Franz-Josef Arlinghaus
Legitimationsstrategien in schwieriger Zeit

Meiner Mutter

Franz-Josef Arlinghaus

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Die Sentenzen der Mailänder Kommunalgerichte im 12. und 13. Jahrhundert

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Preface

The text of this volume was completed already in 1998 and was originally meant to be published in the context of a compilation[331] whose production, however, was unfortunately postponed several times. After longer considerations the editors of the still intended volume, Hagen Keller, Marita Blattmann as well as Jörg W. Busch, and me have agreed on taking the voluminous text out of the volume, not at last for technical reasons, and on publishing it separately.

The publication of a text after so many years without considering the meanwhile published literature [332] requires an explanation. In my opinion, three aspects of the text are still interesting: firstly, the applied method, secondly, as a result of the method, the chronological contouring of societal change in the context of the Milan judiciary, and thirdly the theoretically enriched interpretation of the findings. On the whole, I hope, still this work might be methodically stimulating in one way or the other and make a suggestion concerning the interpretation of the Milan judiciary which has as yet not been presented.

1.) Method: 'Digital humanities' and hermeneutic analysis
Currently there happens an intensive debate on the prospects and limits of 'digital humanities'. The here presented study applies a hybrid method: by a first step, it makes the information gained from scanned material and processed by help of a database subject to a quantitative analysis. This way the processing of information, this again and again tentative regrouping of information, unfolds its own heuristic potential. How many office bearers are mentioned by the document? Are their temporal fluctuations allowing for the identification and interpretation of patterns? When do which titles of office bearers appear for the first time? Which of them are particularly frequent and predominant at what time? Thus this is no prosopographic study but a study oriented at function bearers.

[331] KELLER/ BLATTMANN/ BUSCH (Edits.) Formen der Verschriftlichung und Strukturen der Überlieferung.

[332] An overview of current research as well as of the more recent literature is found in WICKHAM, Sleepwalking into a New World, pp. 1ff. and pp. 21ff.; KELLER, Erforschung der italienischen Stadtkomunen; DARTMANN, Politische Interaktion in der italienischen Stadtkommune.

Taking the individual parts of the document seriously concerning their intrinsic value and meaning, as diplomatics do, was a crucial aspect of the processing of the data. This resulted in a differentiated consideration of the appearance of the titles of office bearers in the various parts of the document, in particular in the initial protocol, (*intitulatio* etc.), text (*narration* etc.) of the document as well as in the *eschatocol* (*subscriptio* etc.). Of course this required a further processing of the data. Then, however, the use of the database allowed for the assessing of different theses and periodisations, e. g. for testing different chronological intervals in which documents give mostly the same or a similar 'staff' of function bearers. The advantage offered by making use of the database was not the saving of time. On the contrary, processing and 'assessing' are very much time-consuming. Rather, the advantage is in the material looking different, allowing for a different kind of access, thus stimulating new questions. However, to make the thus developed theses plausible – this may be emphasized – there must be a comparison with the 'traditional' reading of the sources and most of all to the historical context. Thus the here presented database-supported evaluation of sources is meant as an enrichment of the classical hermeneutic process, not as a replacement.

2.) Chronological contouring of societal change in the context of the Milan judiciary

The radical breaks of the structure of the judiciary as they are identified in the material are at first based on a quantifying analysis. In this context, quantification is confronted with problems of its own. As the tradition does not provide any representative selection of documents and we may not even assume that charters have survived by pure chance, it is not possible to conclude from existing documents on any totality of charters that once might have been written in 12^{th} / 13^{th} century Milan. Quantification allows only for making statements on surviving documents. However, it essentially contributes to structuring the existing material and to discussing, in a way, 'suggestions' – such as concerning a chronological classification of phenomena. Of course these reservations do not only concern any database-supported quantitative evaluation but also any 'traditional' reading of the stock of sources. Then, similar to working without a database, conclusions must be made plausible by way of analysing the historical context.

3.) Theoretically enriched interpretation of the findings, literacy

Also concerning present times there are debates on how court decisions may be legitimated, without these debates having produced any concluding or at least satisfactory result. Pointing out to the court having been specially authorised (by King or Emperor or by a democratically legitimated government) is a frequent argument. A somewhat more recent suggestion particularly concerning the judiciary

of the modern age identifies the way of the proceeding itself, the way in which the communication among the parties, judges, notaries and *iurisperitii* is structured, as an essential possibility of legitimating court decisions.

In Milan in the High Middle Ages it seems as if both types can be identified, however at different times. 'External' legitimation – as far as it can be read from the titles of office bearers – seems to be predominant rather during the early stages of the court, whereas 'internal' legitimation becomes predominant in later times. The assumption is that this is due to the, in the course of time deteriorating, possibilities of the court to refer to a generally accepted authority. Important in this context is the question of how this 'internal' legitimation was organised in Milan. After all, the central idea of this kind of legitimation was that, by way of implementing committee-like authorities – such as the *iurisperiti* – the decision-making process could be split up in the course of the trial, so that no longer the court itself had to bear the entire burden of reaching a verdict. In this context writing plays a crucial role, not as a means of rationalisation, as it is often assumed, but as a means of organising communication. In the context of the trial, documents serve a. o. for realising the implementation of such authorities and for creating their autonomy from the court responsible for their implementation. For this purpose one made use not at last of specific staff – the notaries – who put the verdicts, to which the parties had often considerably contributed, into force by reading them aloud.

Thus, it is the intention of the book to apply approaches of e-humanities to a collection of medieval documents and to interpret the findings by reaching back to sociological theories. The hope is that, although it was completed quite some time ago, still it may contribute some ideas to current historical research.

The evaluation of the sources was based on extensive digitalisation, as at the end of the 1990s it was carried out in the context of sub-project A of the Collaborative Research Centre 231 "Agents, Fields and Forms of Pragmatic Literacy in the Middle Ages", headed by Hagen Keller, to whom I am very much obliged for giving me plenty of scope then. Marita Blattmann, Jörg W. Busch and Thomas Scharff as my immediate contact partners showed extreme patience. I am thankful to Nine Miedema who told me how to program in dBase. Claudia Becker, Petra Schulte and Michael Drewniok lent valuable support by their many ideas, Udo Göllmann, Sabine Rutar and Olaf Zumhagen relentlessly processed the data.

Very special thanks to Lena Gumpert who in 2015 knew how to very carefully and skilfully convert the old files into current formats and who also, together with Moritz Heitmann, drew my attention to some inconsistencies of the text.

Franz-Josef Arlinghaus, in January, 2016

Summary

For the urban communities of Northern Italy the 12th and 13th centuries were a period of radical change in almost all spheres of social life. These radical changes came along with uncertainty among institutions and authorities which up to then had allegedly been firmly established. How, as was the initial question, did the sensitive field of justice react to the general change of the societal and political environment? How was it possible for courts to establish acceptance of their judgements and to legitimate themselves as a decision-making authority, given the fact that the two institutions – Emperor and municipality – they had referred to over the decades were increasingly quarrelling with each other and finally found it very difficult to establish acceptance for themselves? Inevitably the judiciary had to react to this, the question was only how to react and how soon.

The analysis of the somewhat continuously preserved judgements of the Milan municipal courts may be supposed to provide an answer to this. Given the problem, the here presented study was meant to work out, if possible, typical elements of the judiciary in certain periods of time. Thus it was not about the question of when *for the first time* this or that phenomenon can be grasped by the judgements but when it was applied widely and frequently. This required a qualitative approach which could only be realized by basing it on a database on Milan office bearers, called 'Amtmail'. This initially purely formal counting of the distribution of appointments of office bearers in the various segments of the document produced, as a first result, the fact that the text of the document and its *subscriptio* are mostly independent of each other, although they were part of one and the same legal act and the same document: A high number of those office bearers as being mentioned in the text could come along with a low or a high number of subscribers and vice versa. This observation, according to at first purely formal criteria, allowed for a periodization of the material which on the one hand served as a basis for the further interpretation of the judgements while at the same time having to prove its worth, in the course of this interpretation, as being correct and interpretable. By way of the analysis of the titles found in the various parts of the document it was possible to confirm the five different phases which had become obvious already in the course of counting the 'staff of the judgement'. Despite this confirmation, the applied method would be overstrained if one interpreted the suggested periods as development phases which could be delimited from each other for each year exactly. This was neither the intention nor necessary for an interpretation, for concerning the postulated connection between social changes and reorganisations of the legitimation structure of the judiciary one will have to assume a) a more or less strong postponement when it comes to a cause-effect connection. Only rarely changes in the political-social realm have immediate effect on the way of dealing

with justice[333]. And b), we may not expect complex changes of the legitimation structure to start abruptly and suddenly.

In this sense, it is astonishing how clear the differences between the intervals are. The years between 1140 and 1175 are the most homogeneous period of time of the 136 years under consideration here, if not concerning the number of mentioned office bearers – there the figures vary considerably – but definitely concerning the titles. During the first 35 years the court referred to the two authorities of 'municipality' and 'Emperor' in quite a balanced way, and it knew how to make use of them for establishing its own legitimacy by using the terms *consul* in the text of the document and *iudex* in the *subscriptio*. In the ten years after 1175 – the second period – the quarrels between ruler and city, which had been increasing since the mid-1150s, gravely manifest themselves in the court files. Precisely in the *subscriptio*, where previously the term '*iudex*' had exclusively referred to the Emperor, coming along with a growing number of subscribers also the references become more various. Now the newly found names in the *subscriptio* refer to a municipal office – for the first time in this part of the charter – on the one hand, on the other hand by just giving his name the personal reputation of the subscriber gains temporary significance. Against the background of the political development, which is characterised by the Peace of Constance and the Emperor recognizing the municipal community, however soon by renewed quarrels again, the following intervals No. 3 (1186-1210) and No. 4 (1211-1247) are under the sign of the further increasing and then finally predominant use of municipality-based titles. Of the two institutions on which, still in the third quarter of the 12th century, the courts were leaning for their own legitimation and for increasing the acceptance of their judgements, now it is only the municipality they can refer to.

However, right from the beginning this exclusive reference to the urban community is no complete replacement of the balanced double legitimation we encounter in the charters still in the 1170s. Inevitably the loss of the possibility of including the Emperor – and with it to god given law –, into the legitimation of the court tore gaps which could not be completely filled by the municipality. Even less so as also the urban society itself experienced an 'identity crisis', due to the contradictions between popolo and nobiles. Given the now only limited possibility of basing its legitimacy on 'external' authorities, the court was increasingly dependent on developing a different strategy of creating acceptance. The structuring of the trial into several, if possible autonomous sub-cases and the commissioning of function bearers responsible for carrying out these sub-cases, nominated only in the course of the trial itself was such an alternative strategy. First approaches at

[333] On the phenomenon of law being 'staggered' see LUHMANN, Das Recht der Gesellschaft, pp. 124ff.; GÜNTHER, Vom Zeitkern des Rechts, zu: Niklas Luhmann, Das Recht der Gesellschaft, pp. 17ff.

a split up of the trial can be identified already in the late 1180s, at the beginning of our third phase: The increasing separation of consules comunis and concules iustitiae – although it was never strictly executed – relieves the burden both of the 'political' leadership of the city and the judiciary[334]; for the first time there are indications that the interrogation of witnesses was separated from the trial as such[335] now the discussions of the court are no longer exclusively moderated by the consuls presiding the court, at least sporadically *magistri* are mentioned who act as consultors. By the delegation of a trial from the *concules iustitiae* to so called *iudices delegati*[336] for which there is evidence for the first time from the year 1200, a number of autonomous sub-elements of the trial can be proven already before the beginning of the 13th century, which may claim that their legitimation to act in the context of a given trial is predominantly based on being charged with such a task through/within the trial itself. This is not meant to deny that those charged with a task during a trial were members of a guild or council and that the municipality exerted influence on these associations and that access to these organisations was not at last based on professional qualification. The notaries in charge of interrogating witnesses, the *iudices delegati* and the *iurisperiti*, however, based their often crucial position in a given trial only indirectly on their membership of certain corporations. First of all, it was based on being appointed during the trial as such.

If we may consider already the structuring of the course of at trial an attempt to create acceptance by way of the trial itself, as by each step of the procedure the parties were participating in, at the same time they implicitly confirmed the legitimacy of what was happening[337] the appointment of the individual 'institutions' in charge of these steps, often only in the course of the proceedings and often while including the parties, asking them for consent, is another increase of this way of creating acceptance. It is no coincidence that in the late 1240s, when even reaching back to the municipality as a possibility to create acceptance 'from the outside' was only a very limited option, the alternative strategy of 'legitimacy from the inside' was applied to a degree which, from today´s point of view, looks extreme. The growing significance of the *iurisperiti* for the judgement, the general bringing in of commissaries, may they be delegated judges or 'experts', and the not seldom found 'chains of commissioning' – the consul commissions the delegate, the delegate commissions the *iurisperitus* – indicate how much now one counted on the creation of acceptance in the course of the trial as such. Even if still 80% of the judgements were announced by a 'judge' who was immediately appointed by the municipality – about 20% of the judgements were decided and announced

334 See chapter 'Die Aufteilung des Konsulats', pp. 66ff..
335 See chapter 'Das Notariat als zunehmend eigenständiges Element im Prozeß', pp. 69ff.
336 See chapter 'Zur Funktion der *iudices delegati* und *consiliarii/iurisperiti*', pp. 77ff.
337 See chapter 'Herstellung von Legitimität im Verfahren', pp. 95ff.

by the *iudices delegati* – an analysis of the proceedings produces the result that we may state that the municipality was ever less *directly* involved into the proceedings. This makes sense at a time when leaning too much on an institution which was no longer uncontested would not have meant a relief but a growing burden for the judiciary.

A quick comparison of Periods 2 (1176-1185) and 5 (1248-1276) may be supposed to once again make obvious that at different times the court made use of different legitimation strategies – on the one hand by leaning on 'external' authorities, on the other hand the creation of acceptance by way of further differentiating the proceedings. At first one tried to react to the fact that the bipolar reference system of the judgement (text of the document = municipal reference, *subscriptio* = Imperial reference) was increasingly put into question – due to the constant conflict between the two institutions and the ongoing decline of Imperial authority in Milan – in a 'traditional' way: By way of mobilising more office bearers, by way of differentiating the titles, and not at last by emphasizing that outstanding personalities of the city that backed the trial one tried to maintain the validity of the court and its judgements; the trial itself, however, was at first maintained as one entity, without any further chronological or personal differentiation. Such a way of proceeding was nothing new, for also in the context of particularly important trials one tried, by including further office bearers, to increase the legitimacy and power of the municipal court. However, in this period such a way of proceeding became a general principle, and this cannot be explained by the specifics of each individual case but by the weakness of the external references. For, 'legitimacy' from the 'outside' as well as the possibility of creating legitimacy by the increased commissioning of representatives of 'external' institutions alone, without further differentiating the proceedings, are only possible if these institutions themselves meet sufficient acceptance. In so far it looks symptomatic that in the *subscriptio* not only the titles of municipal offices appear for the first time but that increasingly people give only their names although they are office bearers. In the second period the strategy of legitimation from the outside is both quantitatively – by giving many personal names and titles – and qualitatively – by referring to a variety of external entities – exhausted to a degree which may almost be called extreme; at the same time here the limits of such a kind of legitimation strategy become obvious if each individual reference itself may contribute only a limited degree of legitimacy to the trial.

The proceedings which became common in Milan after 1247 are quite different. Now important parts of the proceedings were dealt with by two or three separate administrative units. The notaries were in charge of interrogating witnesses, the *iurisperiti* were in charge of de facto deciding the case, whereas still the assessor of the Podestà or the Consul was in charge of hearing claims and announcing the

decision – at least in the majority of the cases. Here the way of proceeding – due to its differentiation, however also due to the fact that again and again it was other committees consisting of different function bearers which made partial decisions – provided a possibility to create legitimacy, so to speak, step by step, in the course of the proceedings themselves. As a result of this differentiation, at the same time there was a considerably less necessity of legitimacy of each committee; furthermore, due to the autonomous sub-systems referring to each other, one succeeded with the individual elements supporting each other. If furthermore the parties are included into the commissioning of the committees – and in this context it is only of minor significance if this inclusion happened by way of handing in lists of desired and definitely undesired candidates or if it happened simply by drawing lots – this way the aspect of 'recognition by way of participation', which is the result of any kind of participation in proceedings, was additionally increased.

The differentiation and split-up of the process and the delimitation of competences can be grasped as far as to writing down the judgements. If still in the 12th century there was no possibility to connect the title of the respective office bearer to the act of writing and signing, in the second half of the 13th century the *notarius* had mostly replaced all other office bearers – including those being officially in charge of the proceedings – when it came to the *subscriptio*. Even more: Now the signing notary had the right to autonomously commission a colleague or employee with writing down the judgement of the municipal court. From this kind of subscription we can read how the field of literacy itself was understood to be an independent element of the proceedings which was now the task of a certain group of function bearers. If once writing and notaryship are made autonomous to such a degree, they can be interposed as an independent module and a relay station, in particular in case of commissionings and delegations. For a court which does not only count on differentiating the proceedings but furthermore establishes and commissions each individual committee only in the course of the trial faces the problem of establishing the legitimacy of the individual elements by way of appointment. Here it can only be advantageous if, in the course of the trial presided by the *iudices delegati*, one may not only refer to being commissioned by the assessor of the consul but if there is the additional possibility to refer to the notary who is considered a separate element and to the provided *carta delegationis*. Thus, in the context of the delegation procedure two institutions could be referred to, each of which was 'independently' contributing to the commissioning.

If the strategy of creating acceptance and legitimacy by way of differentiating the proceedings is supposed to be fully successful, despite the interlocking of each module of the proceedings the autonomy and independence of each module must be guaranteed and made visible to the outside in one way or the other. In the case of institutions where individual elements are established only ad hoc, by way

of commissioning, there is the particular danger that the intended autonomy of these committees, which have been established only by the 'superior institution', is not sufficiently made clear. By interposing the notary and the document between the commissioning and the delegated entity, by appointments made not immediately by the assessor or consul but by the *notarius* who publicly reads the *carta delegationis*, actually the commissioning happens only indirectly, by way of a second 'authority'. By way of such an interposing one prevents the above sketched danger that the independence of partial elements is not perceived; however it prerequisites that the notaryship itself is considered an institution of its own.

These institutional aspects, with notaryship and writing being too closely interwoven for any further differentiation, must be distinguished from more fundamentally identifying writing as a means of exchange between the individual sub-entities of the proceedings. If the differentiation of the proceedings – at least concerning the here discussed segments – serves primarily the purpose of creating legitimacy in the context of the proceedings as such, and if this requires that the independence of different sub-elements is clearly made obvious to the parties, then the textualisation of certain procedures happens within quite a particular context where also another function must be attributed to writing. In this context, writing has indeed not *primarily* the function of exchanging information; as after all such an exchange of information – such as if it is not the notary but the judge who interrogates the witnesses or, as it had been common for a long time, *sapientes* are consulted in the form of a *colloquium*, that is in the form of immediate oral deliberation instead of a separated *consilium* – would still have been possible orally. Here, the exchange of records and deliberations by messenger between the various institutions served for maintaining the distance between the different entities and for, if possible, preventing any immediate contact, such as between *iurisperitus* and *iudex*. Thus, by this way of communicating, basically a very far reaching separation of the individual stages of the proceedings was possible – despite the many topical and organisational-legal links. Only this it was possible to effectively establish the autonomy of the authorities, which was of crucial significance for unfolding the possibility to create legitimacy for the proceedings, while at the same time making this autonomy visible towards the outside.

However, as it becomes obvious by the way in which the judges of San Gimignano proceeded[338], the skilful use of the elements of 'secrecy' and 'public nature' in combination with literacy and reading aloud of deliberations and judgements did not only allow for an either or, i. e. complete separation or immediate contact. Rather, it provided a complex framework of differentiated, tiered ways of proceeding of an actually intended ceremonial nature, allowing for a very refined structure and presentation of the relations between the institutions.

[338] On this see pp. 97ff.

The restructuring of the civil court proceedings in Milan from a consistent trial to a differentiated system of individual committees served, as is the thesis, predominantly for dealing with the no longer possible 'legitimation from the outside' of the court and for replacing it by a kind of 'legitimation from the inside' coming along with the development of sub-elements which were supposed to be as independent as ever possible. The first establishment of mostly autonomous segments at the end of the 1180s and the degree of differentiation and commissioning in the context of the proceedings, which must indeed be called extreme, from the late 1240s on were understood as an answer to the fact that the courts could only in a very limited way refer to Emperor and municipality as the points of reference of their actions – in the context of which, however, we must assume that the phenomena of 'putting the institution into question' and 'development of legitimation from the inside' happened with a time lag. If there are connections between a strong and respectively a weak social-institutional environment of the court and a weak and respectively strong interior differentiation of the proceedings, similar structures – each according to the situation of the environment – would have to be identified also at other times and in other regions. This can only be decided after a further, comparative, analysis of the practices of the judiciary which is not possible here. However, at least some indications to be found in literature shall be mentioned.

Already Engelmann states that in the 13th century the 'practice of consulting experts', that is the consultation of *iurisperiti*, was particularly widespread in the municipalities of Northern Italy, whereas centrally organised Southern Italy, where the judges had a 'civil servant status', hardly knew this legal institution[339]. Also in the field of ecclesiastical jurisdiction it was not much common[340]. However, what seems to contradict our thesis is the fact that precisely the 14th and 15th centuries are considered the peak of counselling in Italy, although at least for Lombardy, given the fact that by the end of the 14th century at the latest the Viscontis had not only pushed through but had become firmly established, we might expect a decline. However, Ascheri points out to the fact that increasingly more seldom the *consiliarii* brought in their judgements in cooperation with the 'magistrate' but that instead the deliberation becomes a legal opinion in the proper sense, immediately commissioned by the claimant or the defendant to use it for their arguing at

[339] "Von Bedeutung wurden gerichtliche Gutachten Rechtsgelehrter nur in den Gebieten der Podestà-Verfassung ... Keine Bedeutung gewannen sie ... in den Königreichen Neapel und Sizilien." There the judgement continued to be decided in the course of joint deliberations; ENGELMANN, Wiedergeburt der Rechtskultur, p. 243. Engelmann tries to explain this by the difficulties the foreign judges, who were quite common in Northern Italy, were facing when applying the local law; on these arguments see in detail above p. 89.

[340] ENGELMANN, Wiedergeburt der Rechtskultur, p. 243.

court[341]. Precisely because here – in contrast to the deliberations of the 13th century which in most cases only give the judgement – legal arguments are presented, the opinions of leading jurists are kept, copied and finally even printed[342]. Thus, however, the *consilia* were no longer an independent element of differentiated proceedings but predominantly legal advice for the parties.

Telling in this context is the changing status of the notary as a sometimes more and sometimes less independent element in the document. It has been shown that the municipal judgements up to 1211 did not attribute any independent function to the notaries and that the title *notarius* in the *subscriptio* could not be clearly distinguished from the title of *iudex*, whereas after 1247 both the signatory and the scribe called themselves a notary, often without referring to the count palatine, the Emperor or the municipality. We have already pointed out to the possibility of the scribe being commissioned by the subscriber (both of them being notaries) in those days. For a surprisingly long period of time the Signoria in Milan continued to reach back to the municipal document form – and this although Otto Visconti as the Bishop had his own chancery where a completely different document form – indeed the type of the chancery document – was predominant and e. g. the use of the seal was common[343]. Precisely at the beginning of the rule of the Signoria the placing of a seal under a judgement – perhaps only as an addition for a start – would have been of great propagandist value. As a matter of fact, however, the seal of the Signoria is found for the first time in 1335 and *next* to the signature of a notary who now often called himself *cancellarius* instead of *notarius*, until finally from 1340 on the signature of the notary disappeared completely and only the seal provided the legal act with legitimacy[344]. Thus, only at a time when the Visconti had already repeatedly been appointed Imperial Vicars and the Signore was widely accepted in the city[345] one was able to refer to him as the legitimating

[341] ASCHERI, Diritto comune, processo e istituzioni, pp. 206ff. ID., Rechtssprechungs- und Konsiliensammlungen, pp. 1199ff.; there we find also the hint that the consilia continue to be part of statutory law-making.

[342] ASCHERI, The Formation of the *Consilia*, in part. pp. 196f.

[343] BARONI, La formazione della cancelleria viscontea, pp. 104ff. Also the municipality of Milan had its own seal which was most of all used for the correspondence with other municipalities. It seems to be symptomatic that this symbol of the municipal community was never used in connection with signing a sentence – not even as a completion; MANARESI, Introduzione, p. XCIX. The situation was different in Genoa; on this see COSTAMAGNA, Il notaio a Genova, pp. 146ff.

[344] BARONI, La formazione della cancelleria viscontea, pp. 107f.

[345] As early as in 1294 Adolf von Nassau appoints Matteo Visconti Imperial Vicar; Henry VII. repeats this appointment in 1311. When in 1313 he is denied the Imperial title by the Pope, tellingly he has himself elected the Signore and Rector of Milan by the municipal council. In 1317, due to ongoing pressure by the Pope, he must give back the title of Vicar. From 1329 on Azzo Visconti may call himself Imperial Vicar; on this see SALZER, Über die Anfänge der Signorie, pp. 119f.; on the events of 1313: COGNASSO, Le basi giuridiche della signoria di Matteo Visconti in Milano.

pillar of document and legal act. Had it only been about providing a legal basis in the sense of *publica fides*, certainly one would have earlier been able to place the seal of the Imperial Vicar under the municipal documents[346]. By the end of the 14th century the chancery of the lord of the city employed hardly any notary but only so called *pronotarii* who had only partly completed their training and thus – in contrast to the independent notary of the administration of the 13th century – rather represented the type of the employed scribe[347].

Based on an analysis of the Milan court documents of the 12th and 13th centuries, the here presented study was able to establish a connection between societal change in general, which resulted in a legitimation crisis of the municipal courts, and the development of certain elements of the proceedings of the trial. Necessarily a comparison with developments beyond the chosen period of time and region was only cursory; here further analyses in particular of the trial practice would be a desideratum. On the whole, however, the lines of development pointed out to, i e. the growing differentiation of the proceedings in connection with a reduced possibility of 'legitimacy from the outside' and a reduction of the autonomy of individual authorities in the context of the proceedings as soon as one is able again to refer to accepted 'external' institutions, are indications of a reaction by the judiciary to the societal environment also under a wider horizon.

[346] Already LIVA, Notariato e documento notarile, p. 193, points out to the fact that the Signore with his seal actually makes the confirmation of the municipal documents by a notary unnecessary. Even more there is the question why still, over a period of more than 50 years, one continued to reach back to the notary although both financial and propagandist arguments could be brought forward against this.

[347] LIVA, Notariato e documento notarile, pp. 194f.

13 Anhang

Zwei Sentenzen aus der ersten und der letzten Phase des hier untersuchten Zeitraumes; es handelt sich in beiden Fällen um Dokumente, die noch im Original überliefert sind.

ACM Nr. 27, 14. April 1153
Eine ‚durchschnittliche' Sentenz aus der ersten Phase. Azo Ciceranus entscheidet zusammen mit drei weiteren Konsuln (oben im Text genannt) im Streitfall zwischen einigen ‚milites Mediolani', den Herren von Ardenno, und dem Kloster San Abbondio in Como bezüglich der Ortsherrnrechte, die indirekt über Rolando Murada ausgeübt werden. Azo und Marchisius werden ‚oben' als Konsul bezeichnet, unterschreiben aber ‚unten' als *iudex et missus domni secundi Chunradi regis* bzw. schlicht als *iudex*. Insgesamt sind sechs verschiedene Amtsträger in der Sentenz genannt.

(S M) Die martis qui est quartusdecimus dies aprilis, in consulatu Mediolani. Breve de sententia quam dedit Azo qui dicitur Ciceranus consul Mediolani in concordia Heriprandi Iudicis, Roberti Pingilucchi atque Markisii Calcanioli, consulum similiter, de discordia que erat inter milites Mediolani qui tenent Ardennum per eorum missos Refutatum Cagalentum, Guilielmum Monetarium consules, Guasconem de Mairola, Arzemondum de Sexto, Porrinum de Porris, Montenarium Monetarium atque Maldotum Pedestorti, et ex altera parte domnum Adam venerabilem abbatem monasterii Sancti Abundii. Lis enim talis erat. Dicebant ipsi milites quod Rolandus qui dicitur de Murada de loco Talamona debebat per eos se distringere propter districtum plebis de Ardenno quod ipsi milites ad se pertinere allegabant, asserentes ipsum Rolandum habitatorem esse de ipso loco Talamona qui est de plepe de Ardenno; et quod ipse locus Talamona sit de plepe Ardenni, et quod ipse Rolandus sepenumero per eos districtus sit ipsi milites quam plures induxerunt testes. E contra ipse abas respondebat districtum ipsius Rolandi ad ipsos milites nullo modo pertinere, imo pro tertia portione ad prefatum monasterium Sancti Abundii spectare affirmabat, asserens universi loci Talamone districtum pro tertia portione ipsius monasterii esse, reliquis duabus partibus ad monasterium Sancti Dionisii et Landulfum Grassum atque Cadagios de Insula pertinentibus dicebat insuper locum ipsum de Talamona

non esse de plebe de Ardenno, set curtem esse; et quod ipse locus sit curtis et quod tertia pars ipsius curtis cum districto ceterisque honoribus ad ipsum Sancti Abundii monasterium pertineret, et quod ipse Rolandus per abates ipsius monasterii sepenumero districtus sit, multis testibus et instrumentis publicis ipse abas ostendebat, privilegium etiam domni Henrici imperatoris producebat quo continebatur quod prefatus imperator tertiam partem ipsius curtis eidem monasterio donaverat. Addiciebant insuper ipsi milites quod domnus Cono, abas ipsius monasterii, de ipsius Rolandi districto finem fecerat in manibus suorum consortum de Insula cum quibus de ipso districto sub consulibus de Insula in causa fuisse dicebant; unde similiter testes produxerunt. Quod predictus abas omnino negabat. His et aliis hinc inde visis et auditis, et predicto Rolando coram ipsis consulibus profitente ipsius monasterii Sancti Abundii districtabilem esse et non ipsorum militum, et hinc inde omnibus omissis testibus, laudavit ipse Azo, si ipse abbas per suum advocatum iuraverit quod predictus Rolandus pro tertia portione per ipsum abatem Sancti Abundii debet se distringere iure et usu ipsius loci, ut de cetero ipse Rolandus per ipsum abatem Sancti Abundii pro tertia portione se distringat. Et prefatum monasterium ab ipsorum militum petitione de districto ipsius Rolandi sit de cetero absolutum. Cumque ipse abbas per suum advocatum paratus esset ut supra iurare, remiserunt ipsi milites ei iusiurandum. Et sic finita est causa. Anno dominice incarnationis milleximo centeximo quinquageximo tertio, prefato die, indicione prima. Interfuerunt Benno de Curte, Amizo de Landriano, Azo de Axago, Peregrinus de Rode, Codemallius de Pusterla, Oldo de Petrasancta, Otto de la Sala, Passagius, Guifredottus Capellus, Guibertus Medicus, Monachus Gambarus, Trankerius Baxabelleta, Bordella, Guilielmus Cassina, Bernardus Russca; de servitoribus Anselmus de Picino, Bombellus, Iohannes Arpadore, Iohannes Guitonus, atque Siniforte et alii plures.
(S M) Ego Azo iudex et missus domni secundi Chunradi regis hanc sententiam dedi et subscripsi.
(S M) Ego Arialdus causidicus subscripsi.
(S M) Ego Marchisius iudex subscripsi.
(S M) Ego Dominicus iudex ac missus domni regis interfui et hanc sententiam scripsi.

ACM sec. XIII, 2.2, Nr. 689, 7. August 1274
Der Konsul Ruffino zieht im Rechtsstreit zwischen dem Kloster Chiaravalle und den Brüdern Rolando, Miro und Tessari den *iurisperitius* Mainfredus Menclotius bei, der wiederum Petrus de Castana als weiteren ‚Gutachter' benennt. Im Text der Sentenz sind – bei Ausschluß des Martino Tinctoribus *olim consule iustitie*[348] – drei Amtsträger genannt. Anders als in dem Verfahren von 1153 sitzen sie jedoch nicht gemeinsam zu Gericht, sondern beraten getrennt voneinander über den Fall. Typisch auch, daß ausschließlich Notare für das Unterschreiben und Schreiben der Sentenz verantwortlich sind.

(S T) In nomine Domini. Super questione que olim vertebatur coram domino Martino de Tinctoribus olim consule iustitie Mediolani et nunc vertitur coram domino Roffino Anrocho nunc consule Mediolani inter Simonem de Grego sindicum monasterii Caravalensis, nomine ipsius monasterii, ex una parte et Rollandum et Mirum et Azelum fratres qui dicuntur Tessari de burgo Lactarella ex altera; et in qua quidem questione libellus porrectus fuerat in hunc modum, cuius tenor talis est: «Ego Simon de Grego sindicus monasterii Caravalensis nomine ipsius monasterii peto quatenus Rollandus et Mirus et Azellus fratres qui dicuntur Tesseri de burgo Lactarella in predicto nomine permittant et restituant petiam unam terre sive campi iacentem in territorio loci de Metono, ubi dicitur ad Sarexetum de Semeda, cui est a mane suprascripti monasteri et in parte Petri Nechi, a meridie Sancti Celsi, a sero suprascripti Petri et in parte de Amiconis, a monte Sancti Zeni de Decimo, et est pertice decem; et hoc cum omnibus fructibus et expensis et damnis preteritis et futuris suo tempore determinandis; que terra fuit Ambroxi de Inzineriis conversi illius monasterii et modo pertinet dicto monasterio, et hoc quia predicta facere debent et tenentur de iure, salvo iure melliorandi». Nos predictus dominus Roffinus Anrochus, consul iustitie Mediolani ut supra, habito consilio domini Mainfredi Menclotii iurisperiti, qui sibi adsumpsit in socium dominum Petrum de Castana iurisperitum, qui viderunt tenorem dicti libelli et litis contestationem factam super ipso libello per predictum Rollandum pro se et dictis Miro et Azello fratribus suis, quorum procurator est, factam millesimo ducentesimo septuagesimo tertio, die lune vigesimo quarto die iulli per Guilielmum de Vedano notarium; que contestatio facta fuit cum Simone de Grego sindico dicti monasterii, et qui viderunt cartam procurationis sicuti dictus Rollandus est procurator dictorum Miri et Azelli fratrum suorum, et qui viderunt testes in hac causa productos et quam plura instrumenta et iura et acta et actitata ab utraque parte coram producta et ostensa, et qui audiverunt et diligenter intellecxerunt allegationes utriusque partis, damus sacramentum predicto Symoni sindico dicti monasterii vel alteri ydonee persone ut iuret ad sancta Dei evangelia

[348] Vgl. hierzu die in Anm. 44 gegebene Erläuterung.

corporaliter tacta, de consensu et volluntate capituli ipsius monasterii et maxime de consensu et volluntate predicti fratris Ambroxi, quod in veritate dicta tota petia terre fuit quondam Nuvireci patris predicti fratris Ambroxi conversi et quod tempore introitus facti per ipsum fratrem Ambroxium in dicto monasterio predicta tota petia terre erat illius fratris Ambroxi et ad eum pertinebat et spectabat. Quo sacramento prestito, condempnamus predictum Rollandum qui litem fuit contestatus suo nomine et nomine dictorum Miri et Azelli fratrum suorum et per eum ipsos Mirum et Azellum ut hinc ad dies quindecim proximos dimittant et restituant eidem Simoni nomine dicti monasterii et per cum ipsi monasterio predictam petiam terre sive campi, salvo et reservato ipsi capitulo sive monasterio omni iure quod eis competit in fructibus illius petie terre et in expensis in hac causa factis. Predictus Symonus procurator dicti monasterii Claravalensis dixit et exstimavit antequam sententia lata foret valere predictam terram libras decem tertiolorum. Millesimo ducentesimo septuagesimo quarto, die martis septimo die augusti, indictione secunda, dominus Ruffinus Anrochus consul Mediolani pronuntiavit ut in sententia continetur. Interfuerunt ibi testes Guillielmus de Caza de Onzago et Dalfinus de Mezana et Zermanus filius Alberti de Mezana, omnes civitatis Mediolani.

(S T) Ego Albertus Moronus notarius ad sententias suprascriptarum fagiarum porte Vercelline et Ticinensis subscripsi.

(S T) Ego Paganus de Figino notarius civitatis Mediolani porte Cumane iussu suprascripti notarii scripsi.