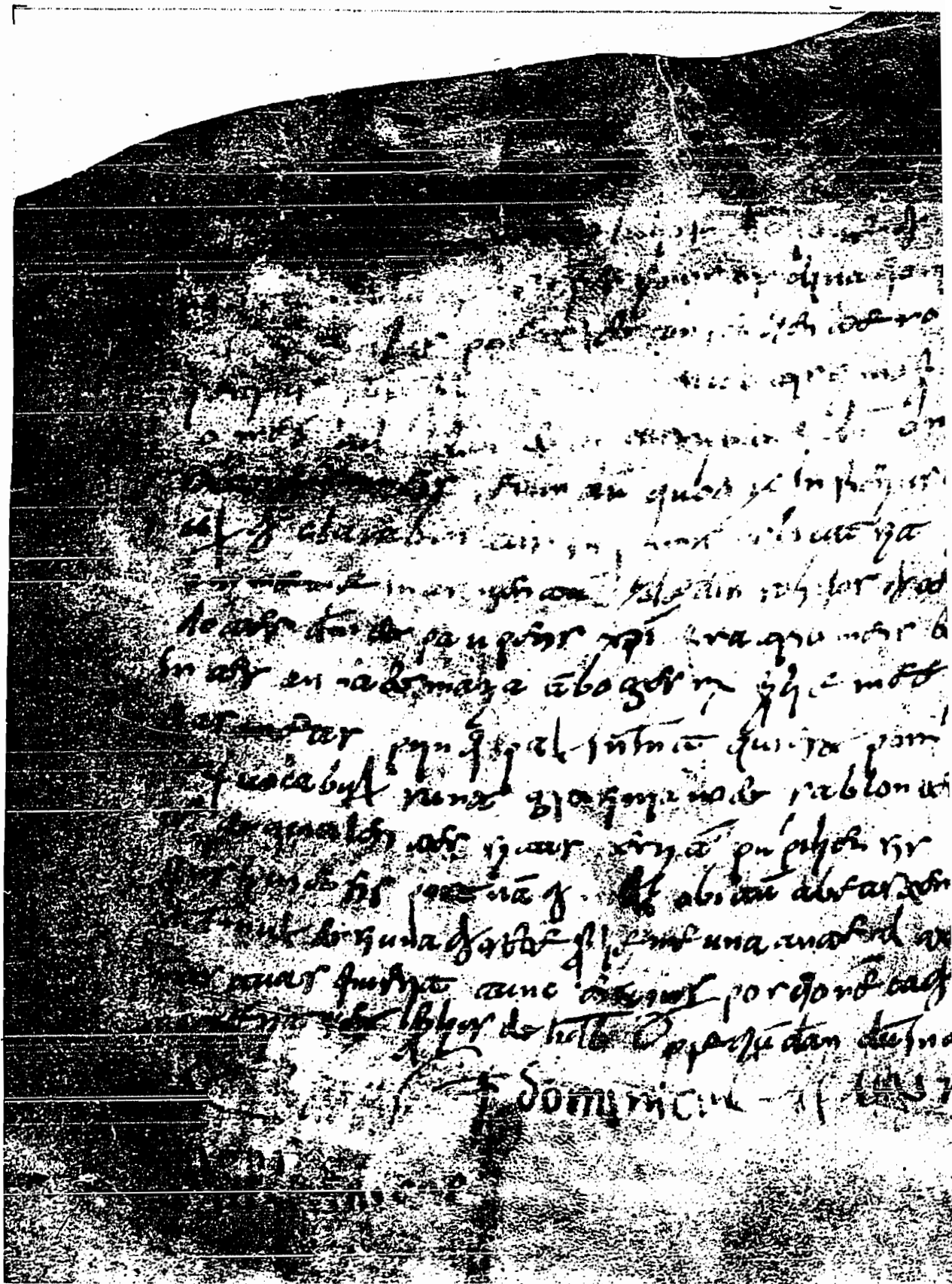


FIGURE 25: DORSAL NOTE, ANNO 982. It bears the autographs of the witnesses, "Romanus, Dominicus, Savinus, Costantinus, Iohannes, Dominicus." From: Archivio Paleografico Italiano, VII, f. 26, pl. 10B.

CHAPTER VIII

JUDICIAL FUNCTIONS OF THE NOTARIATE

" . . . The difference between lawyers and notaries . . . calls for detailed treatment. For when we look to see what has previously been done with it . . . we find that institutional and legal historians have either neglected the question altogether or accorded it such vague and general treatment that they have sown misunderstanding and a still more hopeless imprecision in others." ¹

Our next two chapters concern notaries and the law -- their practice of law as a profession and their cultivation of it as a science. The histories of the notarial and legal professions are closely interrelated. Remember that the Roman notary was simply a scribe. He was clearly distinguished from both lawyers (cognitores) and judges (iudices) in the following passage from Cassiodorus which (conveniently for us) was addressed to a scribe of Ravenna, Deusdedit, dated around 533-537.²

dirimis iurgantium litem: apud cunctos praesules de tua cura litigatur et tu potius iudicas, qui causarum vincla dissolvis. hoc honorabile decus indisputabile testimonium: vox antiqua chartarum cum de tuis adytis

¹Martines, Lawyers and Statecraft, p. 29.

²Cassiodorus, Variae, p. 377.

incorrupta processerit, cognitores reverenter excipiunt: litigantes quamvis improbi coacti tamen oboediunt. et cum fas sit promulgatum sententiam suspendi, tibi non licet obviari.³

In contrast the early medieval notary performed a variety of functions besides his essential one of attesting documents. Specifically, he often acted as lawyer and judge.

Our sources for this chapter are public judicial documents, the records of lawsuits (placita). "Für die Geschäfte bei den Placitis nur solche Notare gewählt wurden, die zu einer der bestehenden Corporationen gehörten . . ." ³ But the tabellio's role was not limited to being a simple secretary. He appeared in different guises and performed a mixture of functions. As a technician of the law his special skills were drafted by the church, state and society in general which was characterized by a meticulous legal culture. It was a notary's world. "Kein wichtiges Rechtsgeschäft kam ohne Vermittelung der Notare zu Stande Sie [notaries] waren die wichtigsten Vermittler zwischen Theorie und Praxis . . ." ⁴ Thus, the notariate and the judiciary overlapped at Ravenna -- their assimilation was even closer in Lombard Italy -- until the twelfth century, when they emerged as separate institutions. Only then with increasing specialization did the notary split away from those whose business was strictly judicial (ie. judges and lawyers).

³Oesterley, Deutsche Notariat, I, 130.

⁴Ibid., p. 350-351.

I. Notaries as Lawyers

"Advocacy was by Roman tradition an honourable career, and men of the highest rank might and did pursue it," such as Ambrose, son of a praetorian prefect.⁵ Classed as a militia, with the benefit of peculium castrense (property acquired by "military" service), the profession of advocati became hereditary in the fifth century. Admittedly most practicing barristers were drawn from the middle ranks of society, the curiales and cohortales. In contrast, Roman tabelliones were mainly commoners and their successors retained a relatively humble status throughout our period. Perhaps there is some truth to a conjecture offered by R. Davidsohn concerning thirteenth century Florentine lawyers and notaries. The former were largely patricians and conservative in outlook while notaries were more democratic because they were "in continuous contact with people of all classes."⁶

The church of Ravenna entrusted its legal interests to defensores, who were chosen from among the clergy, and to lay advocati. The primicerius defensorum, who supervised administration of the archepiscopal patrimony, was always an ecclesiastical notary: "Dominicus Notarius & Primicerius Defensorum Sancte Ravenn. Eccles. [anno 927]".⁷ Assisting

⁵Jones, Later Roman Empire, I, 510-511. For honorati the bar was merely a channel to high office. On the "Verband der Rechtsanwälte und Notare," vide Mayer, Italienische Verfassungsgeschichte, I, 104f.

⁶Robert Davidsohn, Geschichte von Florenz (4 vols.; Berlin, 1896-1927), IV, 11, 3, (cited by Martines, Lawyers and Statecraft, p. 41).

⁷Fantuzzi, II, p. 364, n.4.

the primicerius were other ordinary clerical notaries who acted on behalf of the church:

Pensionem accepi ego Johannes Notarius Sancte Ravennatis Ecclesie pro ipsa Ecclia XII marabotinos a te Domino Comiti Girardo . . . [anno 1057].⁸

The lawyers attached to the college of defensors were laymen of the judiciary or of the tabellionate. Among the former was "Petrus sacrisancti palatii iudex et advocatus sancte rav. eccl. [anno 1001]."⁹

For Ravennese monasteries the evidence is even more explicit. In 998 we read of "Teucio, Tabellio, Avocator eiusdem Monasterii [Sancte Marie in Palazzolo],"¹⁰ representing that monastery in a court of law. As befits one skilled in the law, our tabellio-lawyer often bears the old Roman title procurator:

. . . in generali placito . . . adstantibus cum eo maxima pars nobilium Romanorum omnium . . . Constantinus Tabellio procurator monasterii S. Andree Apostoli [anno 1030].¹¹

Certain monasteries, such as S. Andrea Maggiore, even retained

⁸Fantuzzi, IV, 214.

⁹Ibid., I, 71. "È difficile stabilire con sicurezza il numero dei membri laici componenti il collegio dei difensori della chiesa di Ravenna," but there were at least three. Buzzi, "Curia arcivescovile e Curia cittadina," p. 32.

¹⁰Fantuzzi, II, 50.

¹¹Ibid., I, 265. Constantinus is also called avocator (anno 1031), ibid., I, 268.

as their legal consultants and advocates tabelliones of the same family through several generations.

Finally we should mention their legal counseling function that was tacit but pervasive. Possessed of some legal training, notaries had an obligation to instruct in the law people who came before them. Apprized of contract terms by the parties, the tabellio had to decide whether or not it would be legal. He alone had the power to make the business binding. I leave this proposition naked of documentation but confidently believe its truth is implicit in the omnipresence of tabelliones at each and every private act that has come down to us.

II. Notaries as Judges

The medieval tradition of iudices idiotae -- lay judges who were not expected to be learned in the law -- goes back to ancient Rome where the administration of justice was the preserve of magistrates whose main function was military, financial or administrative rather than judicial. Compensating for this lack of a professional judiciary was the system of assessors, or legal advisors (usually chosen from the bar) to the magistrates. At Ravenna the ordinary municipal judge was called dativus and was appointed by the emperor and later by the pope.¹² Throughout the exarchate dativi are called iudices civitatis or iudices Romanorum.¹³

¹²Savigny, Roman Law during the Middle Ages, I, 357, 360. ". . . I duchi erano anche giudici e dativi," and as such intervene in all placita of the tenth and eleventh centuries. Buzzi, "Curia arcivescovile e Curia cittadina," p. 53-54.

¹³Fantuzzi, V, p. 263.

In the smaller cities a single dativus was the only presiding judge; but in metropolitan Ravenna there were several dativi. They assisted the presiding imperial missus and the archbishop in interrogating witnesses and in sentencing. Also appearing occasionally at medieval Ravenna were scabini, the permanent professional law-experts instituted by Charlemagne to advise each count. However, these Ravennese scabini "belonged to the foreign inhabitants only; and it must not be supposed that the proper constitution of the city underwent any Lombard or Frank transformation."¹⁴

Notaries, originally appointed for the recording of judicial business, came to be selected as judges. The reasons for this were the same everywhere: "Die Anforderungen, die man an jene stellte, waren naturgemäss dieselben, die auch an den scabinus gerichtet werden mussten: Kenntnis der Schrift, der Rechtssprache und Rechtsform."¹⁵ However, the dates at which northern Italian notaries took the title of judge varied from place to place. As early as 885 at Ravenna, among a crowd of judges, two tabelliones who were also dativi are prominent:

¹⁴Savigny, Roman Law during the Middle Ages, I, 377. Most Ravennese lived under Roman law, hence, "In der Romagna ansässige longobardische Richter werden nie erwähnt." Nevertheless "im Hofgerichte zu Ravenna 967 ist Rede von Judices et dativi Romani et Longobardi . . .," Ficker, Reichs- und Rechtsgeschichte Italiens, III, 94.

¹⁵Schwarzmaier, Lucca und das Reich, p. 274.

Item Petrus Dativo. Laurentius tabellio, & Dativo.
 Leone Dativo. Mauritius Dativo. Petrus tabellio, &
 Dativo. Leontatius Dativo, atque Romanus Scavino, &
 Honesto Scavino, & Romanus Scavino de Perita, &
 Laurentius tabellio, & Scavino de Sorbo, . . .¹⁶

Apparently Laurentius was both dativus and scabinus. Notice also all the good old Roman names here.

Predating by forty years our Ravennese example is the Luccan "Andreas notarius et scabinus" (anno 845) who "ist vielleicht der erste Schöffe gewesen, der aus dem Notarsstand aufgestiegen ist."¹⁷ Within fifty years almost all scabini at Lucca were notaries or sons of notaries. But at Ravenna, the judge-notary combination occurred much less frequently, it seems to me. On the whole Ravenna resembles more closely Rome where notaries did not commonly assume the title of judge until the thirteenth century. One more important contrast with Lucca should be noted. While Ravennese dativi (which term is used in all Romagnol juridical documents of the ninth century) were appointed from above, Lombard scabini were elected by the city. At Ravenna "the Dativi necessarily ceased when the right of choosing their own Magistrates became again the privilege of the citizens."¹⁸ This happened at the beginning of the eleventh century. The term judex replaced dativus indicating that "die Judices der Romagna

¹⁶Fantuzzi, II, 14.

¹⁷Schwarzmaier, Lucca und das Reich, p. 275.

¹⁸Savigny, Roman Law during the Middle Ages, I, 363.

in der Regel nicht vom Könige bestellt wurden . . ."19

Apart from the manner of their appointment, dativus and judex were synonymous at least at Ravenna.²⁰ Moreover, what matters for us, notaries occasionally held this new title too: for instance, "Bernardus Judex & Notarius [anno 1130]."21

Although Ravennese judges were not assimilated by imperial judges (judex imperialis and judex sacrosancti palatii), the latter nevertheless do make sporadic appearances in our town. Already in 1001 a Ravennese tabellio was also an imperial judex:

Constantinus in Dei nomine Tabellio Civitatis Ravenne,
& Dei gratia Palatii Judex huic refutationi &
sponsioni interfui & subscripsi.²²

We even have an isolated case of a notarius et judex ordinarius in the eleventh century:

Ego Facius quondam Ser Doxii Civis Raven. Imperiali
Auctoritate Notarius & Judex ordinarius Auscultationi
[anno 1037].²³

¹⁹Ficker, Reichs- und Rechtsgeschichte Italiens, III, 86.

²⁰"While uniformly the same with Dativus in the Exarchate," the term judex among the Lombards is used ambiguously and can mean either a municipal magistrate or imperial magistrate. Savigny, Roman Law during the Middle Ages, I, 357.

²¹Fantuzzi, IV, 250. Note that composers of placita are called notarii again by the twelfth century.

²²Ibid., III, 16. These imperial titles came into frequent use elsewhere in Italy during the late eleventh century, cf. Bresslau, Handbuch der Urkundenlehre, p. 264.

²³Fantuzzi, I, 277.

However, this designation does not become common at Ravenna until the thirteenth century with the triumph there of imperial terminology: "Ego Zerbinus Imperii Sacri Judex Ordinarius & Notarius . . . [anno 1235]." ²⁴

A final judicial office that notarii and tabelliones held was that of missus -- episcopal and imperial. Lay notaries exclusively served as missi of the archbishop and count of Lucca from 880 on. ²⁵ I have uncovered no instance of this at Ravenna. However, in 1216 among the accumulated titles of a tabellio from Arimini is that of missus of the Emperor Otto:

Ego Petrus Tabellio Communis Arimini Notarius sacri palatii Mediolanensis et missus Domini Ottonis Romanorum Imperatoris. ²⁶

Contrary to the high-sounding nomenclature, Petrus should not be considered "als ob nur . . . im unmittelbaren Dienst des Kaisers stehenden . . ." ²⁷

Sociologically, the notariate came to be considered the first grade of a career leading up to judge, at various times in various places. Very early at Lucca the notariate was a prerequisite for judgeship. Of course there were noble

²⁴Fantuzzi, II, 207.

²⁵Schwarzmaier, Lucca und das Reich, p. 275. "Seit dem letzten Jahrzehnt des 9. Jahrhunderts gehören alle Missi Notarsfamilien an." (p. 281).

²⁶Fantuzzi, V, Nr. 56-57.

²⁷Oesterley, Deutsche Notariat, I, 147.

judges who passed over the rank of notary, but most "Notare und Richter grundsätzlich ein-und demselben Milieu zugehörten . . ." ²⁸ Likewise at Ravenna dativi and iudices were always given precedence over tabelliones. Illustrative of the social hierarchy at Ravenna are these two notitia from 1014 and 1036 respectively:

Notitiam testium idest.		
Arnaldus	ux. [vixit?]	dativus Ariminensis.
Natälis	ux.	dux filius Hermenfredi.
Deusdedit	ux.	qui vocatur de ponte augusti.
Andreas	ux.	consul & tabellio.
Marinus	ux.	negotiator qui vocatur Bonizo de Marino [anno 1014] ²⁹

Noticiam testium			idest
Ildebrandus	Judex tt x. [testis?]	ttes. [sic]	
Redulfus	Tabell. tt x.	ttes.	
Arardus	Scolastico tt x.	ttes. [anno 1036] ³⁰	

At Lucca notaries outnumbered judges and "gab es auch mehr Notars- als Richterfamilien." In the competition for "judge-ships", the most skillful notaries did not always come out on top. Those that did usually "keine Urkunden mehr geschrieben, ja, teilweise ihren Notarstitel abgelegt haben." ³¹ In

²⁸Schwarzmaier, Lucca und das Reich, p. 297. "Zugleich hat die Verbindung von Notariat und Richteramt dazu geführt, dass die wenigen bedeutenden Notars- und Richterfamilien exklusiv geworden sind." (p. 296).

²⁹Fantuzzi, III, 18. ³⁰Ibid., II, 69.

³¹Schwarzmaier, Lucca und das Reich, p. 296. Politics conditioned advancement of notaries at Lucca: "Es scheint, als ob zwischen den gewöhnlichen Notaren und den Königsnotaren durchaus ein Qualitätsunterschied bestanden hat, da es gerade die Königsnotare waren, die in grösserem Masse in die Richterschicht aufgestiegen sind." (p. 293).

contrast, "fast jedes Urkundenbuch" contains examples of judges who remained active notaries and continued to use both titles.³²

III. Judicial Origin of the Authentic Notarial Act

The notary-judge is the cornerstone of Bouard's theory of the judicial origin of the authentic notarial act. His theme is the fusion of notariate and judicature in Lombard Italy, where the Roman tradition of a judge intervening in contracts was perpetuated at Lombard tribunals. This was the first stage: "un contrat rédigé sur l'ordre du juge à la suite d'un débat fictif . . ." ³³ A fictitious trial before a magistrate with iurisdictio voluntaria was the Roman way of formalizing certain legal acts. The next stage was the judge-notary's detaching himself from the tribunal and assuming gracious jurisdiction for himself. The act of this newly elevated notarius et judex "désigné dès lors d'un terme de Droit romain: instrumentum publicum, devint authentique, irrécusable à l'égal des conventions déclarées devant le tribunal." ³⁴

Was Ravenna entirely left out of this juridical evolution which made notaries into magistrates of gracious

³²Ficker, Reichs -und Rechtsgeschichte Italiens, III, 12n.5.

³³Bouard, L'acte privé, p. 19. "Quand et comment le notaire devint-il persona publica? . . . c'est assurément avec la judicature qu'il revêtit l'autorité publique." p. 165.

³⁴"Bouard, L'acte privé, p. 174. ". . . Le notaire public apparaît en pleine lumière comme une émanation du tribunal, dont il reçut sa fonction judiciaire." p. 172.

jurisdiction? Bouard is not alone in seeing it as basically a Lombard innovation. "Dass man den Notaren in dem angegebenen Sinne jurisdictio beilegte, ist eine ebenfalls in den toskanischen Städten gebildete Neuerung . . ." ³⁵ Admittedly we can boast no Ravennese text (though that may be accidental) to match the following Florentine one of 1199 which so clearly illustrates Bouard's contention: "Ego Ildebrandus, judex, predictas mulieres interrogavi atque notarius hec rogavi et scripsi." ³⁶ Rather, Ravennese tabelliones wrote at the request of individuals, not by order of judges, it seems to me. However, I have come across some examples of their writing at the command of a iudex, such as this one from 1037:

. . . & per vos investio supradicto Monasterio S. Marie in Palaciolo sicut iudex judicavit, & mihi [ie. iam dicto Petro Tabellone] precipit Domino Cisnone Comes Missus, & Vassus Domini Cunradi Imperatoris . . . ³⁷

Bouard himself discounts any flow of influence from the Romagna into Lombardy, in discussing the origins of the confessio in iure, which was a means of transferring legal title by means of a fictitious lawsuit before a magistrate: "Il est plus aventure encore de pretendre rattacher la confessio in iure à l'antique allegatio Gestis (enregistrement

³⁵Oesterley, Deutsche Notariat, I, 355.

³⁶Cited by Bouard, L'acte privé, p. 19.

³⁷Fantuzzi, I, 274. For a later example, anno 1233, cf. ibid., III, Nr. 51.

des contrats à la Curie), sur la foi d'une glose tradive du Brachylogus . . ."38 The Brachylogus is a twelfth century legal treatise which many authorities (among them Gaudenzi) claim is "certamente di origine ravennate." Here is the gloss in question: "Gesta dicuntur scripta de aliquo negotio per scribam publicum facta ante iudicem." Perhaps one ought to walk more cautiously than Bouard has done, pending further research: still unanswered is Buzzi's clarion call for a study of the notarial chartularies in light of the Brachylogus and Exceptiones Petri.39 A possible Ravennese provenance for the confessio in iure, if not for the notary-judge himself, should not be too quickly dismissed in light of Ravenna's importance as a center of juridical culture, which is established in our next chapter.

38 Bouard, L'acte privé, p. 170.

39 "Le clausole d'obbligazione e penali delle carte notarili hanno un perfetto riscontro nei più minuti e mutevoli particolari coi precetti giuridici contenuti nelle Petri exceptiones legum Romanorum e nel Brachylogus iuris civilis, due opere di diritto della scuola giuridica Ravennate." Buzzi, "Curia arcivescovile e Curia cittadina," p. 32n.1.

CHAPTER IX

EDUCATION AND CULTURE

"Ai rozzi ed incolti tabellioni del secolo XI e XII s'erano venute a poco a poco imponendo per l'influenza dei glossatori progressive e sostanziali riforme nella redazione delle scritture notarili per ridurle e mantenerle in armonia col moto incessante delle consuetudini e delle leggi . . ."1

The notariate was born at the same time as two other great medieval institutions -- the university and the commune. Nor was this accidental, since all three were intimately related. "Come espressione di un medesimo mondo spirituale, il notariato s'immedesima rapidamente con l'Università e col Comune, alla prima chiedendo anzitutto la propria giustificazione giuridica, al secondo il campo per lo svolgimento della sua azione pratica."²

I. Rhetorica

The background of notarial and legal instruction lies in rhetoric. In most of the other artes liberales, especially grammar, medieval educators faithfully followed late Roman teaching methods and ideals. But rhetoric, the keystone of

¹L. Sighinolfi, "Salatiele e la sua ars notariae," StUB, IV, (Bologna, 1920), p. 68.

²Cencetti, "Notaio medioevale Italiane," p. xvi.

the classical educational arch, was overthrown by medieval pedagogues whose needs were different. Medieval Italian rhetoric was reduced to one minor branch of ancient rhetoric, namely the study of letter writing and the preparation of documents. Leading the way to a new system of practical rhetoric was Cassiodorus' Variae Epistulae. The resultant medieval ars dictaminis was destined to become "the empress of the liberal arts." Savigny has traced the origin of the scientific study of Roman law to Italian ars dictaminis: the law school at Bologna grew out of an earlier school of rhetoric there. Its earliest lumen iuris, Irnerius, is credited with separating law from rhetoric, though some ties no doubt remained.³ The ties were even closer between ars dictaminis and ars notaria. The latter, it is interesting to note, came under the arts faculty, not the law school, at Bologna.⁴ Thirteenth century notarial manuals often treated literary composition, and teachers of dictamen often lectured on notarial forms. "Both arts had the same general aim: to provide the written necessities of urban life."⁵

³G. Cencetti argues that the law school of Bologna derived from an earlier notarial school and points out that Irnerius' earliest work was a notarial formulary, "Sulle origini dello studio di Bologna," RSI, s. VI, V (1940), p. 249f.

⁴"... nei più antichi rotuli o annuari delle Università dobbiamo ricercare i nomi dei lettori di arte notarile non già nell'elenco dei dottori giuristi ma in quello dei professori artisti." Anselmo Anselmi, Le scuole di notariato in Italia (Viterbo, 1926), p. 23.

⁵Jerrold Seigel, Rhetoric and Philosophy in Renaissance Humanism: The Union of Eloquence and Wisdom, Petrarch to Valla (Princeton, 1968), p. 206.

At Ravenna Latin rhetoric and grammar never died out, to say nothing of Greek learning.⁶ In the sixth century Theodoric and Justinian maintained chairs of rhetoric and grammar at Ravenna. As a literary center the city attracted two leading rhetoricians of that period, Arator (advocate, diplomat and poet) and Fortunatus (considered the last Roman poet, ca. 530-610). The schools of Ravenna were still renowned in the eighth century as Paul the Deacon⁷ and Agnellus attest. In the late tenth century, the tradition of secular rhetoricians was represented by the grammarian Vilgardus who taught such devotion to ancient literature that he was condemned for heresy by the archbishop.⁸ The continued existence of lay schools conducted by laymen for

⁶"Paul Diacre, qui passait aux yeux de ses contemporains pour un helléniste consommé, y [Ravenna] avait appris in scolis ce qu'il savait de grec: et l'abbé Agnellus, qui se piquait d'être fort savant en la matière, avait été formé sans doute sous la même discipline." Charles Diehl, Études sur l'administration byzantine dans l'Exarchat de Ravenne (Paris, 1888), p. 287.

⁷"Ravennae nutritus et doctus in arte grammatica sive rhetorica seu etiam metrica clarissima extitit." Paulus Diaconus, Historia Langobardorum, MGH, Scr rer Lang, II, 13, p. 79.

⁸"Ipso quoque tempore non impar apud Ravennam exortum est malum. Quidam igitur Vilgardus dictus, studio artis grammaticae magis assiduus quam frequens, sicut Italis semper mos fuit artes negligere ceteras, illam sectari, is cum ex scientia suae artis coepisset inflatus superbia stultior apparere, quadam nocte assumpsere daemones poetarum species Virgilii et Horatii atque Juvenalis, apparentesque illi, fallaces retulerunt grates . . . coepit multa turgide docere fidei contraria, dictaque poetarum per omnia credenda esse asserebat . . ." Rudolfus Glaber (d. 1044) Historia, II, 12 (PL, CXLII, 614).

laymen is demonstrated by various diplomas from as early as 984 which mention magistri.⁹ These are teachers, possibly grammarians and probably laymen since they bear no ecclesiastical title. Almost everywhere else in Europe notarial-legal documentation is secularized long before the literary-philosophical texts, but at Ravenna education and literature as well as the notariate were always in lay hands. Could it be that the lay notariate provided an institutional base for secular intellectualism?

We may infer that our tabelliones experienced no difficulty in obtaining at least a rudimentary education in Latin. Admittedly in the later Roman empire pursuit of literary culture was reserved for aristocrats. But our notaries eventually developed genuine literary interests. As in most Italian towns, notaries dominated the intellectual life of medieval Ravenna. One of them, Pietro Cantinelli, in his Chronicon narrated events in the Romagna from 1226 to 1306.¹⁰ The most famous of Romagnol notaries, Benvenuto de' Rambaldi, rubbed shoulders with the dominant intellectuals of the Florentine Enlightenment. Boccaccio was his mentor, Petrarch his friend and *Salutati* called him "quasi divinus vir."

⁹"heredes quondam Johannis de Leo Magister . . . [anno 984]"; "filii quondam Johannes magister . . . [anno 1002]"; "Ego Petrus scolasticus . . . [anno 1023]"; "Ego Arardus Scolasticus . . . [anno 1036]". Fantuzzi I, 215, 229; II, 60, 69. For Florentine magistri of the eleventh century, cf. Davidsohn, Florenz, I, 807.

¹⁰Petrus Cantinelli, Chronicon, ed. F. Torraca, RIS, 28, pt. II.

Many of Benvenuto's fellow notaries moved in the same elite circles. "If there was a Renaissance, it was due to the new standards set by the educated laymen, and this meant either merchants or notaries."¹¹ In a real sense the medieval notaries were ancestors of the Renaissance humanists.

II. Ius Romanum

The one area in which the ancient Romans had a professional education was in law, although it was not until the late fourth century that aspirants to the bar attended law schools rather than schools of rhetoric where law was taught as a sideline.¹² Ravenna may have had its own school of law in the mid-sixth century, judging from Fortunatus who went there for legal training around 550.¹³ If that is the case it was among those closed by Justinian who authorized only three official law schools, those at Constantinople, Rome and Berytus.¹⁴

Was Ravenna a citadel of legal studies in the period from Charlemagne to Irnerius? Odofredus (d. 1265), a

¹¹Larner, Lords of Romagna, p. 150.

¹²In Ulpian's day (ca. 228 A.D.) there were no public schools of law. The one at Constantinople was organized only in 425, as the standards for the legal profession rose sharply.

¹³"Parvula grammaticae lambens refluamina guttae/ rhetorici exiguum praelibans gurgitis haustum / cote ex juridica qui vix rubigo recessit . . .," Fortunatus, Vita Martini, I, 29-33, MGH, AA, IV, p. 297.

¹⁴"Omnem: "Haec autem tria volumina a nobis composita tradi eis tam in regiis urbibus quam in Berytiensium pulcherrima civitate, . . . volumus, . . . et non in aliis locis.'" Dig. const. Omnem. 7.

Bolognese professor of law, claims that the law school of Rome was transferred to Ravenna and afterwards to Bologna:

Debetis scire, studium fuit primo Romae (maiores nostri ita referunt), postea, propter bella quae fuerunt in Marchia destructum est studium, tunc in Italia secundum locum obtinebat Pentapolis, quae dicta Ravenna postea . . . unde ibi coepit esse studium . . . Post mortem Karoli, civitas ipsa collapsa est, postmodum fuit translatum studium ad civitatem istam [i.e. Bologna] . . .¹⁵

The "bella" mentioned here seem to me to be those of the fifth century rather than those against the Saracens in the ninth or those of Henry IV against Gregory VII, two other hypotheses advanced by scholars. Under Emperor Lambert (891-898), Lombard law also was taught at Ravenna, but a Roman reaction ensued under the Ottonians.¹⁶ By the eleventh century the evidence of a flowering of scientific jurisprudence here is undeniable: A) several references to legis doctor in Ravennese sources;¹⁷ B) Peter Crassus' tract, In Defense of King Henry (written in the 1080's), which was the first

¹⁵Odofredus, Lectura Infortiati Digest 35, 2, 82. Proponents of the continuous existence of a science of Roman law in Italy (Ficker, Fitting, and Italian romanticists of the Risorgimento) were opposed by Conrat who denied the existence of a Ravennese school. Cf. Ficker, Reichs -und Rechtsgeschichte Italiens, III, 110f; M. Conrat (Cohn) Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter (Leipzig, 1891), p. 601f.

¹⁶A. Gaudenzi, "Lo svolgimento parallelo del diritto Longobardo e del diritto Romano a Ravenna," MASIE, s. 1^a, I (1906-7), p. 37-93; II (1908), p. 117-164.

¹⁷Archivio arcivescovile di Ravenna, fondo del monastero di S. Andrea Maggiore di Ravenna, n. 97. Also C. G. Mor, "Legis Doctor," AA, p. 195f.

professional use of Roman law in defense of lay power;¹⁸

C) Peter Damiani's castigation (ca. 1045) of "sapientes civitatis Ravennae in unum convenientes" who adopted the Justinian computation of relationship to reduce hindrances to marriage;¹⁹ D) a miniature contained in Vatican manuscript ottoboniano n. 74, reproduced on page 177, that represents a Temple of Justice at Ravenna under the Ottonians. It depicts the emperor seated on a throne assisted by two assessors who "sono come quei dottori, che compaiono più tardi nelle miniature bolognesi, i maestri di una scuola vera e reale, e che può essere soltanto quella di Ravenna."²⁰ The decline of the Ravennese school in the late eleventh century is closely connected to the rise of the Bolognese law school, whose work is considered by some to be the most important intellectual achievement of the entire Middle Ages. Indeed, the renaissance of the notariate is derived from the studium at Bologna by Kern and others.²¹ Be that as it may, Ravenna deserves an honored place in this drama since it was

¹⁸This treatise is printed in Ficker, Reichs -und Rechtsgeschichte Italiens, IV, 106f. "Diese Schrift gibt nun gewiss ein recht günstiges Zeugnis für die Schule," III, 113.

¹⁹Petrus Damiani, Opera omnia, tom. III, opusc. VIII De parentelae gradibus, cap. V-VII. He reproves those "qui in tribunalibus iudicant, qui causarum negotia dirimunt, qui scrutandis legum decretis insistunt."

²⁰A. Gaudenzi, "Il tempio della giustizia a Ravenna e a Bologna ed il luogo in esso tenuto dal diritto longobardo," Mélanges Fitting, II (1908), p. 705.

²¹Kern, Dorsualkonzept und Imbreviatur, p. 63

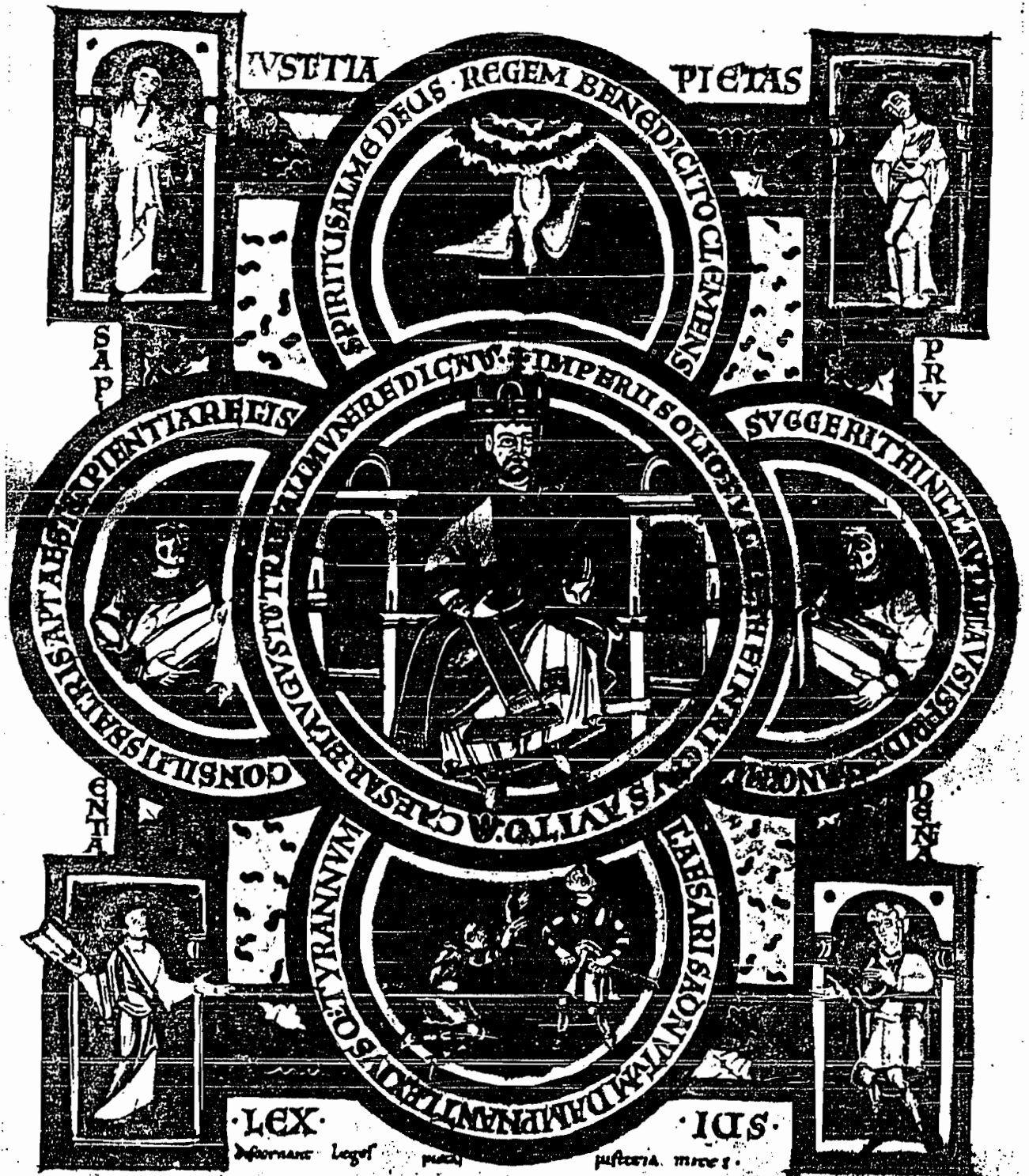


FIGURE 26: "TEMPLE OF JUSTICE" AT RAVENNA UNDER THE OTTONIANS. Ms. Vaticano ottoboniano, n. 74 (eleventh century). From: A. Gaudenzi, "Tempio della giustizia," facing page 791.

to counterbalance imperial support from Ravennese jurists that Countess Matilda (a papal ally) founded the Bolognese center (ca. 1088).²²

Were Ravennese notaries academic satellites of the law school in their city? Apparently not. "The scientific jurists of Italy who wrote and taught from the sixth to the eleventh century were out of immediate touch with the law actually in force in their country. They never succeeded in gaining any control over the practical administration of justice."²³ Even the twelfth century Glossators failed to influence practitioners of law to any extent, so we must not expect too much from Ravennese masters poring over a few ancient texts before the civil law revival. Nevertheless our notaries were important transmitters of Roman law even though they were not involved in the scientific study of it. They were living repositories of Roman legal tradition. Laymen certainly regarded them as learned in the law and they played along by injecting their work with heavy doses of legal jargon, all the more so because they were often paid by the line. In fact their deeds do perpetuate many ancient legal ideas and practices. The Justinian law codes (which

²²At the height of their influence Ravennese jurists were consulted by foreign courts, but "depuis 1076 [i.e. the accession of Matilda] les juristes de Ravenne disparaissent des tribunaux toscans pour y être remplacés par les bolonais . . .," Hermann H. Fitting, Les commencements de l'école de droit de Bologne, trans. by P. Leseur (Paris, 1888), p. 104.

²³Rudolph Sohm, The Institutes: A Textbook of the History and System of Roman Private Law, trans. by J. C. Ledlie from 1892 ed. (New York, 1970), p. 134.

barely escaped with their life in the early Middle Ages) are still cited, implying that they remained in force. For example, in this Ravennese placitum of 975 an attempt is made, in settling the dispute at hand, to comply with the procedures of Roman law:

Divaliu[m] quidem augustorum normiter reperitur sancitum,
 ut quicumque a legalis calculo fine tenus examen
 perveniunt ut in libro legitur Novellarum:
 Negotium iam finito nullo modo volumus reffrigari; et in
 libro Codicum: Iustas causas vel lites legitimis
 transactionibus finitas etiam iam ab imperiali
 rescripto suscitari non oportet presente me
 Dominicus in dei nomine tabellio huius civitatis
 Ravenne²⁴

This text from 975 confirms that even in the worst of times, some tabelliones possessed a modicum of legal knowledge and an acquaintance with court procedures. Moreover, as practitioners they may have contributed more to the evolution of new law than has been assumed hitherto. "Di fronte al rapido mutamenti economici e sociali che si venivano svolgendo sotto i loro occhi, i notai modernizzarono . . . e in alcuni casi mutarono gli schemi di contratto esistenti, o ne crearono addirittura di nuovi."²⁵

III. Ars Notaria

Even closer than law in its ties to everyday life was the craft of the notary. How did the tabelliones of Ravenna learn their art? It is possible that they used

²⁴Text cited in full in Ficker, Reichs -und Rechts-
geschichte Italiens, IV, 37-38.

²⁵Petrucci, Notarii, p. 23.

formulary books. Brunner denies that such guides existed in early medieval Italy and points out that no counterpart to the Frankish manual from the first half of the seventh century, Formulae Marculfi, has been discovered there. He argues that each notary drew on his predecessors' acts as models and hence did not need a formal textbook.²⁶ On the opposite side of the issue stands Bresslau, who affirms that Italian formularies existed but have not been preserved since they were the work of laymen.²⁷ By contrast, in northern Europe, the notarial art was the province of clerics in great monastic schools: for instance, Marculf was a monk who dedicated his collection to a bishop. But this is an argument ex silentio. (Of course by the high Middle Ages there was an explosion of Italian works on the art of document writing, starting with Irnerius' Formularium tabellionum [early twelfth century, now lost] and culminating in Rolandino Passaggeri's Summa artis notarie, the standard textbook.)

Regarding formal instruction in the notarial art, let us first mention palace schools found at some political centers though perhaps not at Ravenna. "A Pavia ci fossero almeno due scuole in questo tempo [under the Carolingian, Lothar I], una, diciamo così, di carattere cittadino privato

²⁶Heinrich Brunner, Deutsche Rechtsgeschichte (Leipzig, 1906), vol I, p. 576.

²⁷Bresslau, Handbuch der Urkundenlehre, I, 623 (1889 ed.).

e notarile e l'altra annessa al sacro palazzo e in esso insediata."²⁸ Secondly, there were ecclesiastical schools. Lucca in the eighth century had an episcopal school which trained both clerical and lay notaries.²⁹ In fact throughout the Lombard domain Petrucci speaks of "l'assoluta prevalenza culturale del notariato ecclesiastico su quello laico nel periodo longobardo," by means of episcopal and monastic schools.³⁰ Neither however is mentioned at Ravenna where first private teaching and then schools conducted by the commune predominated. We should not overlook the easiest, most intimate, and immemorial means of instruction: namely, fathers of notaries, who no doubt taught their sons personally and passed on their practice.

Ego Artusinus filius q[uondam] D[omini] Cambii Imperiali auctoritate S. R. E. [Sanctae Ravennae Ecclesiae] Not[arius] ex commissione ab ipso Patre meo in sua ultima voluntate de protocollis explendis transcripsi &c. [anno 1255] ³¹

Apprenticeship to a practicing notary was for a long time the usual recourse of aspirants to the profession. We

²⁸Mengozzi, Scuola di Pavia, p. 324, though he may claim too much for this notarial school. "Peut-on même parler d'école de notariat à Pavie? Contrairement à ce que pensaient certains historiens, l'invention d'un nouveau type de sténographie, la tachygraphie syllabique, ne peut être mise à l'actif des bureaux de Pavie." Pierre Riché, Education et Culture dans l'Occident barbare VIe-VIIIe siècles (Paris, 1962), p. 463-4.

²⁹Schiaparelli, "Notai nell'età Longobarda," p. 27.

³⁰Petrucci, Notarii, p. 11.

³¹Fantuzzi, I, 359.

are fortunate in having a contract (anno 1221 from Genoa) between a father and a notary who apparently made teaching the art his main occupation.³² Similar services were offered by a reputable notary of Lucca, Gauspert, in 823.³³ "Le scuole scrittorie - intese in largo senso - erano forse più numerose di quanto crediamo . . ." ³⁴ At Ravenna too magistri and their discipuli are occasionally mentioned. Sometimes the apprentice writes ex dictato, or by order of his master.

Ego Valterius ius [iussu] Magistri mei Ravenni
Tabellionis ss [scripsi] . . . [anno 1193]

Quam vero paginam petitionis ego Jacobus iussione
Martini Tabellionis Magistri mei scripsi et complevi.
[anno 1198] ³⁵

By the fourteenth century "the notary in Romagna was generally taught his craft in some local school, such as that which Benvenuto's father ran in Imola."³⁶ Deeds of that period recording the creation of notaries are often composed in a

³²"Ego Iohannes de Cucurno loco tibi magistro Bartholomeo notario filium meum Enrighetum usque ad annos quinque proxime venturos ad standum tecum et tibi serviendum et ad disciplinam tuam audiendum et scolares tuos prout melius scriberit educendum et ad scripturas quas eidem facere preceperis scribendas . . .," cited in Vito Vitale, I Notai Genovesi del Medioevo (1955), p. 55.

³³Schwarzmaier, Lucca und das Reich, p. 274. ". . . neben der Bischofsschule laikale Ausbildungsstätten von Schreibern und Notaren bestanden haben, an denen eine künftige Beamtenschicht in Schrift und Form des Rechtsganges unterwiesen werden konnte." p. 270.

³⁴Schiaparelli, "Notai nell'età Longobarda," p. 28.

³⁵Fantuzzi, IV, 291; II, 172.

³⁶Larner, Lords of Romagna, p. 149

schoolmaster's house or school:

. . . in domo habitacionis sive scola magistri Johannis ser Guaspar de Bonzanis de Parma rectoris scholarum quam conducit a Blaxio de Scarabigolis. [anno 1372] ³⁷

The need for apprenticeship was obviated in places like Bologna with its splendid university, fostered by the town itself. Public instruction even in notaria was provided there as early as 1228.³⁸ Publicly established schools eventually became common at Ravenna in the course of the thirteenth century. By 1304 schoolmasters received an annual salary of £R.25 from the commune plus fees from parents. "Above all, these schools [run by the commune] taught Latin, but at Rimini a second master was appointed for instruction in law, doubtless for those who wished to become notaries."³⁹

Did the ancient schola of tabelliones at Ravenna perform any teaching or examining function? In the early Middle Ages which suffered from a failure of knowledge -- at least of the classical literary sort -- the trade secrets of several professions were transmitted by means of such corporations. Anticipating fuller discussion of the guild of tabelliones in our next chapter, we may refer to a dispute

³⁷Cited in Larner, Lords of Romagna, p. 275n.124.

³⁸Anselmi, Scuole di notariato, p. 8. "A Lucca, ove la facoltà di nominare notai era stata concessa fino dal 1110 alla famiglia Avvocati, come lo fu più tardi . . . ai Castracani . . . il Comune sussidiava o conduceva appositi insegnanti." p. 7.

³⁹Larner, Lords of Romagna, p. 130. One pound of Ravenna "was roughly equivalent to 19s.B [Bologna]." p. xiii.

over its rights that occurred in 1227. Apparently some individuals had been practicing the notarial art without being enrolled in the society. Acting as arbitrator, the archbishop ruled in the society's favor. He summarized his decision with this highly informative passage:

Item arbitramus quod illi discipuli, qui volunt venire ad artem Tabellionatus dentur ad discendum Tabellionibus Societatis secundum arbitrium Maioris Societatis Tabellionum, et exceptis illis, qui modo locati sunt cum Magistris, quos volumus esse cum illis, cum quibus locati sunt, quos credimus esse numero quinque vel sex. [anno 1227]⁴⁰

From it we learn, first of all, that there were private masters (five or six at this moment) who prepared those who wanted to learn the art. Secondly the association of tabelliones was headed by a maior who supervised the instruction of apprentices by members of the society. He seems to me to be on par with the master, schoolmaster perhaps, of the corporation of archepiscopal notaries:

Quam vero paginam permissionis ego Ugo tabellio Ravenna et primicerius atque magister notariorum sanctae Ravennatis ecclesiae scripsi et complevi. [anno 1127]⁴¹

Furthermore, that the Ravennese society of tabelliones certified candidates for matriculation is corroborated by earlier Byzantine practice. A Novella of Emperor Leo VI (886-912) lays down requirements for candidates aspiring to the tabellionate: knowledge of grammar, composition, the sixty

⁴⁰Fantuzzi, IV, 347.

⁴¹Ibid., III, 37.

books of the Basilica (the legal code of Leo VI) and the forty books of the Enchiridion. These were the qualifications for admission to the collegium.⁴²

The subject of this chapter calls for some general observations on notarial culture. The notariate, like the legal profession, was characterized by a practical, mundane spirit. Perhaps this derived from the textbook they held in common, that of Roman law. Second only to the Bible, Roman law provided a basis for secular ethics and philosophy. Or perhaps the notaries' vulgar tone rose simply from preoccupation with pedestrian affairs. At any rate it is reflected in their simple, sober style -- such a contrast with the elegant Latin that typified contemporary northern scribal culture. It is also illustrated by Ravenna's counterpart to Buoncompagno of Signa, Benvenuto de'Rambaldi. In his prosaic commentary on the Divina Commedia, "He was not really interested, say, in the significance of Guido da Montefeltro in the universal scheme of things, but he was able to explain a lot about Guido's life in Romagna."⁴³ That his tastes approximate our own is some indication of the modernity of the notarial ethos.

⁴²Oesterley, Deutsche Notariat, I, 184n.10. Bolognese statutes of 1246 provide: "Decernitur novos notarios examinandos esse per quatuor notarios electos a Consulibus artis tabellionatus, coram Potestate et ejus iudicibus, qui requirant qualiter sciant scribere et qualiter legere scripturas, quas fecerint, vulgariter et literaliter et qualiter latinare et dictare."

⁴³Larner, Lords of Romagna, p. 150.

CHAPTER X

PROFESSIONAL AND SOCIAL STATUS

"A professional organization, a confraternity, and also an arm of the state [the Florentine guild of notaries and lawyers] had a strong sense of its respectability, a sense of class or caste . . ."1

I. From Ancient to Medieval Corporatism

Already in Hellenistic times there were Italian collegia, workers' associations that served religious, social and professional functions. Prohibited under the Republic, they were legalized by Augustus.² But they were unable to keep their freedom and by the third century A.D. they were dominated by the state. All urban occupations were organized in municipal collegia which were directed by civic and/or imperial authorities to perform some public service. Not only were individuals bound to their occupation but so were their heirs.

Ravenna in the early empire had large guilds of navicularii (shippers), fabri (smiths) and centonarii (firemen).

¹Martines, Lawyers and Statecraft, p. 27.

²Jean-Pierre Waltzing, Étude historique sur les corporations professionnelles chez les Romains depuis les origines jusqu'à la chute de l'Empire d'Occident (4 vols.; Louvain, 1895-1900), I, 114.

The Notitia Dignitatum Occidentalis, composed ca. 395, mentions a linyficum (clothing works) here which helps explain later references to a guild of dyers.³ Under Theodoric we hear of Ravennese corporations of innkeepers, wine-merchants, and butchers. The papyri allude to associations of bakers, doctors and of course scribes. The latter appear in this specimen from ca. 650: "(...)us primicerius scolae forensium civitatis Ravennae . . ."⁴ The scribes of neighboring Classis had their own guild: ". . . Deusdedit forensi civitatis Classis Ravennae."⁵ The continuity of these ancient organizations with medieval Ravenna has been convincingly demonstrated, not only for the scribes but also for the fishermen. The Schola Piscatorum or Casa Matha is known in a text dated 943 as a primitive "company" that leased fishing rights in marshes owned by the monasteries.⁶ Apparently Ravenna was as famous for its eels as for its mosaics!

Ancient collegia disappeared with the empire, everywhere except at Ravenna, Rome, Constantinople and Naples. The birth of medieval Italian guilds had to wait until the twelfth century when economic revival and the political collapse of central authority fostered a new social and

³Notitia Dignitatum Occidentalis, XI. 63.

⁴Tjäder, Papyri, 376, l. 40. ⁵Ibid., 212.

⁶I. Badessi, "La pesca valliva e una millenaria società di pescatori: la Casa Matha di Ravenna," Riv. La Pesca Italiana, fasc. II (Nov. 1946). Also a schola macellatorum (victuallers) crops up in 1001.

economic corporatism very different from Ravennese survivals of ancient corporatism. The features they had in common we will discuss first. Both were hereditary: Ravennese tabelliones formed a professional case with stereotyped traditions of script that were handed down from father to son. Both were monopolies: in order to participate one had to be a member. Both had a fraternal-religious side: there were charities and feasts honoring the patron saint of the corporation, Theodorus, whose image figures in this seal which was used from 1500 down to 1797 when the guild was abolished by Napoleon (whose own father, oddly enough, was a notary):

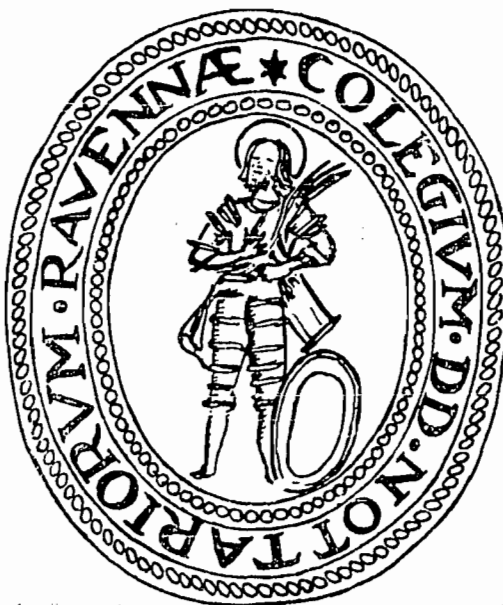


FIGURE 27: SEAL OF THE COLLEGIUM NOTARIORUM RAVENNAE (1500-1797).⁷

⁷Lorenzi, Notariato Ravennate, II, plate 22.

The crucial difference is political in nature. While early medieval craft and merchant guilds played an important role in the communal revolution throughout the rest of northern Italy, the Ravennese societies were under the thumb of their archbishop -- in true Byzantine fashion. We know that the piscatores had to ask him to renew their concessions in 943, and that the tabelliones became his vassals in 1227. This subservience also applied to the other mercantile-artisanal corporations of Ravenna, at least in the beginning.⁸ Later in the thirteenth century the new corporatism became the constitutional basis of the city-state in the Romagna as elsewhere: "In Romagna, the guilds had been introduced during the period of Bolognese hegemony in the middle of the thirteenth century, as political rather than economic institutions. . . . No one who was not enrolled in an Art could properly be called a citizen."⁹

II. Collegium Notariorum Ravennae

In those places where notarial guilds were medieval foundations they were usually organized early along with the other skilled professionals such as judges, lawyers, physicians, apothecaries and goldsmiths. Already in the ninth century at Lucca there were colleges of notaries and

⁸"Quale peso politico poterono avere i mercanti ed artigiani nella formazione del mondo comunale? Esso, se in principio dovette apparire nel complesso modesto, non tardò poi a crescere." Vasina, Romagna medievale, p. 176.

⁹Larner, Lords of Romagna, p. 132.

judges.¹⁰ However, these often formed a single guild as at Siena: ". . . già nel 1176 il collegio dei giudici e notai aveva così alto prestigio che il Comune dovette chiedere anche il suo parere . . ." ¹¹ At Florence an association of advocates, active in the mid-twelfth century, was replaced by the guild of lawyers and notaries. "Already a vigorous organization in 1212, . . . down to the final demise of the Republic it was officially the highest-ranking guild."¹² The prestige of these early corporations derived partly from their imperial appointment. For instance, the emperor directly controlled the notarial guild at Bologna.¹³ Correspondingly, the Ravennese society stood under the guardianship of an imperial representative -- the archbishop -- who, as we have seen, invested tabelliones "ex auctoritate Domni Imperatoris."¹⁴

¹⁰Schwarzmaier, Lucca und das Reich, p. 293.

¹¹G. Prunai, "I Notai senesi del XIII e XIV secolo e l'attuale riordinamento del loro Archivio," BSSP, 12 (1953), p. 78.

¹²Martines, Lawyers and Statecraft, p. 14.

¹³Annali Bolognesi, vol. I, pt. I, p. 176; vol. II, pt I, p. 135. Petrus de Vineis, Epist. VI, 32.

¹⁴Supra p. 76. That the emperor is not mentioned in our chief source on the Ravennese society of tabelliones, a document from 1227, is easily explained by the contemporary political situation. The city of Ravenna had acquired de facto independence of both emperor and pope, neither of whom are cited in the date elements of contemporary documents which use the nativity and incarnation styles. Until 1240 when Frederick II took possession of Ravenna "il dominio della città era completamente nella mani della casa Traversara, che era appoggiata anche dall'arcivescovo." A. Palmieri, "Carte giudiziarie," p. 403.

Along with recognition by public authority went regulation. The Ravennese society possessed only a few privileges, by comparison with some contemporary industrial guilds, yet even its limited monopoly gave rise to disputes, as in 1227. At that time certain individuals, united by a solemn oath, tried to carry on the business of notary without being enrolled in the guild of Ravenna. The archbishop intervened to impose a settlement on the competing groups. From the following passage we learn that he upheld the exclusive rights of the established corporation and appointed a maior to preside over it.

Nos Simeon Ravennatis Ecclesiae Archiepiscopus recepta compromissione a Ravenna Tabellione, et sua societate ex una parte, et a Casanola, et Petro Ganzio, et sua societate ex alia restando, et ubi diendo nostro Laudo et Arbitrio sub poena 100 libr. sibi ad invicem et nobis firmiter stipulata, et promissa super certis capitulis, sicut continetur in Cartula Compromissi concepta super hoc facto, laudamus et arbitramus sub praedicta poena, quod Casanola et Petrus Ganzius et omnes de societate sua, et qui ulterius exercebunt Artem Tabellionatus in Ravennam per Sacramentum fidelitatis factum, vel faciendum sint Vassalli Ecclesiae Ravennae et Archiepiscoporum, qui pro tempore fuerint, et tam ipsi, quam omnes tabelliones Ravennae, qui modo sunt vel in antea erunt, teneantur Maiori Tabellionum, qui pro tempore erit, et manutenere pro posse suo honorem, et bonum statum Tabellionum et artis Tabellionatus,

Hitherto the right of incorporation was probably sanctioned by custom rather than by any special written dispensation. The "ordinances" mentioned next have been lost and only the Constitutionum Notariorum Collegii Ravennae, dating from the fifteenth century, survives.

et illa ordinamenta quae Tabelliones comuniter et concorditer ordinabunt bona fide servabunt, et teneantur obedire Maiori suo in hiis, quae praeceperit eis pro facto societatis. Et arbitramus quod omnes Tabelliones Ravennae qui modo sunt, vel in antea erunt, sint in una societate Tabellionum et uni Maiori obediant, vel pluribus secundum quod inter eos fuerit ordinatum: Plures enim societates Tabellionum esse in Ravenna vel eius suburbis penitus inhihemus sub poena excommunicationis, quam modo facimus.

The society of tabelliones thus acquired a complete monopoly of scribal services in the city and in its contado.

Et mandamus ut Casanola, Petrus Ganzius et omnes de societate sua absolvant se ad invicem ab omni Sacramento, quo ipsi tenentur sibi ad invicem, et hoc arbitrando laudamus. ¹⁵

Apparently these upstarts had formed a sworn association and as such were anathema to authorities such as the archbishop and even to the guild which was trying to consolidate its position. Unlike a feudal oath, that of a sworn association was not a promise of obedience to a superior but a pledge of mutual aid among equals.

According to the above charter the guild whip (maior) was to safeguard the "bonum statum Tabellionum et artis Tabellionatus." The society itself existed to guarantee both the professional and moral standards of member tabelliones, which indeed was in their own self-interest ultimately. Since judicial competence was often divided between a multiplicity of corporations in Italian communes, guildsmen accused of wrongdoing could be tried in a guild

¹⁵Fantuzzi, IV, 347.

court. In a sensational case at neighboring Imola in 1320, the guild court and/or the commune failed to prosecute one of the town notaries who was charged with "holding his servant Lucia as a prisoner, and amputating her nose and ears because she refused to yield to his desires."¹⁶

Commenting on the passage which describes how tabelliones must swear fidelity and become vassals of the archbishop, F. Crosara exclaims: "La pacifica penna del Tabellone si è trasformata nella spada del feudale!" This does not even sound like Italy. Indeed Crosara falls back on an appeal to "insospettate influenze franche nella capitale della Romaniola," which is implausible. Actually, feudalism was introduced in the Romagna by the Ottonians in the tenth century. He goes on to assert that the archbishop gave the notary "il carattere nobiliare mediante il giuramento vasallatico."¹⁷ More tangibly, the archbishop did indeed enfeoff a tabellio as follows in 1246:

Nos Thedericus divina permissione sancte Ravennatensis ecclesie archiepiscopus tibi Marcoaldo, filio Beniamini nostri iudicis, in vita tua et donec vixeris in feudum damus et concedimus tabellionatus officium et cartulerium quarte partis terre et castri nostri et hominum de Argenta¹⁸

But feudum can mean "salary" as well as "fief". A clear

¹⁶Larner, Lords of Romagna, p. 144. The commune was fined by the papal authorities.

¹⁷Crosara, "Scole ravennati," p. 20-21.

¹⁸Tarlazzi, I, 184.

instance of the former usage occurs in the statutes of the college of notaries at Pavia in the year 1266: "De sacramento consulum et de electionem ipsorum et de eorum feudo."¹⁹ Crosara is not alone in his woolly-mindedness about feudalism. Many historians wrongly bind feudal political and social institutions to a landed economy. In reality "anything may be given 'at fief' and the possession of anything may become hereditary. This includes money . . ."²⁰ As to Crosara's corollary contention that Ravennese tabelliones were "nobles", this will be our next inquiry.

III. Social Status

One of the earliest medieval attempts to classify urban social elements was made by Agnellus who divided the Ravennese population into three parts: A) cives illustres, the possessores with ancient or Byzantine lineage; B) mediocres, the officials, merchants and artisans; C) parvuli, the undifferentiated mass that remained.²¹ This tripartite scheme which emphasizes social function and still conceives of the nobility as a "sacred race" seems late Roman to me. Anyway it was soon transformed "attorno al Mille, nell' articolazione tipica della società cittadina in età feudale costituita dai capitanei, valvasores et populus . . ."²²

¹⁹Petrucci, Notarii, plate 42.

²⁰Mundy, "European Society," p. 92.

²¹Agnellus, p. 361.

²²Vasina, Romagna medievale, p. 149.

We must always remember that after the collapse of the exarchate Ravenna reverted to a "heroic" society. By comparison with the bourgeois patricians of Tuscany, the Ravennese aristocrats were essentially landed magnates.

Though maddeningly little information survives concerning the socio-economic position of individual medieval notaries, we may hazard some guesses about the group as a whole taking consolation in the reflection that "a face in the crowd is not more real than the crowd itself." Turning first to the question of social origins, we know that the office of ecclesiastical notary at Ravenna was "esercitato da membri di famiglie nobili; si può anzi affermare con sicurezza che esso fosse quasi infeudato alla nobiltà."²³ By contrast lay notaries seem to have been of humbler descent nearly everywhere. Of course the ancient tabulari were originally slaves. The first lay notaries at Lucca sprang from the lower clergy, among whom the Roman element was predominant, and from the laborates generally. By the end of the ninth century, "sind Notare Empfänger von Grosslivellen gewesen, und so scheint es, dass sich diese Experten des Rechtslebens in wenig mehr als einer Generation aus der Masse der Handwerker und Kleinpächter herausgelöst und als die eigentlichen Vertreter der Gelehrtenschicht Luccas konstituiert

²³Buzzi, "Curia arcivescovile e Curia cittadina," p.24.

haben."²⁴ For Bologna in the time of Accursius (the famous glossator who died in 1260), G. Fasoli comments on "la varietà della provenienza sociale di questi professionisti [ie. notaries]: ci sono figli delle grandi famiglie cittadine, figli di notai, figli di medici o di giudici; c'è qualche giudice che cambia mestiere e si fa notaio; ma ci sono anche figli di fabbri e di fornai, di miniatori e di cartolai, di beccai e di erbivendoli."²⁵

The Ravennese tabelliones also were from diverse origins. In this they resembled the clerical order which did not recruit from a single social class. Those bearing the title consul et tabellio were probably nobles. On the other hand "sometimes the sons of artisans (shoe-makers, for instance) became notaries . . ."²⁶ Probably the majority were somewhere in between, judging from the position assigned them in most hierarchical listings in the sources -- that is, after the clergy and nobility but before negotiatores, scolastici, etc. Moreover, by universal practice notaries were addressed as Ser rather than with the more elevated Messer or Dominus. Throughout Tuscany, "the lawyer was

²⁴Schwarzmaier, Lucca und das Reich, p. 272. On the question "wieweit eine Vermischung der von unten kommenden, stark romanisch bestimmten Notare mit den langobardischen Adelsfamilien erfolgt ist, oder wieweit vielmehr Letztere von der Ersteren nach oben abgedrängt worden sind . . .", alles . . . deutet auf diese letztere Möglichkeit hin, . . ."
p. 278.

²⁵G. Fasoli, "Giuristi, Giudici e Notai nell' Ordinamento comunale e nella vita cittadina," SA, I (1963) p. 31.

²⁶Larner, Lords of Romagna, p. 149.

called Messer or Dominus, the notary Ser The lawyer's claim to the title 'Lord' (Dominus) was based on the equiparatio in Roman law of the lawyer and miles"27
Analogously at Ravenna the lesser title of Ser was applied to imperial, ecclesiastical and eventually all notaries:

Ego Facius quondam Ser Doxii Civis Raven. Imperiali
Auctoritate Notarius & Judex ordinarius Auscultationi
[anno 1037].

. . . ab eo Bartholinus q uondam Ser Dominici
Mascaronis Not. Rav. [anno 1221] 28

We will see shortly by what means successful notaries were able to elevate themselves socially. Obsession with social status and function was a hallmark of the later Middle Ages. During this period at Ravenna the notariate became an ennobling profession: practicing as notary entitled one to be inscribed among the nobility. This is beautifully demonstrated by the text reproduced in appendix V, a list of the nobles of Ravenna who attended a council in the year 1309. A total of 54 names are recorded of whom 18 bear the title notarius. These notaries were not descendants of ancient families, nor were their offices and salaries hereditary. Once again, as in the days of Cassiodorus, the notariate was an ennobling militia. Conversely, the professionalism they represented was compatible with the nobility, itself long

²⁷Martines, Lawyers and Statecraft, p. 29. "Notaries in Tuscany were never called Messer or Dominus."

²⁸Fantuzzi, I, 277; II, 422.

dominated by a service ethos. At least one noble Ravennese family, the Counts della Bordella di Mordano, ca. 1235 "took to the notarial profession with profitable results."²⁹

IV. Sources and Uses of Notarial Wealth

Wealth can be an important gauge of significance especially for the group we are studying, about whom Gothofredus wrote: "Tabelliones sunt qui literis quaerunt vitae subsidia."³⁰ The main source of their income was fees for the drawing up of documents. These were regulated by Diocletian in 301 (as we saw) and by Lothar in 832 who decreed a maximum of "dimidia libra argenti" for "scripta maiora" with lesser charges scaled progressively, and exemption of orphans and the poor from all fees.³¹ The scale of fees varied with the importance of the document, that is the amount of money recorded therein. In the late thirteenth century, the notary's charge for rogation and authentication of contracts of £B.10 amounted to sixteen shillings.³² The

²⁹Larner, Lords of Romagna, p. 152.

³⁰Gothofredus, ad L. 6 CTh de denun. vel edit. resc., 2.4. Cf. Oesterley, Deutsche Notariat, I, 22n.5.

³¹Quoted supra p. 59.

³²Remembering that the pound of Ravenna (£R.) was equivalent to 19 shillings Bolognese (s.B.) we can get some idea of a contemporary pay scale: a priest received 2s.B. for saying a mass, a carpenter earned 7s.B. per day, a schoolmaster £R.25 a year. The poverty line stood at £B.15. Cf. Larner, Lords of Romagna, p. xiiif. In 1191 a Genoese notary, Guglielmo Cassinese, collected an average of six denarii (pennies) for each act, giving an annual earnings of 8340 denarii, Mario Chiaudano, Contratti commerciali genovesi del secolo XII . . . (1925).

remuneration of ecclesiastical notaries is discussed in an intriguing passage, though somewhat far afield, by the Parisian canonist Peter the Chanter (d. 1197). He ponders whether it is simony for episcopal notaries to accept fees: "Episcopus justiciam suam venditare videtur vendendo imaginem suam per notarios qui vendet scriptam calami et canipuli sigillum pargameni ceram et huiusmodi. Hanc autem exactionem concedit eis episcopus nomine laboris et stipendii."³³

Secondly notaries could profit from the growing professionalism in government. The commune itself employed some of them in association with the chief magistracies. Even at Ravenna the earliest communal statutes, from the late twelfth or early thirteenth century, provide for "Officium Notariorum Comunis Ravenne":

Statuimus et ordinamus quod Notarii comunis Ravenne sint quatuor ad civilia. Et teneantur et debeant scribere omnia acta civilium causarum que ventillabuntur coram domino Potestate vel suo vicario . . . ³⁴

Certain enterprising notaries even held office themselves. For instance, the same Ravennese statutes lay down "quod Cancellarius comunis Ravenne sit notarius . . .,"³⁵ which

³³Petrus Cantor, Verbum Abbreviatum, Vatican MS Regina, Latin 106, fol 49 ba, for which reference I am indebted to Professor John W. Baldwin. Versions in Migne, vol. 205, col 132 and 405 differ considerably.

³⁴Statuti del Comune di Ravenna, ed. A. Tarlazzi (Ravenna, 1886), p. 55. Tarlazzi believes these were compiled in 1213, but other estimates vary from 1180 to 1260.

³⁵Ibid., p. 57.

reminds us that Salutati was chancellor of Florence. Much more lucrative was tax-farming. "Having made money by office holding and tax-farming, the notary would then invest in land, or in the trading contracts of the town; from this point, marriage into the signorial family, and identification of interests with the signore, was but a short step."³⁶

What kinds of wealth were included in the notary's portfolio? The statio or office might be owned by the notary himself. Violators of Justinian's laws governing tabelliones were punished by losing their stationes which were then awarded to assistants. We know of two stationes in sixth century Ravenna. One was located near the imperial palace, "statio ad Monitam auri in porticum sacri Palati . . .," the other near a church, "statio apud Sanctum Johannem Baptista."³⁷ At medieval Genoa notaries' shops were concentrated in one quarter: "nella regione . . . che costituisce il centro commerciale della vecchia Genova, hanno la loro sede i notai."³⁸ However, tabelliones could work any place, and often executed deeds in their own homes, eg. "in domo Gracianii notarii [anno 1214]".³⁹

³⁶Larner, Lords of Romagna, p. 151-2. Elsewhere notaries may have supported communal liberties, but our notaries, who "provided the cadres of communal officials . . . had an interest in stable government and stable tax collecting, and, given the circumstances of Romagna, this could come only from single person rule." p. 152.

³⁷Marini, p. 185, l. 86-89; Nr. 75.

³⁸Vitale, Notai Genovesi, p. 27.

³⁹Federici, p. 145.

A second form of wealth we can inventory is their holdings in land, which was as usual the safest form of investment. Naturally notaries were absentee landlords since their business kept them in town. Luccan notaries from the ninth century on owned land, but we should not attach too much weight to its prestige value: "Der Erwerb von ländlichem Besitz bedeutete zunächst keine Statusänderung, aber doch eine so namhafte Steigerung der Einkünfte . . ." ⁴⁰ In the Romagna generally "much of the land in the villages was owned by the notarial and official class dominant in the town." ⁴¹ At Ravenna the property of tabelliones is often mentioned. For instance, in 978 the archbishop gave some houses, "edificias planas . . . cum ingresso, & egresso suo usque in platea publica" to Petrus, tabellio, and his cousins. ⁴² But most impressive of all is a will of a Ravennese tabellio dated 1014 which bequeathed considerable wealth to a monastery and chapel in Ravenna. Though written in barbarous Latin, it enumerates several houses and possessions within the city and much landed property outside. Most of his fortune probably came as a reward from King Henry, though we do not know just what he did to merit such favor.

⁴⁰Schwarzmaier, Lucca und das Reich, p. 291.

⁴¹Larner, Lords of Romagna, p. 184.

⁴²Fantuzzi, I, 198.

Hic quod abere & ac possidere & a meis manibus possidere videor quas mihi ovenit per precepti paginam ab Inrico invictissimo Regi idest omnia medietatem integram de domo una in integrum cum superioribus, & inferioribus suis in eo manere & habitare viso fuit Sigizo qui vocabatur de Acatheo cum Maria hanteriora congnum sua cum omni medietatem de mansionibus solaratiis seo de vinea & ortis seu vacuamentis seo omni pertinencia de capella que vocabulum est Sancti Paterniani cum ingresso & egresso eorum & cum omnibus sibi pertinentibus sitas in territorio Ravenne in regione Sanctorum Johannis & Pauli iterando in predicto monasterio omnia medietatem de omnem rem illam quantascumque mihi pertinet in loco qui vocatur albarito qui vocatur de cancellarii iuxta quantascumque mihi pertinet infra tota plebe Sancti Johannis qui vocatur in arsiata & fra tota plebe Sancti Stefani qui vocatur in colorita & fra tota plebe Sancti Martini in barsiani vel infra totum comitatum Livienne & plebe Livienne infra tota plebe Sancti Victoris qui vocatur in valle & in fundum qui vocatur corisolo vel quantascumque mihi pertinet tamin hac urbe Ravenne quam & extra ac civitate Ravenne aut quam mihi evenit per precepti paginam Inrico invictissimo Regi & omnia medietatem de fundum qui vocatur cultula ex predictis rebus & terris & vineis campis pratis pascuis silvis salectis sacionalibus una cum arbustis arboribus & cum omnibus sibi pertinentibus sitas territorio Faventino ac Corneliense plebe sancti Petri⁴³

Proverbially notaries had a reputation for being mercenary, from the ancient notarii who "vendaient à haut prix aux chrétiens la communication des Actes des martyrs,"⁴⁴ down to Ser Lapo Mazzei of Prato who confessed in 1400: "Most of us notaries delight rather in heavy purses than in ardent hearts."⁴⁵ Therefore, it is a pleasure to be able to conclude this section on the uses of notarial wealth with a

⁴³Fantuzzi, II, 54-55.

⁴⁴Leclercq, "Notaire," col 1627.

⁴⁵Iris Origo, The Merchant of Prato: Francesco Di Marco Datini (New York, 1957), p. 218.

reference to some frescos, once erroneously attributed to Giotto, which were commissioned by a Ravennese notary, Graziadeo, in 1246.⁴⁶

⁴⁶Cf. Ricci, Guida di Ravenna.

CHAPTER XI

CONCLUSION

The importance in all periods of authentic testimony need hardly be stressed: the entire New Testament is a "testimony" of a group of witnesses. In our period the notaries constituted a small group, but they enjoyed an influence out of all proportion to their numbers -- they were the memory of their community. The sizable body of data coming from them, particularly in relation to the small numbers of documents in this early period, shows that it was indeed a notary's world.

One of the major conclusions that emerges from our research is that the scribal culture of Ravenna was overwhelmingly secular in character. Admittedly, the church was the mother of all the learned professions and even in our city, which was a brilliant lay center, ecclesiastical notaries contributed to the survival of the notarial profession. But with the Gregorian demand for clerical freedom, clerical notaries did not expand to meet the documentary needs of a maturing society. Legal documentation remained in secular hands at Ravenna throughout our period. Seventy per cent of Ravennese private deeds dating from 751 to 1200 were composed by secular tabelliones. The existence of this unique class of professional laymen is an important exception to the almost

universal domination of early medieval society by clerical leaders.

In a "Christendom which did not fully appreciate the worth, the functions, and the initiatives of the simple believer,"¹ our Ravennese notaries may have paved the way for restoration of some dignity to earthly occupations and to the eventual triumph of the lay spirit.² The march toward laicization, the social aspect of secularization, no doubt derived from many sources one of which may have been a growing professional consciousness that we have noticed as characteristic of the notaries. Their seals express their prise de conscience of being in a lay profession. The titles they chose, such as divina gratia tabellio, hint at a certain self-justification and even sanctification. Examination of the large quantity of comparative data from other northern Italian towns reveals that this lay, professional outlook was unique to Ravenna.

We have shown where Ravenna's notarial traditions came from and how they evolved. The Ravennese passion for written documentation was deeply rooted in centuries of Mediterranean life. However, we must not oversimplify and embrace

¹M. D. Chenu, Nature, Man and Society in the Twelfth Century: Essays on New Theological Perspectives in the Latin West, translated by Jerome Taylor and Lester K. Little (Chicago, 1957), p. 228.

²It was only much later, in the nineteenth century, that the professions came to be seen as "conspiracies" against the laity, cf. Robert Robson, The Attorney in Eighteenth-Century England (Cambridge, England, 1959), p. 135.

unreservedly the Romanist theory of the origins of the medieval notariate. At Ravenna the situation was more complex. There is a big difference between the tabellio of the sixth and that of the thirteenth century. From being private he had become public -- that is, appointed and regulated by public authority. The key to understanding this transition lies in the Carolingian contribution. As with so much that Charlemagne started, his normative pattern for the medieval notariate only worked itself out later. Despite the fact that the Romagna was administered as part of the empire from the tenth century on, imperial notaries did not immediately replace the local tabellionate as they did throughout the rest of Italy. Nevertheless a trend toward the assimilation of the native Ravennese tabellio to the imperial notarius was irresistible.

We have emphasized the change in title because small things like this sometimes betray fundamental transformations most faithfully. By the year 1240 when Frederick II took possession of the city, the idea had triumphed here that the notary was an emanation of imperial power. Contemporary notarial instruments began to adopt the word "publica" and assumed an authenticity equal to that of imperial diplomas themselves. Notarial seals reflected the penetration of imperial style. The archbishop of Ravenna, acting in effect as heir of the Carolingian missi, invested notarii "ex auctoritate Domni Imperatoris" and governed the ancient guild in his name. The Carolingian notariate had imposed itself even in this area of Europe.

Our topic may have seemed obscure at first. Like the once prominent archdeacon, the notary public of today no longer claims anything like the same pride of place he had in the age of Boncompagno and Salutati or even that of Cassiodorus. Historians of the profession have recognized the notary's significance in the growing society of the communal period. But Ravenna had a professional class of notaries, with their own guild, long before this urban renaissance in Italy. It seems only fair that those who were in charge of preserving our sources should be honored by becoming the subject of scholarly inquiry.

APPENDIX I

SAMPLE PRE-JUSTINIAN DONATION

Bequest of King Odoacer to his Count of the Domestics,
dated March 18, 489.

Salutation

Viro inlustri et magnifico fratri Pierio Odovacar rex.

Instructions of the donor

Ex sexcentis nonaginta solidis, quos magnitudini tuae
humanitas nostra devoverat conferendos, sexcentos
quingenta iuxta nostrae donationis tenorem viri sublimis,
comitis et vicedomini nostri Arbori didicimus attestazione
contraditos, id est intra provinciam Siciliam, Syracusano
territorio, Pyramitana masa, solidos quadringentos
quingenta, et in provincia Dalmatiarum insulam Melitam,
ducentos solidos pensitantem. Reliquos ergo solidos
quadraginta in nobilitatem tuam in suprascripta massam
fundos - id est Aemilianum, prestantem solidos decem et
octo, et partem fundi Budii, quae remansit, solidos
quindecim, siliquas decem et octo, nec non et partem fundi
Potaxiae, quae prestat per suprascriptos Ianuarium et
Octesibium solidos septem, - suprascripto territorio
constitutos, volentes supplere summam superius conpraehensam,
praesenti donatione in te cum omni iure suo omnibusque ad
se pertinentibus iure directo transcribimus adque ad tuum
dominium optima profitemur lege migrasse, quos utendi,
possidendi, alienandi vel ad posteros transmittendi livero
potiaris arvitrio.

Statement about the notary

Quam donationem Marciano viro clarissimo, notario nostro,
scribendam dictavimus, cuique Andromachum virum inlustrem
et magnificum, magistrum officiorum, consiliario nostro,
pro nobis suscribere iussimus, tribuentes adlegandi
fiduciam, ita, ut ad tuis actoribus fiscalia tributa
solvantur.

Date and Place

Actum Ravenna, sub die quintodecimo Kalendarum Aprilium,
Probino viro clarissimo consule.

Signature of the donor

Et alia manu suscribitio: "Incolumem sublimitatem tuam
divina tueatur, domine inlustri et magnificae frater.
(Text from Tjäder, vol. I, p. 288, I, 10f).

APPENDIX II

SAMPLE POST-JUSTINIAN DONATION

Bequest of a Gothic freedwoman to the Church of Ravenna, circa 600. It is the most complete example of post-Justinian gift formulae despite the gap in the beginning which would give date, place, salutation and arenga.

Instructions of the donor

et in ius dominiumque sanctae ecclesiae Ravennatis in perpetuo transcribo, cedo, trado et mancipio, id est ex fundum, cui vocabulum est Balonianum, omnem portiunculam meam in integro cum terris et vineis et omnibus generaliter et specialiter ad memoratam portiunculam meam longo lateque pertinentibus Venientem mihi ex destinatione suprascriptae quondam Theudifarae, patronae meae, quam mihi concessit ad confirmandam libertatem

Guarantee not to contest the document

Contra quam etiam inrevocabilem donationis meae paginam polliceor numquam esse venturam, neque per me neque per heredes successoresque meos, adversus praedicta sancta ecclesia Ravennate actoresque eius, quoniam et legebis cautum est, ut, quod semel in loca venerabilia donatum vel quoquo modo cessum fuerit, nullo modo revocetur

Oath

et pro maiori firmitatem iurata dico per Deum omnipotentem et sancta quattuor evangelia, quas corporaliter manibus meis teneo, salutemque dominorum nostrorum invictissimorum principum Augustorum, Romanum gubernantum imperium,¹ adtestatione confirmo me, ut superius dixi, contra numquam esse venturam, sed inviolabiliter tam me quam heredes meos conservatura esse spondeo,

Renunciation Formula

excluso erga me omnium legum beneficia, quae de revocandis donationibus et de sexu femineo Bellianus senatusconsultus mulieribus subvenire adsolet,²

¹Refers to Emperor Maurice and his son Theodosius who ruled jointly, 590-602.

²The Gothic woman hereby renounces her rights under the senatus consultum Velleianum which dated from the first century, A.D. It protected women from having to assume liability for other people. Renunciations of these

Reference to the voluntary nature of the donation

quoniam ad hanc largitatem meam sponte et habeta
deliberatione perveni, nullius cogentis imperio nec suadentis
impulso, et haec inrevocabiliter me donasse profiteor.

Dolus malus clause

Quam donationis meae paginam omni vi, dolo, metu et
circumscriptione cessante

Identification of the scribe

Bono, tabellioni huius civitatis Ravennatis, rogatario meo,
scribendam dictavi,

Statements regarding the signatures

in qua subter propria manu pro ignorantia litterarum
signum venerabilem sanctae crucis feci, et testibus a me
rogitis optuli suscribendam;

Authorization for entry into the "Gesta"

quam si gestis municipalibus allegare voluerint actores
ecclesiae, liberam tribui ex more licentiam allegandi,

Stipulation and promise clause

de qua re et de quibus omnibus suprascriptis stipulatione
et sponsione sollemniter interposita.

Place and date

Actum Ravenna, imperio et die suprascripto.

"exceptions" were very common in late Roman law and
persisted at Ravenna, though they did not become well-
developed in the rest of Western Europe until much later.
This contravention of an exception demonstrates the power
of the private law document which "dared repeal privileges
and provisions of Roman . . . law, which might interfere
with . . ." it, D. Herlihy, Pisa in the Early Renaissance
(New Haven, 1958), p. 17.

¹"This conception, which was so important for the Greek
ethical view, came into Roman law quite late," cf. F.
Bruck, "Ethics vs Law: St. Paul, the Fathers of the
Church, and 'the cheerful Giver' in Roman Law," Traditio
2 (1944), 97-121.

"Signature" and inscription of donor

Signum + Sisiverae honestae feminae, suprascriptae donatricis, omnia suprascripta agnoscentis et consentientis, cui et relecta est.

Signatures and Inscriptions of the Witnesses

Armatus vir devotus, scholaris huic chartulae donationis in integro fundi suprascripti Baloniani cum omnibus ad se generaliter pertinentibus, sicut superius legitur, facte in sancta ecclesia Ravennate a suprascripta Sisevira honesta femina, donatrice et hanc donationem a suprascripta Sisevira Palumbo viro venerabili, diacono et vicedomino, traditam vidi. . . .

Statement of the scribe

Bonus, tabellio civitatis Ravennatis, scribtor huius chartulae donationis portionis in integro fundi suprascripti Baloniani cum omnibus ad se generaliter pertinentibus, sicut legitur, post roboratam a testibus atque traditam complevi et absolvi.

List of witnesses

Notitia testium idest

Armatus vir devotus, scholaris et collectarius a sancta ecclesia, ad signum.

Adquisitus vir clarissimus, optio numeri Mediolanensium.

Iohannis vir honestus, negotiator Syrus, a Caput porticus.

Laurentius vir strenuus, ex ypodecta civitatis Fanestris.

Iulinus vir honestus, qui fuit adiutor quondam Marcatoris.

Iuvinus vir honestus, horr(.)s(. . .)

(Text from Tjäder, vol. I, p. 346-352).

Transcription

Quam paginam dationis, concessionis et permutationis ego Ubaldu Ravennatensis tabellio et notarius sancte Ravennatensis ecclesie scripsi voluntate utriusque partis et complevi et ex mandato domni Gerardi Ravennatensis archiepiscopi. Testes interfuerunt: Pezzo, Martolus Vinoli, Martolus Andreoli, Andreas de Carundo, Rencontro, domnus Rusticus investitor ab abbate datus cardinalibus ut eos de prefatis rebus investiret, et presbiter Tebaldus cardinalis investitor ex parte cardinalium ut domnum abbatem de suprascriptis rebus investiret.

+ Legimus

+ Ego presbiter Tebaldus cardinalis subscripsi.

+ Ego Gandulfus presbiter cardinalis subscripsi.

+ Ego Bonusfilius presbiter cardinalis subscripsi.

+ Ego Ugo diaconus subscripsi.

+ Ego Morandus diaconus subscripsi.

+ Ego Henricus diaconus subscripsi.

+ Ego Cornubilus diaconus subscripsi.

+ Ugitio subdiaconus subscripsi.

+ Palmerius subdiaconus subscripsi.

APPENDIX IV

GESTA PROTOCOL FROM 552

The following curial proceedings took place in Classe at the house of the praetorian prefect. After the will of an Antiochene silk merchant was read and confirmed before the magistrates of the city of Ravenna, the primicerius and secundocirius of the notaries of the church of Ravenna (the chief beneficiary) requested that it be insinuated into the gesta municipalia. The scribe is an exceptor attached to the curia.

Undecies post consulatum Basili, Iunioris viri clarissimi, sub die Iduum Ianuariarum, Ravennae,¹ apud Melminium Andream virum clarissimum, defensorem civitatis Ravennatis,² et Pompulium Bonifatium quinquennalem et iterum magistratum,³ praesentibus Melminiis Cassiano viro clarissimo, Bonifatio,

¹Imperial cursive is used for the date and the place -- apparently because the names of the consuls figured in the date. This hand was monopolized by the imperial chancellery and local chancelleries were forbidden to imitate it. It is used here most likely to show respect and to make forgeries more difficult.

²In his fifteenth Novella Justinian tried to revive the defensor civitatis as a check against provincial governors. It was a biennial office, chosen by bishop, clergy and influential citizens (rather than by the curia); no one could decline his turn in serving; he was unremovable by governors, provided (supposedly) with a notarial staff and a public archives building, granted power of judging certain civil cases and registering wills, etc. in his court.

³Quinquennales were leaders of the gesta proceedings. After the defensor they were the highest local officials, serving five year terms. It is striking that almost all the officials appearing in the papyri have served more than once. In the two presiding officers some have seen the annually elected duoviri (the pair of supreme public officers in a locally self-governing community of Roman citizens), a tradition of 700 years or more.

Theodosio, et Pompulio Plauto viris laudabilibus principalibus,⁴ Ammonius vir clarissimus dixit: "Dum Georgius quondam, clarissimae memoriae vir, olosiricoprata civitatis Ravennatis, suam conderit voluntatem, suscribta a testibus ac signatam mihi eam coram ipsis credidit
 prae manibus gero; peto laudabilitatem vestram, optimi defensoris (....)ctissimi magistratus, ut eandem a competenti officio suscipi iubeatis et testibus praesentibus ostendi, ut, si signacula vel superscriptiones suas recognoscent,⁵ singuli edicere non morentur; tunc demum ipsam cartulam testamenti resignari praecipiat, linum incidi, aperiri et per ordinem recitari faciatis, ut intrinsecus possit agnosci voluntas defuncti."⁶

Melminius Andreas vir clarissimus, defensor civitatis Ravennatis, et Pompulius Bonifatius quinquennalis et iterum magistratus dixerunt: "Primitus suscipiatur carta testamenti, quae offertur, et testibus praesentibus ostendatur."

Cumque carta testamenti suscepra fuisset et testibus praesentibus ostensa, Iohannis vir clarissimus proemptor dixit: "In hac voluntatem interfui, in qua agnosco anuli mei signaculum quam superscriptionem meam, et infra suscripsi." Vitalis vir clarissimus argentarius dixit: Theodolus vir clarissimus olosiricoprata dixit: Ammonius vir clarissimus argentarius dixit: Laurentius vir honestus gunnarius dixit: Georgius vir clarissimus argentarius dixit: Theodorus vir honestus argentarius dixit:

Defensor, quinquennalis et iterum magistratus dixerunt: "Quoniam de agnitis signaculis vel superscriptionibus testium responsio patefecit, nunc carta testamenti resignetur, linum incidatur, aperiatur et per ordinem recitetur.

Et inciso lino ex officio recitatum est: [reading of the will]

Flavius Aurelianus vir gloriosissimus, praefectus praetorio per Italiam, Petrus Taurinus et Iohannis dixerunt: "Quae lecta sunt, gesta suscipiant. Quid autem aliud adstantes defensores fieri desiderant, prosequantur."

⁴Note that a small number of principales (four) take part in the curial proceedings. Honorius required three to assist the magistrate. At Rieti the whole assembled curia amounted to only six members.

⁵Use of a ring to authenticate documents was popular in the late empire and does not necessarily mean that users were illiterate -- as can be seen here since witnesses also sign. This is a lay society in which literacy is widespread.

⁶This formula for the opening of a will is based on Paulus' Sententiae IV. 6.

Domesticus, primicerius notariorum, et Thomas secundocirius idem notariorum, una cum Cypriano et Thomate defensoribus ecclesiae sanctae catholicae Ravennatis, per unum ex se, Thomatem secundocirium, dixerunt: "Gratias agimus gloriosae potestati vestrae, quia petitionem nostram ad effectum congruum per duxistis. Nunc petimus, ut ex his, quae acta sunt, gesta nobis edi propitii censeatis."

Flavius Marianus Micahelius Gabrihelius Petrus Iohannis Narses Aurelianus Limenius Stefanus Aurelianus vir gloriosissimus, praefectus praetorio per Italiam, Petrus Taurinus et Iohannis dixerunt: "Gesta vobis ex his, quae acta sunt, competens ex more edere curavit officium." Edantur.

Flavius Severus exceptor pro Bonila praerogativario edidi.

Edantur.

(Tjäder, Papyri, p. 212, l. 11 - p. 216).

APPENDIX V

LIST OF THE NOBILITY OF RAVENNA WHO WERE PRESENT AT A COUNCIL
IN 1309. ¹

Ser Jacobus Benincasa Notar.	Ser Sassolinus de Sassolis Not.
Ser Philippus Ser Jacobi	Ser Nicolaus de Sassolis Notar.
Benincasae	Nicolaus Cigilentius
Ser Guido Aldobrandinus Notar.	Ser Michael Cerisulus Notarius
Joannes Ser Guidonis Aldobran-	Ser Bulgarellus Cerisulus Not.
dini	Ser Augustinus Cavallus Notar.
Rentius de Lambardanis	Ser Bartolomeus Jupoli Not.
Ser Melchisedech de Lambardanis	Ser Turra de Carnevalis Notar.
Lambardus de Lambardanis	Ser Ghinus de Ghinibaldis Not.
Pertius de Lambardanis	Bondus fil. Matthei Doma-
Theodericus de Maltaliatis	terii
Ottorengius de Menzochiis	Ugo Sassius fil. q. Accursii
Vitalis q. D. Ugonis de	Nicolaus de Badais
Lazaris	Jacobus Philippi Mercati
Ostasius q. D. Jacobi de	Pascutius Ser Philippi
Lazaris	Mercati
Dondisellus fil. q. Vitalis	Simon Albertini Forastieri
de LazarisDe Spretis
Ugolinus de Lazaris	Rambaldus de Rambaldis
Ser Jacobus de Ghetiis Notarius	Pavolus de Palazo
Ser Domixellus de Genariis Not.	Betinus q. Nicolai de
Ser Antonius de Genariis Not.	Rasponis
Ser Vitalis de Genariis Not.	Nicolaus Zanzolinus
Ugo filius Ser Domixelli de	Albertinus de Brotiis
Genariis	Joannes Ser Rainerii Dento
Antonius de Genariis	Zanellus de Russiis
Ser Oddo de Montanaribus	Manente de Russiis
Ser Jacobus de Montanaribus Not.	Joannes q. Bencevnae de
Ser Simon de Montanaribus Not.	Novellinis
Pasqualis de Montanaribus	Joannes Andreas q. Jacomini
Ser Cambius Artusinus	de Guarneriis
Ser Ostasius de Artusinis Not.	Guarnerius de Guarneriis de
Ser Liberalis de Guiritis Not.	Cella
	Mariolus de Centonis.

¹Fantuzzi, V, 390-391.

CHRONOLOGICAL TABLE

- 402 Honorius II made Ravenna capital of the western empire.
- 423-425 Joannicus, primicerius of imperial notaries at Ravenna, usurped title of emperor in the west.
- 476-493 Odoacer ruler of Italy.
- 493-526 Theodoric's reign.
- ca. 537 Variae Epistulae edited by Cassiodorus.
- 527 Accession of Justinian.
- 534-552 The "Gothic Wars".
- 536 Novella 44, "De tabellionibus . . ."
- 538 Novella 73, "De instrumentorum cautela et fide."
- 540 Belisarius enters Ravenna.
- 552 Final defeat of Ostrogoths.
- 565 Death of Justinian.
- 568 Lombard invasion of Italy, and in defense Byzantine creation of exarchate of Ravenna.
- 615 Exarch John I and other imperial officials were killed in a popular rebellion at Ravenna.
- 625 Latest extant insinuation before the curia of Ravenna.
- 695 Deposition of Justinian II.
- 705 Restoration of Justinian II, who punished Ravenna and executed Joannicus his former notary.
- 710 Popular revolt against Byzantines led by Georgius, son of the executed primicerius Joannicus.
- 715-731 Pontificate of Gregory II, who detached Roman church from Byzantine Empire. Widespread rebellion against Byzantine rule in the major cities of northern and central Italy.
- 727 Lombard King Liutprand's edict fixed duties of scribes.
- 740 King Rachis attributed new authority to the acts of the Lombard scribes.

- 742 Epiphanius, scriniarius, secured return of archbishop Ravenna from exile.
- 751 Ravenna taken by Lombard King Aistulf. Collapse of exarchate.
- 752-756 Ravenna occupied by the Lombards.
- 756 Donation of Pepin by which Ravenna was ceded to See of Rome. Papal domination lasted until 891.
- 762 Paul the Deacon chancellor and notarius at the court of the Lombard King Desiderio.
- 769 Michelius, lay scriniarius of the church of Ravenna claimed archepiscopal seat in disputed election.
- 774 Capitulary of Charlemagne ordered: "Ut nullus presbyter chartam scribat . . ."
- 803 Capitulary of Charlemagne provided for election and supervision of local notaries.
- 805 Capitulary of Charlemagne ordered: "De notariis, ut unusquisque episcopus, aut abbas, vel comes suum notarium habeat."
- 805-854 Agnellus, chronicler of ecclesiastical history of Ravenna up to 846.
- 832 Capitulary of Lothar regulated appointment and emolument of notaries.
- 855-888 In their struggle for independence from Rome, the archbishops organized their chancellery in imitation of the Roman curia, and appropriated pontifical formulae.
- 889-963 Ravenna part of the Kingdom of Italy.
- 891-898 Reign of Emperor Lambert and flowering of school of law at Ravenna. Lombard as well as Roman law was taught there.
- late 9th century Reappearance at Ravenna of curia composed of consules and duces.
- 963-1024 Ottonian dynasty transformed Ravenna's archbishops into great imperial feudatories independent of Pope.
- 978 Construction of curia publica building, fortified with towers, in a palazzo near basilica of St. Agnes.

- 11th century Feudal period at Ravenna. Senate restricted to feudal nobility; rise of new bourgeois consoli tabellioni.
- 1080 Henry IV had Archbishop Guiberto of Ravenna elected antipope under the name Clement III. Ravennese jurists (eg. Petrus Crassus) take part in struggle against Gregory VII.
- ca. 1088 Countess Matilda founded law school at Bologna to counterbalance imperialistic one at Ravenna.
- 1106 Archbishop of Ravenna was deprived of his ecclesiastical jurisdiction, thereby liberating Bologna: emergence of rival Bolognese miniscule and notarial culture.
- 1118 Reconciliation between Ravenna and Rome.
- 12th century End of aristocratic rule at Ravenna, growth of commune under auspices of archbishop and appearance of Tabellio Communis Ravennae.
- 1227 Archbishop of Ravenna sustained exclusive rights of the corporation of tabelliones and appointed a maior to preside over them.
- 1240 Frederick II took possession of Ravenna.
- 1276 Rudolf of Habsburg ceded the Romagna to the Pope.
- 1297-1441 Polenta family ruled Ravenna (protector of Dante).
- 15th century Constitutionum Notariorum Collegii Ravennae compiled.

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LIST OF ABBREVIATIONS

1. Periodicals

- AA Atti del Convegno Internazionale di Studi Accursiani, ed. G. Rossi (1968).
- ADSPR Atti e Memorie della R. Deputazione di Storia Patria per le provincie di Romagna. Bologna.
- AEDB Annales de l'École du Droit de Beyrouth. Lyon.
- AfD Archiv für Diplomatik.
- AG Archivio giuridico "F. Serafini". Modena, 1868-1961.
- AIV Atti dell'Istituto Veneto di Scienze, Lettere ed Arti, Classe di Scienze morali e Lettere. Venice.
- ASI Archivio Storico Italiano. Florence.
- ASL Atti della società ligure di storia patria.
- ASPN Archivio storico per le province napoletane. Naples.
- ASRSP Archivio della società romana di storia patria. Rome.
- AUF Archiv für Urkundenforschung. Berlin-Leipzig.
- BHE Bibliothèque de l'École des Hautes Etudes. Paris, 1839 - .
- BISI Bullettino dell'Istituto Storico Italiano per il Medio Evo e Archivio Muratoriano. Rome.
- BSSP Bullettino Senese di Storia Patria.
- BSWL Berichte über die Verhandlungen der Sächsischen Gesellschaft der Wissenschaften zu Leipzig. Philologisch-Historische Classe.
- FR Felix Ravenna, bollettino storico-romagnolo edito da un gruppo di studiosi Ravenna. Ravenna.
- MASIB Memorie dell'Accademia delle scienze dell'Istituto di Bologna. Bologna.

- MEFR Mélanges d'archéologie et d'histoire de l'Ecole Française de Rome. Paris.
- MIÖG Mitteilungen des Instituts für Österreichische Geschichtsforschung. Wien.
- QFitAB Quellen und Forschungen aus italienischen Archiven und Bibliotheken.
- RSI Rivista Storica Italiana. Naples.
- SavZGA; RA Zeitschrift der Savigny Stiftung für Rechtsgeschichte: Germanistische Abteilung; Romanistische Abteilung. Weimar.
- StUB Studi e memorie per la storia dell'università di Bologna. Bologna.
- Trad Traditio. Studies in ancient and medieval History, Thought and Religion. New York.

2. Editions & Collections of Sources

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- CTh Codex Theodosianus, ed. T. Mommsen & P. M. Meyer. Berlin, 1905.
- Fantuzzi M. Fantuzzi, ed, Monumenti ravennati de' secoli di mezzo per la maggior parte inediti. 6 vols. Venezia, 1801-04.
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- Marini G. Marini, ed, I papiri diplomatici, raccolti ed illustrati dall'Abate Gaetano Marini . . . Rome, 1805.

- MGH Monumenta Germaniae Historica, ed. G. H. Pertz, T. Mommsen, et al. Hanover, 1826f.
- " AA " Auctores Antiquissimi.
- " Ep " Epistulae.
- " Gest Pont Rom " Gesta Pontificum Romanorum.
- " Scr rer Lang " Scriptores rerum Langobardicarum et Italicarum.
- " Scr rer Merov " Scriptores rerum Merovingicarum.
- PL J. P. Migne, ed, Patrologia Latina. Paris, 1844-1864.
- RIS L. A. Muratori, ed, Rerum Italicarum Scriptores, Milan, 1723-51. New edition by G. Carducci et al, Città di Castello & Bologna, 1900f in progress.
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