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VARIA

# «On the life and continence of judges»

## The production and transmission of imperial legislation in late Ottonian Italy

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This article focuses on a decree prohibiting imperial or royal judges from marrying that was copied around the year 1000 into a ninth-century manuscript of canon law now in the Biblioteca Medicea Laurenziana in Florence (Edili 82). The article sets the decree in the context of Ottonian legislation in Italy, and of early medieval legislation more generally, and provides a detailed investigation of the manuscript's contents and likely provenance. It argues that the decree should be read as new evidence for the aspiration of the late Ottonian court's clerical elites to integrate increasingly autonomous Italian legal professionals into the imperial reforming programme. A critical edition of the decree is provided as an appendix.

Ottonian rule, early medieval law, Farfa, Monte Amiata, Leo of Vercelli, celibacy, lawyers, judges, Edili 82

Cet article étudie un décret prohibant le mariage des juges impériaux ou royaux qui fut copié vers 1000 dans un manuscrit canonique du IX<sup>e</sup> siècle aujourd'hui conservé à la Biblioteca Medicea Laurenziana de Florence (Edili 82). Cette étude situe le décret dans le contexte plus large de la législation ottonienne en Italie et, de manière plus générale, dans la législation du haut Moyen Âge. Une analyse détaillée du contenu du manuscrit et de sa probable provenance sont également présentées. L'article suggère de lire ce document en tant que témoignage original des aspirations des élites cléricales gravitant autour des derniers empereurs ottoniens, cherchant à contrôler l'autonomie croissante des professionnels du droit en Italie et à les intégrer dans le programme impérial réformateur. Une édition critique du décret est publiée en annexe.

Dynastie ottonienne, droit du haut Moyen Âge, Léon de Verceil, célibat, Edili 82

### INTRODUCTION

Compared with the capitularies of the Carolingian kings, the legislation issued by their imperial successors, the Ottonian rulers, is little studied. That is doubtless in part simply because there is not a great deal of it. If we set aside texts

formally issued by church councils and various peace treaties, this leaves just seven Ottonian capitulary-like texts in the standard edition: three linked to Emperor Otto I († 973), on abduction, on duelling or trial by battle, and a third on the same topic<sup>1</sup>; three from Emperor Otto III († 1002), on freeing slaves, appropriate times for judgements,

\* The argument presented by this article is the product of close collaboration between the two authors, and has undergone repeated joint re-drafting. Our especial thanks to Paolo Tomei for discussion. We are also grateful to David Bachrach, François Bougard, Jennifer Davis, Thomas Faulkner, Thomas Gobbitt, Julia Hillner, Matthew Innes, Simon Loseby, Steffen Patzold, Richard Pollard, Levi Roach, Martial Staub, Karl Ubl, Giacomo Vignodelli, Arthur Westwell and Chris Wickham for comments, assistance, advice, and sharing forthcoming work. Thanks too to Stefan Esders and Alice Hicklin, who organised the *After*

*Empire* HERA conference in Berlin where this research was first presented; and to the anonymous reviewers of this journal for their acute suggestions. Finally, we are grateful to the staff at the BML in Florence for permitting access to the manuscript as well as for granting the permission to publish images from it in the present article. West's research on this article was in part enabled by AHRC grant AH/LO10623/1. All weblinks accessed 1<sup>st</sup> May 2018.

1. *Const.* 1, nos. 8, 13 and 16. On Ottonian legislation regulating duels, Bougard 2003. The first of these texts is also now edited in *Concil. VI*, i, p. 183-184.

and ecclesiastical property<sup>2</sup>; and one from Emperor Henry II († 1024), on inheritance and homicide<sup>3</sup>. This is not a trivial body of material, but it falls far short of the scores of extant Carolingian texts issued over an only slightly longer time-frame.

Yet the relative neglect of this body of evidence also reflects its historiographical marginalisation. To begin with, most of these Ottonian texts have an Italian provenance. Studies of the Ottonian emperors (with some important exceptions) have however traditionally not dwelled on the Italian dimensions of their rule, beyond commenting on the difficulties they faced in controlling Rome; until relatively recently, the Ottonians have often been treated as essentially “German” kings, despite the risk of anachronism inherent in such a view<sup>4</sup>. Since northern Italian historiography has for its part traditionally centred around the rise of urban communities (albeit again with important exceptions), the activities of the Ottonian rulers in Italy, including their legislative efforts, have fallen somewhat between two stools<sup>5</sup>.

Perhaps more significant though is how the relative lack of legislative texts from the Ottonian period seems to make sense, because it fits with our general sense of Ottonian rule. For some historians, the apparent collapse in capitulary production in the tenth century is one sign amongst many of the collapse of Carolingian modes of literate administration, and of the emergence of more oral forms of rule: a sign of how different Ottonian kingship was from Carolingian, or at least of how it was rooted in specifically East Frankish practices<sup>6</sup>. These were

rulers who relied on consensus politics, on the face-to-face persuasion of aristocratic elites firmly rooted in their respective territories, and on symbolic forms of communication: mandates issued from royal or imperial courts were no longer appropriate forms of governance. Recent and ongoing research – for instance the innovative *Italia Regia* project – has suggested that Ottonian rulers relied on personal connections, reconstructable through close analysis of the surviving charter material, even more in the *regnum italicum* than elsewhere<sup>7</sup>. By implication, the occasional normative text that chances to survive can only tell us little about the real processes of rule. It is therefore not surprising that Ottonian legislative activity has seldom received extensive discussion. Indeed, most of the relevant texts are still only available in an antiquated and unsatisfactory edition from 1893<sup>8</sup>.

This article brings a striking text, discussed here fully for the first time, to bear on these historiographical habits and assumptions. Although just a few lines long, it is a text that cuts against the grain of early medieval society. When set in a full manuscript context, we argue it has important implications for several key themes in tenth- and eleventh-century history, including the nature and ambition of Ottonian rulership, the relation between royal power and the written word, ideas of reform, and the place of Italy within wider cultural and political networks. In particular, we argue that it bears unique testimony to the moment when two separate, far-reaching and enormously important historical processes collided: the promotion of a programme of church reform spearheaded by Ottonian ecclesiastical elites, and the growing autonomy of a newly influential social group in northern Italy, the lawyers.

2. *Const.* 1, nos. 21, 22, and 23; the latter is now also edited in *Concil.* VI, ii, p. 562-565.
3. *Const.* 1, no. 32. No. 31, a text dealing with unfree priests, describes legislative discussion at the palace of Goslar (*in consistorio regali Goslare*) in 1019, but it is not written in a capitulary format, and emphasises the activity of Bishop Bernward of Hildesheim. For no. 30, see below, n. 90.
4. On this point, Roach 2018 (our thanks to Levi Roach for discussion on this point). Among the historians who have emphasised the connections across the Alps in this period are Pauler 1982, Keller 2001 and of course Huschner 2003; for more recent trends, MacLean 2017 and Groth 2016. On the wider historiographical challenges of studying the so-called Holy Roman Empire as a whole, see the essays in Puhle – Hasse 2006, and now also Wilson 2016.
5. Amongst the exceptions, see for instance D’Acunto 2002 and D’Acunto 2003. On Italian historiographical traditions, D’Acunto 2002, p. 9-12, Wickham 1988, p. xiii-xxvii, and Wickham 2015b, p. 3-20.
6. For instance, Althoff 2005, p. 231; for parallel arguments advanced in a previous generation of scholarship,

Leyser 1981. This paradigm has been contested, most vigorously in the Ottonian context by David Bachrach: see for instance Bachrach 2017 and Bachrach 2016. Wangerin 2017 provides a nuanced evaluation of the topic. For the eastern Frankish origins of Ottonian rule, Deutinger 2006 and now also Groth 2017.

7. For the first volume of the *Italia Regia* project, focusing on Tuscany, Ghignoli, Huschner and Jaros 2016. An overview of the project’s aims and scope is presented in Ghignoli 2014.
8. On Ottonian legislation, Bougard 2004 and now also Patzold 2019. A new edition of early medieval capitularies will include the Ottonian material: see n. 24 below. In the meantime, some have been re-edited as part of the MGH council editions: see above, notes 2 and 3.

## A STRANGE TEXT: EDITION AND TRANSLATION

In his 2007 book, *Authentizität und Geltung spätantiker Kaisergesetze*, the legal historian Wolfgang Kaiser provided a detailed study of a heterogeneous and hitherto obscure collection of nine late Roman legal edicts, labelled in some manuscripts as the *Sacra privilegia concilii Vizaceni*. In the course of a thorough survey of the manuscripts that contained traces of this short collection, Kaiser came across a separate, brief text added towards the end of a canon law manuscript now in the Biblioteca Medicea Laurenziana in Florence, where it is shelved as Edili 82. Kaiser described this text as an “extract from a (not otherwise transmitted?) decree about marriage prohibition for judges of the palace and other judges”<sup>9</sup>. He noted that the text did not seem to have been edited before, provided the Latin in a footnote, and left the matter there. Evidently the text did not particularly interest him – understandably so, given that he was writing a book on a quite different topic. But this short text of 85 words is nevertheless of considerable interest for early medieval historians (fig. 1).

The Latin text is as follows (a full diplomatic edition is provided as an appendix):

*De vita et continentia iudicum*

*Nulli praeterea ex iudicibus nostris, in sacro palatio iuradantibus vel in omnibus regnorum nostrorum finibus, liceat contrahere matrimonium (interlinear: id est mulierem), ne forte filiorum inducti diligentia, a veritatis et legis declinantes semita, aliena iniuste subrepta, ambitione filiorum ad opus eorundem per sua trahant discrimina. Sed huius noxii contemptentes (interlinear: id est respuentes) saeculi delicias, normam veritatis ubique teneant, moribus, vestibibus atque totius bonitatis insignibus sicut superius in alio capitulo statuimus religiosorum sacerdotum vestigia imitentur, eorumque per omnia inhereant legibus.*

## An English translation:

On the life and continence of judges

Moreover, it is permitted to none of our judges giving the law in the sacred palace or elsewhere in

our kingdoms to contract a marriage (gloss: that is, a woman). This is so that they should not be led by love of their children to leave the path of truth and law, and to unjustly seize other people’s property for the ambition of their children, using their judgments for their advantage. But despising (gloss: that is rejecting) the delights of this wicked world, they should hold to the norm of truth on all occasions, in customs, apparel and the signs of all goodness, and as we determined above in another chapter, they should imitate the religious priests and adhere in all things to their laws.

The text is written in good Latin, and the prose rhythm – *cursus* – at the sentence endings suggests that it may have been carefully composed<sup>10</sup>. As we shall see, whoever copied it out in the manuscript assumed that it carried enough weight to stand alongside Late Antique councils and papal decretals, and someone also took the trouble to provide it with a gloss, perhaps seeking to expand the injunction to cover not only marriage but other kinds of sexual relationships with women too, for instance concubinage (*concupinatus*).

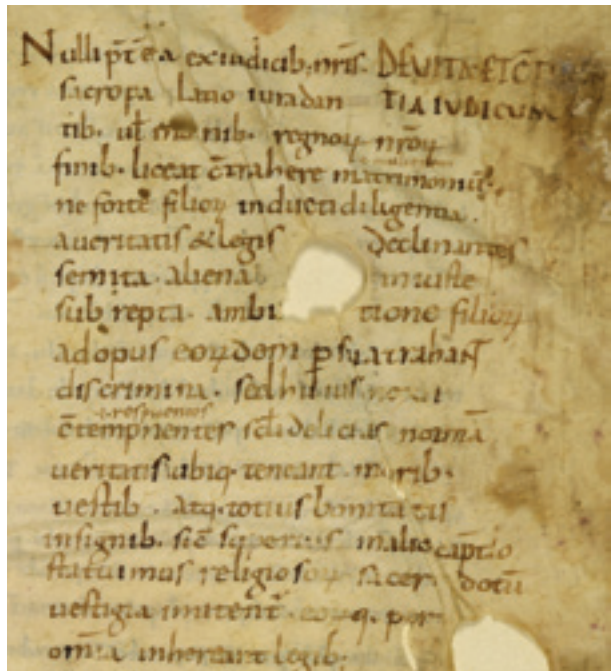


Fig. 1 – Firenze, Biblioteca Medicea Laurenziana, MS Edili 82, fol. 169r.

9. Kaiser 2007, p. 204: «Auszug aus einer (anderweitig nicht überlieferten?) Rechtssetzung zum Heiratsverbot für Palzrichter und sonstige Richter».

10. In particular, *trahant discrimina* and *inhereant legibus* show signs of *cursus*, more precisely a pure *cursus tardus* in the first case ('xx'xx). Our thanks to Richard Pollard for his advice on this matter.

The short injunction has some terminological and thematic resonances with Roman and Late Antique law. For instance, in the third-century legal collection known as the *Sententiae Pauli*, in a section that deals with marriage, officials are prohibited from marrying women in the provinces that they are administering, although they are permitted to betroth them<sup>11</sup>. The (probably) sixth-century decree known as the *Edictum Theoderici* talks of *iura dictantibus*, and Emperor Justinian's Novel XXII (issued after 534) has *iura dantes*, both of which may remind us of the text's *iura dantibus*<sup>12</sup>. However, the text's reference to various kingdoms (*regna*) suggests that its voice (genuine or imagined – we shall return to the question of authenticity later) cannot have been an ancient Roman emperor.

In other ways, meanwhile, the decree resembles a Carolingian capitulary, especially taking into account the notoriously wide parameters of a “genre” that includes texts of very different kinds. References to “other chapters” are quite common in Carolingian capitularies, particularly in making reference to the collection of capitularies in four books produced by Ansegis c. 827, but there are instances too of cross-referencing within a single body of text, as seems to be the case here<sup>13</sup>. But other aspects of the decree are not reflected in Carolingian capitulary material. For instance, *ius* and *iura* in Carolingian capitulary texts tend to be defended, conserved and observed, but not “given” by judges; the lemma *deliciae saeculi* was much used by Patristic authors, such as Cyprian, Augustine, Jerome and Ambrose, as well as by Carolingian-period writers such as Alcuin, Radbert and Anastasius Bibliothecarius, but not in Carolingian capitularies; and *contrahere coniugium/iura matrimonii/nuptias* in the ninth century was also chiefly found in ecclesiastical contexts<sup>14</sup>. Yet the reference

to “our kingdoms” (*regna nostra*) shows that the text's voice was not that of a cleric.

The Ottonian emperors however were proud of ruling multiple kingdoms, and often mentioned it in their surviving original charters, especially in Italy<sup>15</sup>. Carolingian rulers had done this less emphatically, and with a different turn of phrase when they did<sup>16</sup>. This plurality was also stressed in Ottonian-period narrative texts, such as John the Deacon's *History of Venice*<sup>17</sup>. What is more, the reference to judges at work in the sacred palace would fit very neatly with a late tenth- or early eleventh-century Italian context, when judges titled ‘of the sacred palace’ appear frequently in a range of texts. The Roman flavour of the text would especially suit the agenda of Emperor Otto III, and matches some of the Romanising language to be found elsewhere in the normative texts associated with him and his immediate successor, highlighting the extent to which Ottonian legislation was already drifting from, or alternatively building upon, Carolingian precedents<sup>18</sup>. Taken together, all

*matrimonium/nuptias*, see Council of Friuli (796), ch.10, *Concil. II*, p. 193; Council of Pavia (850), ch. 9, *Concil. III*, p. 224; and Council of Tribur 893, *Concil. V*, p. 363.

11. *Sententiae Pauli* II, 19.10, p. 70: *Si quis officium in aliqua provincia administrat, inde oriundam vel ibi domicilium habentem uxorem ducere non potest*. Our thanks to François Bougard for this reference. This part of the *Sententiae* was not received into the *Lex Romana Visigothorum*, and so may not have been widely known in the early Middle Ages.
12. *Edictum Theoderici*, p. 168; *Novellae Iustiniani XXII* c. 47.
13. Examples of this kind of cross-reference within a text include *Capit. II*, p. 73 (*in praecedenti capitulo*, 851 Capitulary of Meerssen, c. 7); and *ibid.*, vol. II, p. 321 (*in praefatis capitulis*, 864 Edict of Pitres, c. 25).
14. For ecclesiastical uses of *contrahere* in combination with
15. The phrase *regnorum nostrorum* occurs in the following original documents of Otto I: DD. O I nos 241 (for S. Pietro in Ciel d'Oro, Pavia), 242 (for Reggio cathedral) and 260 (for Modena cathedral). Otto II used a slightly different phrasing in his original diplomas: DD. O II nos. 89 (for Merseburg), 93 (for Magdeburg cathedral) and 173 (for S. Pietro in Ciel d'Oro, Pavia). Otto III also stressed the plurality in original diplomas issued in his short reign, mostly for Italian recipients: DD. O III nos. 53 (for S. Pietro in Ciel d'Oro, Pavia), and 425 – a draft charter as it happens for Monte Amiata (see below). Henry II linked plurality of kingdoms to Cunegund, *regnorum consortis*, in DD. H II nos. 43 (original, for Nienburg), and 59 (original, for the archbishop of Salzburg), but also talked of his kingdoms independently in no. 73 (original, for S. Pietro in Ciel d'Oro, Pavia). For discussion of how Ottonian rulers conceived of the Italian *regnum*, Groth 2016.
16. The precise phrase *regnorum nostrorum* is not securely attested in Carolingian royal charters. Carolingian rulers did however talk of *nostra regna*, attested in charters for Pippin issued by Pippin and Charlemagne, for Farfa issued by Charlemagne and Lothar I, and for Novalesa by Carloman, amongst others. The charters of Louis the Pious and Charles the Fat, by contrast, do not use the plural at all.
17. Personally attending the courts of Otto III and Henry II on behalf of the Venetian *dux*, John the Deacon was familiar with the vocabulary of Ottonian kingship, see for instance in his *Istoria Veneticorum*, Book IV, ch. 55, p. 196: *tantorum regnorum princeps* (referring to Otto III).
18. Mor 1958; Bougard 1995, p. 53. Cf. Schramm 1969 for the edition of an early eleventh-century Roman formula on

this suggests that the text might sit very neatly as a decree issued by late tenth- or early eleventh-century Ottonian emperors, and is probably an extract taken from some larger work, as the phrase ‘as above in another chapter’ (*sicut superius in alio capitulo*) suggests<sup>19</sup>.

There is just one problem: the decree’s prohibition on secular judges from marrying appears almost unthinkable<sup>20</sup>. No other surviving normative text from the early (or for that matter the late) Middle Ages made any similar demand. If anything, there was an expectation that judges should be married men, firmly embedded in social networks and leading figures in their communities; and as far as we can tell from the documentary evidence, in practice that was usually exactly who they were<sup>21</sup>. This extraordinary text therefore presents us with a problem. Who wrote it, and why? And most importantly – how should we interpret its remarkable content?

#### THE TRANSMISSION OF OTTONIAN CAPITULARIES

It may be tempting to write off the text as anomalous simply on grounds of its transmission. Preserved only as an addition to the closing pages of a single manuscript, it is conspicuously absent from the set of connected eleventh- and twelfth-century Italian manuscripts collectively known as the *Liber Papiensis* that are usually perceived as the key source for Italian legal culture in the period<sup>22</sup>. None

of these manuscripts includes any text remotely similar to the extract set out above.

Yet the frailty of this line of transmission might not be as significant as it seems. To begin with, we should remember that the surviving traces of early medieval royal legislation in general are not a direct record of court discussion and decision-making, as recent work on Carolingian capitularies has made clear<sup>23</sup>. Not one of these capitularies survives in a material form issued by the royal court. Just as with documentary evidence (and for that matter narrative evidence too), we therefore need to think carefully about the contexts of preservation<sup>24</sup>. That preservation involved processes of deliberate selection and omission. As Patzold has pointed out, the manuscripts that preserve Carolingian capitulary texts are a mediated form, akin to cartularies’ relation to original charters, the result of various editing processes<sup>25</sup>. Not all texts labelled now as Carolingian capitularies were necessarily issued by kings; and the surviving texts do not necessarily provide a comprehensive view of the kinds of things that kings were legislating about.

These points apply equally well to Ottonian legislative material. The compilers of the *Liber Papiensis* were certainly not trying to create a comprehensive or even representative record of contemporary and historical legislation<sup>26</sup>. Rather, they used the Pavian archives to put together a selection of material, composed of capitulary extracts rather than complete texts. In one case, a single manuscript preserves the whole text from

the appointment of a judge, *Qualiter iudex constituendus sit*, p. 352-3, urging the judge to follow the law of Justinian *antecessoris nostri*.

19. Bougard 1995, p. 285-288, esp. p. 286: «Le dernier volet de la réforme ottonienne fut de redonner vie, après une éclipse d’un demi-siècle, au titre de *iudex sacri palatii*». On the sacred palace in its Carolingian incarnation, de Jong 2003.
20. For recent overviews of marriage and related questions, Parish 2010, Karras 2011 and McDougall 2017. For the importance of late antique ideas, Leyser 2000.
21. On the Italian evidence for judicial careers, Radding 1988. See also below on the judge Leo in Lucca.
22. A list of the *Liber Papiensis* manuscripts is provided in Mordek 1995, p. 243-244; on their production, Radding 1988, p. 82-84. More light on the topic will be shed in forthcoming work by Thomas Gobbitt, who has also provided detailed manuscript descriptions online: <https://thomgobbitt.wordpress.com/lombard-laws/manuscripts-of-the-lombard-laws/>. A new edition of this important text is a significant desideratum.
23. A table showing the transmission of Carolingian and Ottonian capitularies in Italy is provided by Bougard 1995, p. 38-39. On capitularies in general, Pössel 2006; MacLean 2010; Innes 2011; Depreux 2016; Faulkner 2016, and Ubl 2017, *passim* but esp. p. 169 and 195-200. The new edition of the capitularies currently underway for the *MGH* by Philippe Depreux, Stefan Esders, Steffen Patzold and Karl Ubl will certainly shed much more light on the question: <http://capitularia.uni-koeln.de/>.
24. For a recent engagement with narrative evidence in this vein (albeit on slightly later material), Symes 2017.
25. Patzold 2019; Münsch 2001, p. 70, discussing Lupus of Ferrières’s willingness to re-edit capitulary texts, and Ubl 2017, p. 221-2, suggesting that for early medieval law, «In den Handschriften schlägt sich ... das lokale Wissen über das Recht nieder».
26. As pointed out by Radding, 1988, p. 79. Thanks to Thom Gobbitt for his advice here. For evidence of a collection of material which the *Liber Papiensis* compilers did not include, but on which a canon law collection known as the *Collectio Angelica* drew, see below.

which the compilers of the *Liber Papiensis* worked, giving us some sense of the selection process<sup>27</sup>. More broadly, several surviving Ottonian legislative texts have left no trace in the *Liber Papiensis*. Otto I's second decree on trial by battle (Const. 16), issued in Pavia in 971 and therefore probably locally available when the *Liber Papiensis* was compiled, survives in just a single manuscript, the famous tenth-century Roman manuscript of Justinian's Institutes (Bamberg, Staatsbibliothek Msc Jur.1), to which it has been added at the end (f. 124) by a later hand, possibly at Mainz<sup>28</sup>. Another Pavian document, Otto III's decree on ecclesiastical property, the so-called *Capitulare Ticinense* of 998 (Const. 23), is also missing from the *Liber Papiensis*; it is instead preserved in four manuscripts, in one as an addition to a manuscript of canon law, in another jotted into the margin of a ninth-century capitulary collection, and in two closely related manuscripts from Farfa<sup>29</sup>. Similarly,

there are a number of texts associated with Henry II that only survive in two canon law collections; these texts are usually assumed to be the remnants of a church council but could equally be fragments of a different kind of legislation<sup>30</sup>.

This fragmentary transmission is less surprising when we remember that a great many Italian legal manuscripts have demonstrably been lost: for instance, the two *libri legis Langobardorum* available in the library of Bobbio around the mid-ninth century, the two capitulary manuscripts mentioned in the list of books gathered at Piacenza for Otto III by John Philagathos, abbot of Nonantola and bishop of Piacenza, or the lost manuscript containing an *Edictum regum* that Monte Cassino owned in the early eleventh century<sup>31</sup>. And this transmission is equally consistent with how Carolingian capitularies were copied and preserved too. To be sure, some Carolingian capitularies were widely disseminated. But many others are transmitted in just a single manuscript<sup>32</sup>. Some of these are obscure texts, such as a set of fragments preserved in Munich that contain traces of what could be otherwise unknown capitularies of Charlemagne and Louis the Pious, and another by an unidentified ruler<sup>33</sup>. A number of capitularies however with a very high historiographical profile also survive only in single manuscripts – or sometimes even in no manuscripts at all, but only through early modern copies<sup>34</sup>. There are examples

27. Otto III's capitulary on freeing slaves (Const 21): the complete text is in just one late eleventh-century manuscript (Florence, Biblioteca Medicea Laurenziana, Plut. 89 sup. 86, f. 138r-v), while two other *Liber Papiensis* manuscripts preserve only the first chapter. This Florence manuscript can now be consulted online: <http://mss.bmlonline.it/catalogo.aspx?Collection=Plutei&Shelfmark=Plut.89+sup.86>. Cf. *Const.* 1, no. 13 about duelling from 967: this is preserved in the *Liber Papiensis*, but there is an independent transmission in another manuscript (s. xii: Vienna, Österreichische Nationalbibliothek, Cod. 2213, f. 88).
28. The Bamberg manuscript can be consulted online here: <http://bsbsbb.bsb.lrz.de/~db/0000/sbb00000123/images/index.html>. For the identification and dating of the hand, Hoffmann 1995, p. 17: «ein Mainzer Hand wenig später». Loschiavo 2015, p. 28, wonders whether it was Henry II who acquired the manuscript in Italy.
29. Canon law: Florence, Biblioteca Medicea Laurenziana, Plut. XVI.21 (s. xi), where the text has been added by a later hand to the collection of Burchard of Worms at fol. 244v, following a short text attributed to a Pope Gregory about ordination and another text about simony. This manuscript can be viewed online: <http://bsbsbb.bsb.lrz.de/~db/0000/sbb00000123/images/index.html>. The manuscript has been connected to the juridical interests revived by the Gregorian reform movement in late eleventh-century Camaldoli: for a detailed description of the codex Magheri Cataluccio – Fossa 1979, p. 211-212, n. 178. Capitulary manuscript: Paris BnF. Lat. 3877 (s. ix – Bishop Isaac of Langres's capitulary collection), with the Ottonian text added in the left margin at f. 70v: see <http://gallica.bnf.fr/ark:/12148/btv1b10542078f/f148>. item. Farfa manuscripts: Rome, Biblioteca Nazionale Centrale Vittorio Emanuele II, Cod. Farf. 1; and Vatican, Biblioteca Apostolica Vaticana, Vat. lat. 8487, both written c. 1100 and both linked to Gregory of Catino (these are the autographs of his Chronicle and *Regestum*, respectively).

30. *Leges* III, p. 484: see n. 90 below. The decrees the duke of Bavaria Henry II issued at Ranshofen in 990 are also preserved only in a single manuscript: Weinfurter 2002, p. 30-33.
31. Bamberg, Staatsbibliothek Med. 1, f. 42v. Mütterich 1986. On the list, see also Dormeier – Schuffels 1993. For the lost lawbooks from Bobbio and Montecassino, Bougard 1995, p. 46, n. 95.
32. Mordek 1995 provides an index, 1079-1111.
33. Munich Clm 29555/1 with associated fragments (in total 31 pieces of parchment mostly recovered from bindings). The Charlemagne text is edited as Mordek 1995, Anhang no. 14, p. 995-7, the Louis the Pious text is edited as Mordek 1995, Anhang no. 24, p. 1017-1019; and the unidentified ruler as Mordek 1995, Anhang no. 15, p. 997-999.
34. E.g. the Edict of Paris of 614 (not a Carolingian capitulary, but comparable) in Berlin, SBPK Phill. 1743; the *Capitulatio de partibus Saxoniae* (c. 785) in Vatican, Pal. lat. 289; the *Capitulare de villis* in Wolfenbüttel, Herzog August Bibliothek, Helm. 254; the *Capitulare missorum generale* of 802 in Paris, BnF lat. 4613; and the *Ordinatio Imperii* of 817 in Paris, BnF lat. 2718. Significant capitularies preserved by modern copies alone include the *Capitulare Carisiacense* of 877, transmitted only by Sirmund's edition.

too of Carolingian capitularies being added to older manuscripts, in Italy as elsewhere<sup>35</sup>.

Of course, to observe that the preservation of our text on married judges in a single manuscript is not intrinsically unusual does not account for the peculiarity of this decree's central demand. Yet the tenuous transmission of much early medieval normative material outlined above suggests it is worth taking the text seriously, and studying more closely its manuscript context – the codex Florence, Biblioteca Medicea Laurenziana, Edili 82 – to see whether this might provide more information about the decree's likely provenance.

#### THE MANUSCRIPT I: CORE CONTENT AND ORIGINS

The main content of Edili 82 is the *Collectio Vaticana*, which occupies f. 4v-168v of the manuscript. The *Collectio Vaticana* is a canon law collection which combines Western and Eastern councils with patristic documents and papal letters, from Clement through to Gelasius. The great canon lawyer Friedrich Maassen thought it was originally a Roman collection from the sixth century<sup>36</sup>, but an analysis of the four complete surviving manuscripts suggests that, as it stands today, the *Collectio Vaticana* was produced around the middle of the eighth century, since all the codices include the proceedings of the Roman synod convened by Pope Zacharias in 743<sup>37</sup>. It is nonetheless likely that the eighth-century *Collectio Vaticana* built on an earlier, now lost collection in ninety chapters, to which was added Zacharias's council, a couple

of letters by Pope Leo the Great and the Gelasian Statutes<sup>38</sup>. A Roman origin for this original collection is strongly suggested by the rich dossier of papal letters and documents gathered for it.

The eighth-century *Collectio Vaticana*, though probably compiled before Charlemagne's conquest in 774, was evidently of considerable interest in Carolingian Italy, from which all the surviving complete manuscripts derive: Vat. lat. 1342 (s. viii<sup>ex</sup>), Barb. lat. 679 (s. viii<sup>ex</sup>-ix<sup>in</sup>) and Düsseldorf ULB E 1 (s. ix<sup>ex</sup>), as well as Edili 82 (s. ix<sup>ex</sup>)<sup>39</sup>. It is moreover likely that these manuscripts are but the remains of an originally rather more substantial transmission<sup>40</sup>. Two other Carolingian canon law codices (Novara, Biblioteca Capitolare XXX (66) and Oxford, Bodleian Library, Laud. misc. 421) include the *capitulatio* or contents page of the *Collectio Vaticana*, while two ninth-century Italian manuscripts (Lucca, Biblioteca Capitolare Feliniana, MS 125 and Leipzig, Universitätsbibliothek, Hänel 8+9) contain excerpts from it<sup>41</sup>. There are also indica-

35. Examples of the insertion of later capitularies into earlier manuscripts include:

London BL Add. 16413 (s. xi, south Italy) – two extracts from the *Admonitio Generalis* (Mordek 1995, p. 219); Paris BnF lat. 10753 (s. ix, Francia) – addition of the *Capitula legibus addenda* at f. 90 (Mordek 1995, p. 583); Rome, Vallicelliana A 5 (s. ix<sup>ex</sup>) – addition of Lambert's capitulary along with other Ravenna material at f. 349 (Mordek 1995, p. 629); Vatican Pal lat. 773 (s. x, Mainz) – the Capitulary of Frankfurt of 951 was added to the end of the manuscript (Mordek 1995, p. 799); Vatican Chigi F IV 75 (c. 1000, Italy) – additions including the 779 Herstal capitulary from f. 101 (Mordek 1995, p. 757).

36. Maassen 1870, 522-24; Kéry 1999, 25-26.

37. The *terminus ante quem* is given by the dating of the earliest manuscript (Vatican, Vat. lat. 1342) written in uncial script before 800: cf. CLA I, n. 9. On this canon law collection, McKitterick 2005, p. 962-69.

38. The original collection, arranged in 90 chapters according to a table of contents placed at the beginning of Vat. lat. 1342 (f. 11r-12r) and Barb. lat. 679 (1v-3r), ended with the Roman creed (*Fides catholicae Romanae ecclesiae*), but soon integrated Gelasius's *Instituta*. In spite of the *capitulatio* in these two manuscripts, all four complete codices of the *Collectio Vaticana* transmit a collection of 102 numbered documents. See also Maassen 1870, p. 523-524.

39. All the manuscripts of the *Collectio Vaticana* have differences in their text: for instance, Barb. lat. 679 (northern Italy) has an additional letter. Three of the four manuscripts of the collection can be viewed online: Vat. lat. 1342 [http://digi.vatlib.it/view/MSS\\_Vat.lat.1342](http://digi.vatlib.it/view/MSS_Vat.lat.1342), Barb. lat. 679 (CLA I, n. 65) [http://digi.vatlib.it/view/MSS\\_Barb.lat.679](http://digi.vatlib.it/view/MSS_Barb.lat.679), Düsseldorf ULB E 1 <https://digital.ub.uni-duesseldorf.de/ms/content/titleinfo/3870845>.

40. An eighth-century fragment of the *Collectio Vaticana*, written in uncial script and attributed to northern Italy, has been identified in the parchment reused for the cover of a volume of documents written between 1455 and 1457 by the Treviso notary Bartolomeo di Cristoforo Sugana (CLA Supplement, n. 1763): Billanovich 1984, p. 22-26. For the transcription of the fragment, Billanovich 1964.

41. Kéry 1999, p. 25. The Lucca manuscript (f. 190r-209) only contains the *Regula ecclesiastica* from Chalcedon, the so-called *Epistola canonica*, the proceedings of Laodicea, Carthage and the Roman council convened by Zacharias in 743. Thanks to Arthur Westwell who provided a detailed description of the excerpts copied in this manuscript. The canons from the sixth *actio* of Chalcedon in the version transmitted by the *Collectio Vaticana* were integrated in a compilation of Roman laws (Leipzig Hänel 8+9, f. 192v-193r) copied in early ninth-century Verona: see the detailed manuscript description in Kaiser 2007, p. 10 and transcription of the excerpt in Kaiser 2004, p. 120-121. It is worth mentioning that Edili 82 and Hänel 8+9 also both transmit

tions that some manuscripts of the late eighth-century *Dionysio-Hadriana* were influenced by it<sup>42</sup>. In short, it seems that the *Collectio Vaticana* was an influential canonical collection widely available in Italy, and only gradually made obsolete by more recent Roman products such as the *Dionysio-Hadriana* and its augmented ninth-century version (the *Dionysio-Hadriana adaucta*)<sup>43</sup>. Given that one manuscript of the *Collectio Vaticana* was taken to the imperial convent in Essen (Düsseldorf ULB E 1), it may be that interest in this canon law collection was revived in Ottonian circles<sup>44</sup>.

As is common with canonical collections, the *Collectio Vaticana* was an unstable text: documents could be added, deleted or replaced with a different version, which in turn resulted in a highly complex manuscript transmission<sup>45</sup>. At least two main stages of rewriting can be deduced from the analysis of the four complete manuscripts: the initial eighth-century reworking of the original 90-chapter collection survives in three codices (Vat. lat. 1342, Barb. lat. 679 and Edili 82) and a second intervention, most likely carried out in ninth-century Rome, has left its traces in Düsseldorf ULB E 1 and in the excerpts gathered in Vat. lat. 6808 (the so-called “*Farfenser Auszüge*”)<sup>46</sup>. Considering these complexities of the *Collectio Vaticana* manuscript transmission, it is perhaps not surprising that the collection has yet to find a modern editor.



Fig. 2 – Firenze, Biblioteca Medicea Laurenziana, MS Edili 82, fol. 1r.

The original core of Edili 82 transmitting the *Collectio Vaticana* (f. 1r–168v) is from the late ninth century. Its script, layout and decoration all suggest that the manuscript was prepared and copied in a highly-skilled and well-equipped *scriptorium* in Central Italy, in palaeographical terms a writing province which included Rome, Latium, Umbria and southern Tuscany<sup>47</sup>. The palaeographical features of the Caroline minuscule used on f. 1r–168v – among which the use of the *a* “a foglietta”, the occasional uncial *d*, the ligatures *st*, *ct*, *rt* and *ri* as well as the NT ligature at the end of the line – are shared by other manuscripts produced in this region (fig. 2).

the apocryphal constitution of Emperors Theodosius II and Valentinian III: Kaiser 2007, p. 202.

42. Landau 2004, p. 2-4.

43. Kéry 1999, p. 13-21.

44. As indicated by a twelfth-century note on f. 144v: *Liber iste canonum et decretorum cum Boetio de consolatione et aliis quibusdam eiusdem Boetii libris uno volumine contentis pro quadam parte psalterii Werthinensi ecclesiae de archivo ecclesiae Astindensis pro memoriali relictum est*. Cf. Bischoff 1998, I, p. 231: «Ms E 1 (Stift Essen; s. xiii zeitweilig als Pfand in Werden, 144v)». Bodarwé 2004, pp. 397-8 provides a detailed manuscript description, drawing on personal communication with Bischoff (including the comment that the manuscript remained in Italy into the tenth century). For the Ottonian connection, Bodarwe, 2004, p. 282-4. Quedlinburg also benefited from Ottonian generosity, e.g. the Quedlinburg Itala fragment (Berlin, SBPK Cod. theol. lat. fol. 485). Mütterich 1986, p. 23.

45. A contamination between the *Collectio Vaticana* and the *Dionysio-Hadriana* has for instance been observed in Düsseldorf ULB E 1 and in Oxford BL Laud. misc. 421: Kéry 1999, p. 25.

46. On the Farfa excerpts in Vat. lat. 6808, Kölzer 1982.

47. Bernhard Bischoff instead situated the manuscript in northern Italy during the second third of the ninth century: Bischoff 1998, p. 255-256. However, Edili 82's palaeographical features are consistent with a production in central Italy. On this writing province in Carolingian times, Bischoff 1994, p. 50-51. On the palaeographical features of the Caroline minuscule used in Rome and Central Italy, Supino Martini 2001 and Schmid 2002.

Comparison with other canon law codices produced in late ninth-century Rome give some reason to suspect that Edili 82 may have been produced in the papal city itself<sup>48</sup>. However, a distinctive feature of the ninth-century script observed in Edili 82, that is the ligature *ra*, does not appear in contemporary manuscripts attributed to Roman *scriptoria* and might therefore be a peculiar trait of the scribe or the writing centre in which the Florentine copy was made<sup>49</sup>. Unfortunately, only a small number of codices copied in ninth-century Rome have so far been definitely identified. We therefore know very little about the *scriptoria* operating in the papal city, though it was undoubtedly an active and prolific centre of production and distribution of books. Hopefully the identification of more manuscripts copied in ninth-century Rome and Central Italy may allow future scholars to securely link Edili 82 to a specific *scriptorium* on the basis of its codicological and palaeographical features.

If the palaeographical analysis of Edili 82 is not fully conclusive, the manuscript's contents again hint at the possible Roman origin of the codex's original ninth-century core (f. 1r-168v). Here, the *Collectio Vaticana* has been brought up to date with a preface formed of the Roman synod of 826 (f. 1r-4r), combined with a short apocryphal imperial constitution about clerical immunity (f. 4r) that was probably composed in the sixth century

(this is the text that interested Kaiser)<sup>50</sup>. Copying the council convened by Pope Eugenius II at Rome in 826 as the opening piece in Edili 82 – and decorating it with a beautiful ornate initial (the only one in the whole codex: see fig. 2 above) – is a choice that might strengthen the manuscript's attribution to a Roman *scriptorium*. The same document is also transmitted in one of the other *Collectio Vaticana* manuscripts, Vat. lat. 1342 (f. 193r-198v, the earliest copy of the collection), where it was added in the ninth century in the last pages of the manuscript, along with other Roman council proceedings from the times of Popes Gregory the Great (a. 595), Gregory II (a. 721) and Leo IV (853)<sup>51</sup>. This addition perhaps explains why this Vatican codex has traditionally been associated with the papal Curia and the old Lateran library<sup>52</sup>. The Düsseldorf manuscript of the *Collectio Vaticana* is also from Rome, and may also be linked with the Curia<sup>53</sup>. A Roman production of Edili 82 would therefore not be surprising, as the papal city was not only the likely site of the *Collectio Vaticana*'s compilation in the eighth century, but also the main centre behind its transmission in the ninth.

A comparison with the other three complete manuscripts of the *Collectio Vaticana* reveals that Edili 82 was not copied from any of them, although a closer proximity with Barb. lat. 679 can be observed<sup>54</sup>. Both manuscripts transmit a

48. Supino Martini 1974. The page layout in two columns was the standard format for canon law manuscripts copied at Rome in the second half of the ninth century: see for instance Vat. lat. 4965, prepared under the supervision of Anastasius Bibliothecarius, and later at Verona where it was annotated by Rather (available online [http://digi.vatlib.it/view/MSS\\_Vat.lat.4965](http://digi.vatlib.it/view/MSS_Vat.lat.4965)) as well as two late ninth-century copies of the canon law collection *Dionysiana adaucta*: Munich, BSB Clm 14008 (available online <http://daten.digital-sammlungen.de/~db/0003/bsb00032665/images/>) and the richly decorated Rome, Biblioteca Vallicelliana, A.5. Moreover, Düsseldorf ULB E 1 presents the same layout in two columns of 32 lines. It is worth mentioning that the ornated initial *I* on Edili 82, f. 1r shows decorative motifs that are also found in Vat. lat. 4965, f. 13v ([https://digi.vatlib.it/view/MSS\\_Vat.lat.4965/0034](https://digi.vatlib.it/view/MSS_Vat.lat.4965/0034)) and Düsseldorf ULB E 1, f. 75v (<http://digital.ub.uni-duesseldorf.de/ms/content/pageview/6027506>). For an overview of the few manuscripts that can be ascribed with any confidence to the papal city, see again Schmid 2002 (esp. p. 49-65 and p. 113-8 for the Düsseldorf manuscript).

49. The same *ra* ligature can be observed instead in ninth-century manuscripts from southern Tuscany (Bamberg, Staatsbibliothek, Msc. Class. 43 and Vat. lat. 3314) and Farfa (Farf. 29).

50. Kaiser 2007, p. 282-295. The same text is also transmitted by the Veronese compilation of Roman laws (Leipzig Hänel 8+9, f. 229r-v) which also includes an excerpt from the *Collectio Vaticana*, see above n. 42.

51. The order of the canons in Vat. lat. 1342 is however slightly different from the other manuscripts transmitting the council: *Concil. II*, p. 569-572.

52. Ballerini 1865, col. 135-141.

53. On its dating and location, Bischoff 1998, I, p. 231: «Rom, wahrscheinlich Umkreis der Kurie».

54. According to Mordek (who relied here on Bischoff's opinion), Barb. lat. 679 could have been produced in the same *scriptorium* in Northern Italy (possibly Aquileia) where a famous collection of Germanic laws and Carolingian capitularies was also copied (St Paul im Lavanttal 4/1) as well as a slightly later hagiographic compilation (Graz, Universitätsbibliothek 412): Mordek 1995, p. 751-754; cf. Bischoff 1994, p. 49. Lowe suggested instead a provenance from Central Italy: see again CLA I, 65. Both Bischoff and Lowe noticed an Insular influence on the uncial script used in Barb. lat. 679. However, the similarities between these manuscripts are limited to their decoration: particularly striking are the initials decorated with bird-like heads that can be found in the three codices. It should nonetheless be noted that the manuscripts present different

list of 28 canons apparently issued at Braga.<sup>55</sup> This constitutes the only “exogeneous” document in the Edili version of the *Collectio Vaticana*, where the list is placed after the Roman creed (*Fides Romane ecclesiae*) and before the Gelasian Statutes, that is between what may have been the closing text of the original sixth-century collection in ninety chapters and the last papal dossier of its eighth-century augmented version<sup>56</sup>. In general, the Edili version of the *Collectio Vaticana* shows a lesser degree of borrowing from other canonical material than do the other three manuscripts, all of which integrated additional papal documents into the collection. Moreover, the Florentine codex does not include the *Collectio Vaticana* contents page that is transmitted in other Carolingian manuscripts. That might suggest Edili 82 is a witness of the early transmission of the *Collectio Vaticana*, and that it was copied from a manuscript in which the material was not yet identified as a coherent and cohesive whole.

#### THE MANUSCRIPT II: LATER CORRECTIONS AND ADDITIONS

There are unfortunately no library marks or other explicit indications on the Edili manuscript to show where it went after its production, but some of the later interventions upon the manuscript do provide significant evidence<sup>57</sup>. Intriguingly, the

scripts (late uncial for Barb. lat. 679, Rhaetian pre-Caroline minuscule for St Paul in Lavanttal 4/1, and a well-formed Caroline minuscule for Graz, Universitätsbibliothek 412). For a more cautious judgement of their provenance from the same *scriptorium* on the basis of the shared decorative features, Pani 2014, p. 35-36.

55. It has been impossible to determine whether these canons belong to a known council convened at Braga. They may instead be a compilation of slightly rewritten canons taken from Braga I (561) and II (572): cf. *Concilios visigóticos*, p. 65-77, 78-106. Considering the stress put on the adoption of Roman *ordines* for the mass and baptism (which does not appear in the original conciliar acts), one is left wondering whether this list of canons was produced at Rome on the basis of the Visigothic council proceedings. This in turn would strengthen the identification of the Papal curia as the centre in which the *Collectio Vaticana* was compiled.
56. Edili 82, f. 164r. The same list is recorded in Barb. lat. 679, f. 199r.
57. We know, however, that the manuscript belonged to the collection of books once owned by the library of the Florence cathedral which were transferred to the

*Collectio Vaticana* text in Edili 82 has been carefully and thoroughly corrected at some later date against another manuscript of the *Collectio*, which sadly does not seem to survive. The continued interest this canonical collection provoked amongst whoever owned the Florence manuscript is also confirmed by the additions made in its margins and in its last pages, which include alternative versions of some conciliar canons included in the *Collectio Vaticana*. That shows the relevance of these documents to (probably) eleventh-century learned readers, and it suggests that the Florence manuscript belonged to the holdings of a well-stocked library where the collation with other similar canonical collections was possible<sup>58</sup>.

The capitulary-like decree on which this article is focused forms part of these additions to the manuscript that were copied down in the last *bifolium*, additions which can be broadly categorised into three main sequences. The first of these sequences (f. 168va-168vb) was probably inserted when the manuscript was compiled in the late ninth century, as there is no change of hand between it and the previous text (the Gelasian Statutes) that end the *Collectio Vaticana*<sup>59</sup>. The use of a rubricated title in the same style used in the preceding pages confirm that this addition was contemporary, or nearly so. The text is an extract (chapter 9) taken from the capitulary issued at the Frankish council convened at Ver by King Pippin in 755 and regulates the procedures of excommunication for both clerics and lay people<sup>60</sup>.

The second sequence of additions (f. 168vb-169ra) is made by a different, slightly later hand, writing with a different ink and showing some familiarity with the use of documentary

Laurenziana in 1778. Edili 82 is already described in the library catalogue of the Biblioteca Leopoldina Laurenziana published in 1791, but it has been impossible to trace its earlier history: Bandini 1791, col. 99-115.

58. See for instance the addition in the margin on f. 39r-40r of the canon 4 from Chalcedon in the *versio Dionysii*, thus bringing together for comparison two versions of the same chapter stressing the authority of the bishop over the monks living in his diocese. The beginning of the same canon 4 according to the *versio Dionysii* is to be found among the additions on the last pages of the manuscript, f. 168vb, see below.
59. It may be noted that this is not the opinion of Wolfgang Kaiser, who believes this excerpt to be copied by a new hand: Kaiser 2007, p. 204.
60. *Capit.* I, p. 35.



Fig. 3 – Firenze, Biblioteca Medicea Laurenziana, MS Edili, fols 168v-169r. The decree is in the top right corner.

script<sup>61</sup>. This selection of extracts focuses on the episcopal regulation of monastic life and contains borrowings from the council of Chalcedon<sup>62</sup>, the *Statuta Antiqua contra Orientis partes*, the Council of Carthage, an unidentified council of Toledo and another conciliar document from Chalcedon labelled *Regula ecclesiastica*. These excerpts share a focus on the subjection of monastic communities to episcopal authority, and on what monks cannot do without the bishop's permission. Moreover, with the exception of the Toledo chapter<sup>63</sup>, they all appear to have come from the *Collectio Vaticana* itself – yet they were not taken from the copy of this collection transmitted in Edili 82 (f. 4v-168v)<sup>64</sup>.

One might presume they were excerpted from the lost codex that was also used for the emendation of our manuscript, which if so would help to date that emendation.

The third sequence of additions (f. 169rb-v), including the decree on judges, relates mostly to marriage. The decree on judges is added by an early eleventh-century hand that does not appear anywhere else in the manuscript (fig. 3).

*civitate episcopo subditos esse censemus*. This particular passage in Vat. lat. 1342, f. 3v reads: *absque civitatis episcopi voluntate monachi vero qui sunt per singulas civitates et provintias episcopis subditos esse censemus*; in Barb. lat. 679, f. 59r: *absque civitatis episcopi voluntate. Monachi vero qui sunt per singulas civitates et per provincias episcopos subditos esse censuimus*. Chapter 4 is not transmitted in Düsseldorf ULB E 1 which has a radically abbreviated version of Chalcedon (f. 43r-44r). The comparison with both the *Collectio Vaticana* in Edili 82 and the text provided in the other complete manuscripts of this canonical collection helps us understand the possible reasons for the addition: the scribe was providing a more complete and correct copy of an important conciliar canon, which he transcribed from another manuscript of the *Collectio Vaticana* that unfortunately does not survive. This conclusion is confirmed by the other additions copied down by the same hand. From Chalcedon: chapter 17 on f. 168vb (it is actually chapter 16, cf. f. 40v), chapter 24 on f. 168vb (cf. f. 41v) and chapter 8 on f. 169r (cf. f. 39v). From the *Statuta antiqua orientis*: chapter 87 on f. 168vb (it is actually chapter 86, cf. f. 69r). From Carthage: unnumbered chapter on f. 169r (cf. f. 79v-80r). Our thanks to Arthur Westwell who checked the reading of the Chalcedon additions against Lucca, Biblioteca Capitolare 125, f. 190r-196r and thus allowed us to confirm that none of the surviving manuscripts was used to transcribe the excerpts on Edili 82, f. 168vb-169ra.

61. See for instance the abbreviation mark technically known as a *diplomaticus*, used for the ending of *clericus* on f. 169ra, line 7.
62. Kaiser indicates that the Chalcedon excerpts (canons 4, 16 and 24) were borrowed from the *versio prisca* of the council: Kaiser 2007, p. 204. However, a comparison between the Edili additions, the *Collectio Prisca* and the *Collectio Vaticana*, show that it was from the latter that these borrowings were extrapolated: ACO II/2, Pars II, p. 34, 37 and 39.
63. The same text about the ban on priests and monks from performing pastoral duties without the bishop's permission can be found on f. 18v at the end of the canons issued at Neocesarea, Maassen 1870, p. 525.
64. The text of chapter 4 from Chalcedon is a particularly illuminating example: the canon can be read on f. 39r-v (where it is listed as chapter 5) and as an excerpt on f. 168vb. The collation of a crucial passage clearly indicates that the text was not copied from f. 39r-v. On f. 168v: *absque licentia civitatis praesentis episcopi, sed subditos* (interlinear: *monachos qui sunt per singulas civitates et provintias*) *illi* (interlinear: *episcopo*) *esse censemus*. The same chapter on f. 39v reads instead: *absque*

Immediately following the text are two extracts on the illicit remarriage of a priest's widow (*relicta sacerdotis*) copied down by a different hand in darker ink and taken from another canon law collection, the *Collectio Vetus Gallica*, to which we shall return<sup>65</sup>. On the last page of the manuscript, we find the intervention of yet another hand copying down two texts. The first is an excerpt from a letter of Gregory the Great on lapsed clerics, their penance and the transfer of their properties to the monastery where their penance is to be carried out (I 42). The second is a letter of Pope Zacharias to Bishop Theodore of Pavia (d. c. 778) on illicit marriages: a rather rare letter, but one that we know was of particular interest in tenth- and eleventh-century Italy, since it was cited by Gunzo of Novara in a letter to Atto of Vercelli, and is transmitted by one of the codices belonging to Monte Amiata<sup>66</sup>. Finally, at the bottom of the page a short extract from the Edict of Theoderic (chapter 20) on the legal deadline for denouncing abduction was rapidly noted down by a different hand<sup>67</sup>.

If one were to look for overarching themes within these diverse additions to Edili 82, one would be the regulation of monastic life in relation to episcopal authority, and another would be the definition of illicit marriages (an interest which perhaps led the scribe to add a gloss to the decree on judges). It therefore seems reasonable to presume that the manuscript was owned by a monastic community, whose members perhaps also had pastoral duties. Since the performance of the *cura animarum* by ordained monks was not uncommon during the

early Middle Ages, and monastic friction with the diocesan bishop was always latent, and could at times lead to outright confrontation, this does not help us identify a particular centre, but it hints at a powerful and wealthy institution exercising its control over a wider network of churches<sup>68</sup>.

Finally, a palaeographical examination of the additions on f. 168v-169v allows us to assume that Edili 82 remained in Central Italy during the tenth and early eleventh century. The script continues to show some of the features of the Roman Caroline minuscule at a stage still predating the formalisation of the Romanesca observed in the eleventh and twelfth century<sup>69</sup>. We find again the use of the so-called *a* "a foglietta", a *d* influenced by the uncial letter shape and some typical ligatures with the letter *r* that betray a scribal training in Central Italy. Within the writing province influenced by this script, two *scriptoria* stand out as likely candidates for the possession of Edili 82 and for the additions in its closing pages: San Salvatore al Monte Amiata and Santa Maria of Farfa. As we shall show, a great deal of further contextual evidence exists that makes this palaeographical association all the more plausible.

#### THE MANUSCRIPT III: CONTEXTUAL EVIDENCE FOR PROVENANCE

Both Farfa and Monte Amiata were powerful actors upon both a regional and a supra-regional stage. In origin Lombard foundations that had secured the favour of the Carolingian rulers, both these monasteries had seen their estates grow thanks to the donations of public and private lands throughout the eighth to the eleventh century. Around the time of the additions to Edili 82, these monasteries were ruled by ambitious and charismatic abbots – Winizo (ca. 996-1035) at Monte Amiata and Hugh (998-1039) at Farfa – who took a special interest in their institutions' libraries<sup>70</sup>.

65. Mordek 1975, p. 493-494. Mordek also provides an image of this extract at p. 723.

66. *Epistolae Langobardicae*, p. 710. The text survives mostly as a later addition to Burchard manuscripts (including Barb. lat. 1450, an eleventh-century copy of Burchard's *Collectio canonum* from Monte Amiata), but it also survives in two tenth-century manuscripts. One of these, identified by Pokorny 2012, is Verona Biblioteca Capitolare LXIII, a northern Italian abbreviated *Collectio Dionysio-Hadriana* that also contains another letter from Zacharias and integrates the Roman councils of 826 and 743 at the end. The other tenth-century witness is Vat. lat. 4322, a tenth-century Vercelli manuscript containing Atto's letter collection, of which Gunzo's letter forms part: Vignodelli 2011, p. 4-5. The part of Zacharias's *epistola* copied *verbatim* by Gunzo in his own letter is exactly the same half that is on f. 169v (ending with *ipso praestante domino Deo et salvatore nostro Iesu Christo*).

67. The *Edictum Theoderici* was a rare text, but was also known at the monastery of Farfa: see below, n. 84.

68. On the performance of pastoral duties by monks in the early Middle Ages, Constable 1982; more generally on the provision of early medieval pastoral care, van Rhijn – Patzold 2016.

69. For the subsequent development of the Roman Caroline minuscule into the Romanesca script, Cherubini – Pratesi 2010, p. 389-395 and Supino Martini 1974.

70. On San Salvatore at Monte Amiata, Gorman 2007 (for an earlier English version of the same article, Gorman 2002);

What is more, we know that by the eleventh century both monastic libraries owned a copy of the *Collectio Vaticana*.

The already-mentioned early Carolingian manuscript of this text, Barb. lat. 679, was at Monte Amiata when a few additions were entered into its blank spaces and pages. These additions included a record on f. 133r of the dedication in 1035 of the new church built during Winizo's abbacy, a list of books loaned from the monastic library on f. 297r<sup>71</sup>, a letter from Gregory the Great, two short texts attributed to the same pope<sup>72</sup>, a paragraph borrowed from the council of Carthage (a. 535) as well as three excerpts from Carolingian capitularies on f. 295v-296v<sup>73</sup>. The monks' interest in these legal texts was not purely abstract. One of the capitulary extracts, under the title *De decimis*, can be connected to a dispute between the monastery's abbot, Winizo, and Bishop Arialdu of Chiusi<sup>74</sup>. Just the same text is to be found in the *quaerimonia* the abbot addressed around 1005-6 to the count Ildebrand IV Aldobrandeschi, to obtain his support against the bishop with regard to the contested exaction of tithes from the lands of the monastery<sup>75</sup>.

In the same complaint letter, Abbot Winizo also relied on other capitularies, thereby suggesting the availability in Monte Amiata's monastic library

of at least two collections of Lombard, Carolingian and post-Carolingian legislation<sup>76</sup>. Given the widespread interest in Carolingian capitularies in tenth-century Italy, that is not so unusual. But the eleventh-century scribes at San Salvatore were particularly accustomed to adding short texts and excerpts to older codices owned by the monastic library, a practice Michael Gorman noticed in his overview of the Monte Amiata manuscripts<sup>77</sup>. Among these codices, it is worth mentioning an eleventh-century copy of the *Collectio canonum* by Burchard of Worms belonging to the monastery (Vatican, Barb. lat. 1450): this manuscript also contains a few additions, among which we find excerpts from Gregory the Great's letters and on f. 165 the letter addressed by Pope Zacharias to Bishop Theodore of Pavia that was also copied down on the last page of Edili 82<sup>78</sup>.

The contextual manuscript evidence from San Salvatore at Monte Amiata therefore makes the Tuscan monastery a plausible candidate for the possession of Edili 82 in the early eleventh century. A peak in the activity of the monastic *scriptorium* in both book and documentary production coincides precisely with the years of Winizo's abbacy, a timeframe that would fit the additions on Edili 82, f. 169r-v<sup>79</sup>. A "sudden awakening of juridical culture" has been observed at Monte

on Farfa, Supino Martini 1983. For a comparison of their archival practices, Costambeys 2018.

71. This booklist is analysed in Gorman 2007, p. 38-42.
72. It may be worth mentioning that the text on f. 296r introduced by the title *Aepistula beati Gregorii papae* is actually a letter of Pope Gregory II to Abbot Vitalianus of Benevento, cf. MGH Epist. II, p. 468-469, Mordek 1995, p. 752, as well as Ewald 1882. The same letter is only transmitted by another eleventh-century manuscript copied in Central Italy (Vat. lat. 3830), which itself is the only witness of yet another canonical collection possibly produced in Southern Italy in the second quarter of the eleventh century: Kéry 1999, p. 198-199. The following excerpt (*Ordo ex decretis sancti Gregorii papae*) appears to be the ending of a papal *privilegium* for a monastery: the *formulae* are similar to the ones used in the Roman *Liber diurnus*, but we could not identify the actual document from which the text has been extrapolated.
73. Mordek 1995, p. 752-753.
74. The same *capitulum* can also be read in another manuscript from Monte Amiata: Firenze, Biblioteca Medicea Laurenziana, Amiat. 3, f. 212v, Gorman 2007, p. 63.
75. A new edition with facsimile reproduction of the original complaint letter can be found in *Lettere originali*, p. 33-47. On the dispute over tithes between Monte Amiata and the episcopate of Chiusi, also discussing Winizo's use of papal and imperial documents, Ronzani 1993.

76. This is suggested by Winizo's reference to *leges* (texts that had been gathered in a more comprehensive lawbook, which Leicht identified with an early version of the *Liber Papiensis*) and *capitularia* (separately transmitted documents): Leicht 1907, p. 538-546. The analysis of Winizo's quotations shows that the monks of Monte Amiata owned a collection mainly gathering Italian capitularies similar to the one used by Lupus of Ferrières to make his *Liber legum* (preserved in Modena, Biblioteca Capitolare, O.I.2; Gotha, Forschungs- und Landesbibliothek, Memb. I. 84; as well as a fragment in Freising): *Lettere originali*, p. 46-47, n. 27; Münsch 2001, p. 266-7; and Mordek 1995, p. 29 and 677-8 (on this 'heute verlorenen italienischen Kapitulariensammlung').

77. Gorman 2007, p. 44, n. 81.
78. Gorman 2007, p. 101-102. Another canon law collection (Barb. lat. 538, also known as *Collectio canonum Barberiniana*), dated to the eleventh century and possibly produced at Lucca, was available in the monastic library by the end of the century: the addition of the *confessio Berengarii* on f. 59v by the hand that copied down the same text on Barb. lat. 1450, f. 4v situates the manuscript in the Tuscan monastery. This, in turn, highlights the monks' interest in augmenting the canonical section of their library.
79. For an overview and discussion of the documents produced at Monte Amiata in those years, Marrocchi 2014, p. 101-206.

Amiata exactly around those years<sup>80</sup>. Moreover, if San Salvatore were the monastery that owned our Florence manuscript, the later acquisition of the manuscript by the Biblioteca Medicea Laurenziana would not be surprising as other medieval codices from the Monte Amiata can today be found among its holdings<sup>81</sup>.

The second possible candidate for the possession of Edili 82 is Santa Maria of Farfa, in the Sabine hills north-east of Rome. The late eleventh-century monastic library of Farfa owned various canonical collections, and the work of the monk Gregory of Catino († c. 1130) shows the extent to which this material was relied upon to provide legal grounds for the defence of the monastery's properties and other interests (to the extent of copying a canon law collection into the monastery's cartulary)<sup>82</sup>. It is also worth mentioning that Gregory of Catino had access to the *Edictum Theoderici*, a rare text from which a short excerpt was copied down in the Edili manuscript<sup>83</sup>.

Gregory's legal expertise was demonstrably built upon older Farfa traditions. In particular, it is clear that Farfa, like Monte Amiata, had access to a copy of the *Collectio Vaticana* in the first half of the eleventh century, since that it is when a selection of excerpts taken from it (the already-mentioned *Farfenser Auszüge*) were copied down in Vat. lat. 6808, a famous codex containing amongst other texts the *Consuetudines Farfenses* recording the adoption of Cluniac customs at the monastery<sup>84</sup>. The manuscript from which these *Farfenser Auszüge* were extrapolated is unfortunately lost, but we can be sure it was neither Edili 82 nor its apograph, as the extracts contain excerpts from papal letters missing from the Florence manuscript, though included in the *Collectio Vaticana* version in

Düsseldorf ULB E 1<sup>85</sup>. It is therefore possible that the Farfa excerpts were elaborated on the basis of a manuscript containing an augmented (ninth-century?) version of the *Collectio Vaticana* into which more letters by Pope Innocent, Celestinus and Leo the Great had been integrated.

Documentary evidence shows that the early eleventh-century monks of Farfa were familiar with other kinds of law as well, including Pseudo-Isidore and Justinianic law, and, significantly, Carolingian capitularies<sup>86</sup>. Narrative evidence suggests moreover that the monks of Farfa, just like their counterparts in Ottonian Germany, still cared about royal legislation in the tenth century<sup>87</sup>. This interest seems to have extended to more contemporary forms of legislation as well. As

80. *Ibid.*, p. 174.

81. The majority of the manuscripts from the Monte Amiata have been gathered in a dedicated collection (*codices Amiatini*), but others are preserved in the Plutei, San Marco and Conventi Soppressi collections.

82. The analysis of the sources for the canonical collection included in the Farfa Register (Vat. lat. 8487) provided by Kölzer in *Collectio Canonum* shows the compiler drew especially on Pseudo-Isidore (p. 30-45) and the *Collectio V librorum* (p. 48-55).

83. *Collectio Canonum*, ed. Kölzer, II, 55, p. 194: see also *ibid.*, p. 64.

84. Kölzer 1982, and for a manuscript description, Dinter 1980, p. XXV-XXIX.

85. Despite the parallels, Düsseldorf ULB E I was not the manuscript used for the compilation of the Farfa excerpts. These excerpts included some documents (for instance the *Statuta antiqua orientis*) that were not part of the *Collectio Vaticana* copied in this ninth-century Roman codex.

86. For Justinianic law (*Summa Perusina*), *Il Regesto di Farfa III*, no. 437: *quia iustinianus imperator praecepit: contumacem tertiam vice vocatum, datum iudicatum*. On the *Summa Perusina*, see the Project Volterra website, <https://www.ucl.ac.uk/volterra/texts/summa-perusina>. Kölzer argued in *Collectio Canonum* that the manuscript of Pseudo-Isidore used at Farfa in the later eleventh century was produced around the year 1000, and suggested that it might have been acquired by Abbot Hugh from West Francia (p. 42-4), though a later acquisition cannot be ruled out. For an example of use of royal and imperial legislation, *Il Regesto di Farfa*, no. 492: *mox collatis iustinianae et langobardorum capitulis legis*. Gregory of Catino included a number of capitulary excerpts in Book III of his canon law collection, but these were apparently taken from the *Collectio V librorum: Collectio Canonum*, ed. Kölzer, p. 245-53. But the monks of Farfa most likely owned a now lost capitulary collection which they used to defend their rights at the *placitum* held in 998 at Rome: *Placiti*, 2/1, n. 236, p. 372; Bougard 1995, p. 45. On the revival of Roman legislation at Rome, Chiodi 2002.

87. *Destructio monasterii*, stating that Otto I *legem et iustitiam firmiter cepit tenere per totam Italiam*, p. 45. Written by Hugh during the first years of his abbacy, the *Destructio* reflects on the immediate past on the monastery in the light of present concerns: Sansterre 2006. The Chronicle of Benedict of Soratte similarly emphasises the legal activity of Otto I, alongside other rulers: *et conclusit in legibus Romanam legem et Langobardiam, et in edictis Langobardorum affigi precepit – Chronicon Benedicti*, p. 182-3. Thanks to Maya Maskarinec for bringing this to our attention. Several tenth-century Italian manuscripts indicate an interest in historical legislators; see for instance the famous illuminated lawbook with portraits of Lombard and Carolingian rulers, Cava de' Tirreni MS 4, c. 1000 from Montecassino, discussed in Pohl 2001, and the equally richly illuminated late tenth-century manuscript Modena, Biblioteca Capitolare, O.I.2, as n. 75.

noted above, two of the four extant manuscripts of Otto III's decree on ecclesiastical property have a clear Farfa provenance<sup>88</sup>. It was also in this part of Italy that a number of texts issued by Emperor Henry II in 1014 were preserved<sup>89</sup>. These texts deal with themes ranging from shipwreck to arson; they were not included in the *Liber Papiensis*, and several are missing from the standard edition of Ottonian legal texts in the MGH *Constitutiones*. One of these texts (on shipwreck) is in a canon law collection known as the *Collection in Five Books* (III, 201), whose earliest manuscript, the beautifully decorated Vat. lat. 1339, was produced in the region around Farfa (though the original text could be from Montecassino)<sup>90</sup>. A longer version of this decree is preserved in another canon law collection known as the *Collectio Angelica*, preserved in one manuscript (Roma, Biblioteca Angelica 1447, s. XI, Rome), whose script is also "Farfa type"<sup>91</sup>. This collection also preserves Henry II's edict about arson, as well as an otherwise unknown text of Emperor Wido<sup>92</sup>.

The monks of Farfa thus had access to copies of royal and imperial legislation issued from the rulers of Italy from the sixth century onwards; and the blurred boundary between canonical and secular decrees, which is mirrored by their transmission in locally produced manuscripts, fits the typology of the later additions in Edili 82. Although the peak in the activity of the monastic *scriptorium* at Farfa did not occur until the mid-eleventh to the early twelfth century, it was under Abbot Hugh that the

production of texts and manuscripts most likely received its first impulse<sup>93</sup>. Like Monte Amiata, then, Farfa not only had access to a copy of the *Collectio Vaticana*, but its library holdings were stocked with enough canonical material to carry out a collation of it with other versions of the same councils gathered in the collection.

Finally, the additions on Edili 82 also allow us to establish an interesting connection with another rich and powerful monastery in early medieval Italy: Montecassino. Two canons from another canon law collection, the *Collectio Vetus Gallica* (CVG), were recorded on f. 169r. The CVG might have been circulating in Italy as early as the ninth century, but the earliest textual evidence dates only to the early eleventh century<sup>94</sup>. Meanwhile, the wording of the CVG extracts in Edili 82 shows they were excerpted from a manuscript belonging to the same textual family of the earliest Italian codex of the collection (Montecassino MS 372), most likely copied in the southern Italian monastery at the time of Abbot Theobald (1022-1035)<sup>95</sup>.

Both Monte Amiata and Farfa had a connection to Montecassino which would have provided occasions for the exchange of books. As Paolo Tomei has recently suggested, Abbot Winizo of Monte Amiata had most likely been educated at Montecassino at the same time as Abbot Theobald, and probably belonged to the small group of five monks who fled the monastery to seek protection under the aegis of Marquis Hugh of Tuscany<sup>96</sup>. It is therefore reasonable to assume he could have exchanged books with Montecassino, relying on his former acquaintance with Theobald, under whose abbacy the Cassinese *scriptorium* considerably increased its productivity<sup>97</sup>. On the other hand, Abbot Hugh of Farfa visited Montecassino when looking for an improved *regularis perfectio* to apply to his own monastic community<sup>98</sup>. Moreover, the possibility of book exchanges between Farfa and

88. For the manuscripts with the *Capitulare Ticinense*, see above, n. 30. Visconti 1927 even wondered whether Abbot Hugh of Farfa had commissioned the text: «Può anche darsi che sia stato l'Abate Ugo a richiedere all'Imperatore una legge in questo senso».

89. Key articles for these texts now are Wojtowysch 1991, and Reynolds 2008; for context, Hoffmann 1993, p. 56. On shipwreck, Melikan 1990 (without discussion of this text however). In general see Bougard 1995, p. 34. Four texts, on simony, pledges and clerical ages, are edited as *Const.* I, no. 30.

90. An incomplete edition is provided in *Collectio V librorum*. For discussion of the images of the Vatican manuscripts, Reynolds 1986. On the collection's place in a wider context, Laudage 1984, p. 78-83.

91. On this derivative of the *Collection in Five Books*, Reynolds 2008.

92. On the Wido text, Mordek 1995, 856-7. Reynolds 2007 wonders whether Farfa monks added the texts to a pre-existing copy of the *Collection in Five Books* out of respect for the emperor.

93. Frank 2006, p. 216.

94. A second excerpt can be found in a canon law collection from Nonantola: Roma, Biblioteca Nazionale, Sess. XXX.

95. Mordek 1975, p. 100 and 328-329. The incipits and explicits of the canon law florilegium in Montecassino, Archivio della Badia MS 372 is now available on the Clavis Canonum database, <http://www.mgh.de/ext/clavis/>.

96. Tomei 2016.

97. Newton 1999, p. 31-52.

98. Lucioni 2006, p. 190-191. Hugh himself mentions his visit to Montecassino in the so-called *Relatio constitutionis*, p. 55.

Montecassino is suggested by the circulation of the already-mentioned *Collection in Five Books*, which was most likely compiled in southern Italy, but became rapidly available at Farfa and its surroundings<sup>99</sup>.

In summary, then, the additions to the Edili 82 manuscript, including the decree on married judges, can be philologically and contextually associated with either San Salvatore at Monte Amiata or Santa Maria of Farfa. The parallels between the abbeys of Winizo at Monte Amiata and Hugh at Farfa have been highlighted by recent scholarship, and this adds to the difficulties of preferring one monastery over the other<sup>100</sup>. But in any case, the plausible association of the extract with one of these two monasteries sheds fresh light on the text itself.

#### THE TRANSMISSION OF THE DECREE: POLITICAL CONTEXTS

In the first place, the text's association with one of these two monasteries provides a plausible political context to help explain why, wherever it came from, it was copied in Edili 82. The level of engagement with the legal texts demonstrated in the manuscript, which included collation with other manuscripts and glossing of key terms, can be usefully compared with similar interventions made to manuscripts of the *Liber Papiensis* at around the same time<sup>101</sup>. This must have been done at a well-resourced institution with legal experience. Both Farfa and Monte Amiata had libraries with copies of royal and imperial legislation, even if, as already highlighted, the evidence of their local availability is provided to us only by indirect testimony – that is in the form of excerpts and references encapsulated in other authors' works – and by fragments copied into blank spaces of manuscripts. Both monasteries were institutions with a sustained interest in justice around the year 1000, in theory and in the courtroom, and moreover had experience in attempting to use legal texts to gain practical advantage, and thus reason

to be interested in preserving them. Farfa was heavily involved in judicial disputes throughout the period, as is shown by a large number of charters as well as in the monastery's ample historiographical output<sup>102</sup>. Monte Amiata too was engaged in serious struggles with both aristocrats and bishops around the same time, as documented by Abbot Winizo's letter, and indeed by a number of surviving charters<sup>103</sup>.

Both monasteries therefore had frequent contacts with judges; in neither however can concerns about judicial corruption as such be detected. However, late tenth- and early eleventh-century Tuscan politics do provide a context for such concerns. On Otto III's death in 1002, the margrave of Ivrea Arduin was elected as king of the *regnum Italiae*, in the face of the claims of Otto III's heir Henry II. Although monasteries such as Monte Amiata remained loyal to the Ottonian dynasty, many aristocratic families threw their weight behind Arduin. One of his key Tuscan supporters was a judge, Leo III of Lucca. Leo was himself the son of another imperial *iudex*, Leo II, who had been an imperial *missus* in 971-973 and had managed to consolidate his power in the city of Lucca through his family ties: his sister was the wife of the local bishop Gerard II (ca. 990-ca. 1004), two of Leo II's four sons were appointed to important local ecclesiastical institutions (the urban monastery of S. Ponziano and the church of S. Frediano) while the other two obtained substantial church

99. Reynolds 1990, p. 292.

100. Marrocchi 2014, p. 160-162.

101. Attested for instance by the extensive glossing carried out in Milan, Biblioteca Ambrosiana MSS O 53 sup. and O 55 sup.

102. *Chronicon Farfense* (drawing heavily on Farfense charters), I, p. 347, on a dispute with Benedict the Deacon, and vol. II, p. 22-23, on a dispute during Hugh's own abbacy. The *querimonium* addressed by Hugh of Farfa to Emperor Conrad II in 1026-1027 is particularly illuminating for the recalling of the abbot's past involvement in a juridical dispute against the Roman family of the Crescentii over the castles of Tribuco and Bocchignano. The dispute had directly involved Henry II in 1014, when the emperor assisted by sitting Roman and Lombard judges decided in favour of the monastery in a *placitum* held in Rome: *Chronicon Farfense*, p. 71-77, esp. p. 75. The same *placitum* is recorded in Gregory of Catino's *Regestum* where the involvement of *romani et langobardi iudices* is also mentioned as well as the explicit remark that the dispute was solved according to both Roman and Lombard laws: *tam ex iustinianae legis quam et longobardae videlicet capitulis*, see *Il Regesto di Farfa*, III, p. 199.

103. For instance two disputes in July 991 between the abbot of Monte Amiata and the gastald *Ursus*, and between the abbot and a certain Alvitius: CDA, nos. 207 and 208. Three judges were present, including *Petrus iudex sacri palatii* alongside Lambert and Rudolf.

properties in long-term lease (*livellum*)<sup>104</sup>. In other words, one of Arduin's most influential supporters in Tuscany came from precisely the kind of judicial dynasty that the Edili decree would have made illegitimate. We might suppose that a Tuscan enemy of Arduin, such as Abbot Winizo, might have been only too pleased to circulate such a text.

The scribes of San Salvatore were familiar with both documentary practices and scripts, and they are known to have been particularly crafty with the documents preserved in their archives: interpolations and outright forgeries have been identified by the painstaking work of historians and diplomats<sup>105</sup>. We also know that legal forgeries were circulating in tenth-century Italy – for instance, a forged Roman law known as the *De Subole*, which condemned clerics' children to hard labour and may have been produced in tenth-century Vercelli<sup>106</sup>. With its condemnations of the “delights of the world” (*deliciae saeculi*), the Edili decree's language certainly suggests strong monastic influence.

Yet though the ingenuity of monastic scribes needs to be considered, so too does the fact that both Farfa and Monte Amiata were extremely close to the late Ottonian court. The connections between late Ottonian rulers and Farfa, famous as an imperial establishment, hardly need to be rehearsed<sup>107</sup>. Abbot Hugh of Farfa owed his position to Otto III and to the emperor's cousin Pope Gregory V (996-999), and corresponded with Gerbert of Aurillac, future Pope Sylvester II, on matters of penance<sup>108</sup>. He also benefited enormously from royal patronage, as documented by no fewer than ten grants under the emperor, including one in 999 possibly personally composed by the emperor (D O III 331), whose patronage was reinforced by two personal visits<sup>109</sup>. It is no exaggera-

tion to say that Farfa was Otto III's favoured Italian monastery, and that he was prepared to show his support in public<sup>110</sup>. The proximity of Abbot Hugh to the German rulers was renewed under Otto III's successor. Hugh travelled north of the Alps and sat with Henry II at Neuburg in 1007<sup>111</sup>; he later attended the imperial coronation at Pavia in 1014, accompanied the emperor to Ravenna and, in the same year, obtained at Rome “in the presence of the emperor” (*ante presentiam imperatoris*) a favourable judgement for Farfa<sup>112</sup>; finally, in 1022, the abbot most likely accompanied Henry II on his military expedition into southern Italy<sup>113</sup>.

Monte Amiata too was an institution with strong historical links to the rulers of Italy<sup>114</sup>. More specifically, Paolo Tomei has recently shown how Abbot Winizo owed his position to the collaboration between the marquis Hugh of Tuscany and Otto III in re-organising Tuscan monasticism, a political programme that Nicolangelo D'Acunto has incisively labelled “monachesimo marchionale”<sup>115</sup>. Having earned the favour of Otto III, Winizo was repaid with flattering words in a well-known diploma issued at Rome in 996 and drafted by Gerbert of Aurillac: the emperor granted San

the emperor's possible role in composing this charter, Hoffmann 1988, p. 398-9.

104. On *iudex* Leo III and his family, Schwarzmaier 1972, p. 284-290. Thanks to Paolo Tomei for bringing this to our attention. For another example of a powerful aristocratic family descended from a judge, D'Acunto 2003, p. 65, on the Pavian judge Cuniberto.  
105. Marrocchi 2014, *passim*.  
106. Edited in Hänel 1868 and discussed briefly in Patetta 1967, p. 624-5; Vignodelli 2011, p. 4.  
107. For a recent synthesis focusing on the relation between Farfa and the Ottonians, D'Acunto 2006a.  
108. *Papsturkunden* II, no. 372.  
109. Seibert 2000, fn. 262; D'Acunto 2002, p. 152; and the recent study by Manganaro 2012. On Farfa's relation with the emperors more generally, D'Acunto 2006a. For

110. For Otto's support of Hugh, Warner 1999.

111. The assembly took place at Neuburg in 1007 and was attended by several high-ranking Italian prelates, among whom Winizo of Monte Amiata who presented there his claims against Arialduus of Chiusi, DD. H II, n. 129 (CDA no. 226). Interestingly the *breve* of that meeting only survives among the charters from Monte Amiata conserved at the Archivio di Stato at Siena, which further confirms the unsystematic nature of the transmission of an early medieval ruler's pronouncements: on this document Marrocchi 2014, p. 179-190. Hugh's travel *ultra montem* is also mentioned in the abbot's *Exceptio relationum*, p. 66.

112. Hugh's meeting with the emperor at Pavia in 1014, from whence they travelled together to Ravenna, is also narrated in the *Exceptio relationum*, p. 68. For the Roman *placitum*, see also above, n. 102.

113. The mention of the presence of Abbot Hugh at Troia with Henry II is recorded in a later *breve de contentione*, *Il Regesto di Farfa*, V, p. 280-281.

114. On the monastery's long-standing links to kings, Roebert 2016. For an overview of Tuscan monasticism in the eleventh century, Ronzani 2000.

115. The generosity of the childless Hugh of Tuscany towards monasteries needs to be understood within a larger political programme aiming at the preservation of the lands of his family and at the strengthening of the institutional frame of the March of Tuscany: D'Acunto 2003, esp. p. 77-83, and Ubl 2011.

Salvatore the rights to collect tithes as well as fees and income of public nature while prohibiting public officials from entering the churches and lands under the monastery's control<sup>116</sup>. These connections survived the premature death of Otto III. As already stated, Winizo did not join the supporters of the rival to Ottonian rule, Arduin, who controlled the city of Lucca and had found a leading supporter there in the figure of the *iudex* Leo III, mentioned above; instead he attended Henry II's royal coronation at Pavia in 1004. San Salvatore was indeed the first Italian monastery to obtain a diploma from King Henry II in March 1004.

The proximity of the monks of Farfa and San Salvatore to the courts of Otto III and Henry II meant in turn proximity to those who carried influence at those courts, including figures known to have been involved in Ottonian legislation, which brings the Edili 82 text into closer association with Ottonian law-making circles. One of these figures was Gerbert, the aforementioned draftsman of San Salvatore's charter. At that time the archbishop of Ravenna, Gerbert has also been associated with Otto III's *Capitulare Ticinense*, whose declaration on ecclesiastical property resonates strongly with a charter the emperor later issued to Gerbert's monastery at Bobbio<sup>117</sup>. If Gerbert had succeeded in expressing his own concerns through the imperial voice, he was simply following in the footsteps of an earlier Ottonian courtier, Rather of Verona, who has been identified as the guiding spirit behind Otto I's decree in 967<sup>118</sup>.

Another figure of interest is Leo of Vercelli. Elected as bishop of Vercelli in 998 or early 999,

Leo was a close advisor to Otto III, and contemporaries even called him a "palatine bishop"<sup>119</sup>. He acted as *logotheta* for Otto III, a Byzantine title indicating that he was involved in the imperial chancery, and we know that he devised drafts of imperial charters<sup>120</sup>. Like Gerbert, it is likely that Leo had a hand in Ottonian law-making. It is generally supposed that he drafted much of the Council of Pavia of 1022, which included an imperial affirmation in the name of Henry II, and he was also probably involved with Otto III's legislation<sup>121</sup>. The *expositio* to the *Liber Papiensis* indeed claims that Leo composed a capitulary, and he certainly had great personal experience in judicial matters<sup>122</sup>. He was also close to Gerbert of Aurillac, in whose name he perhaps composed a diploma for Vercelli<sup>123</sup>.

As it happens, a direct connection between Leo of Vercelli, Rome (where the core of the Edili manuscript was probably made), and the monastery of Farfa can be proven around the year 1000. For in 999, Marquis Hugo of Tuscany, Otto III,

116. DD. O III no. 202, p. 611-612. For the identification of Heribert B with Gerbert of Aurillac, Huschner, 2003, p. 142 and 347-351. On the Ottonian diplomas issued in favour of San Salvatore al Monte Amiata, see also Manganaro 2015. The monastery also obtained a papal privilege granting the immunity, but the surviving document (an imitative copy) lacks necessary authenticity signs, and some of its passages might have been interpolated: Marrocchi 2014, p. 127-129 and 143-153.

117. Wolter 1988, 162, suggesting that "zumindest der Inhalt des Gesetzes auf die Erfahrungen und Vorstellungen des Ravennater Erzbischofs zurückgehen könnte". The charter is D. O III no. 303. For Gerbert's involvement, see also Görich 1993, p. 241-2. For a summary of the older literature, *Regesta Imperii* II, 3, no. 1291.

118. Bougard 2003. Hincmar's involvement with several of Charles the Bald's capitularies is perhaps comparable: Nelson 1983.

119. For the epithet, Bruno of Querfurt, *Vita quinque fratrum*, p. 725 (*Leonem episcopum de palacio*). The biography of Leo of Vercelli is reconstructed in Bedina 2005. On Leo of Vercelli and the role he played in the Ottonian ideological and political programme, see also Dormeier 1993, Hoffmann 1995, p. 19-20, Dormeier 1999, Dormeier 2002, Gamberini 2002, p. VII-XIII, Gandino 2004, Roach 2013, p. 86, and also [http://www.geschichtsquellen.de/repPers\\_100951945.html](http://www.geschichtsquellen.de/repPers_100951945.html).

120. Leo replaced archchancellor Heribert who had been elected archbishop of Cologne in 999. On Leo of Vercelli and his functions as imperial archchancellor, Huschner, 2003, 264-5; cf. Hoffmann 2005, p. 467-468. For his drafting of a charter, entered into the margins of Vercelli, *Biblioteca Capitolare CII*, Bloch 1897, p. 45-59, edited in D HII 322a.

121. For his authorship of or involvement with Otto III capitularies, Gamberini 2002, p. X, and D'Acunto 2002, p. 158 (describing his role in elaborating Ottonian legislation as «innegabile»). Bloch's maximal assessment of Leo's output is based on a slightly unreliable Diktatvergleich. See also Dormeier 1993 and Bougard 1999. Leo also acted as Otto III's panegyrist and composed the *Versus de Gregorio et Ottone Augusto*, preserved in the margins of a manuscript that is now Bamberg, Staatsbibliothek Msc. Can. 1. Originally from Montecassino, this manuscript passed to the Ottonian court library: <http://bsbsbb.bsb.lrz.de/~db/0000/sbb00000067/images/index.html?seite=00028&signatur=Msc.Can.1>. Very likely Leo borrowed the manuscript whilst at Rome.

122. *Leges Langobardorum*, p. 572, *Expositio* c. 1, *ante illum scilicet Leonem Vercellensem episcopum, qui hoc capitulum ante imperatorem composuit*, though it is in fact impossible that Leo had composed the particular capitulary (of 967) in question. Bloch 1897, p. 82 thought Leo may have personally been a *iudex*, but the proof text for this is corrupted.

123. *Papsturkunden*, II, no. 375.

Leo of Vercelli, Gerbert of Aurillac and Heribert of Cologne gathered outside Rome to discuss the reorganisation of the *res publica (pro restituenda re publica)*<sup>124</sup>. They then travelled to Farfa, at which point Abbot Hugh issued with papal approval the famous *Constitutum* which established Cluniac customs (*religio*) at his monastery<sup>125</sup>. However, Leo also had connections to San Salvatore, if we accept Huschner's suggestion that he was the scribe ('Heribert E') of the charter the monastery received in 1004<sup>126</sup>. Moreover, Leo personally knew Winizo's major patron, Hugh of Tuscany, to whom he might even have dedicated an important poem, the *Metrum Leonis*; it would not be surprising therefore if Winizo and Leo knew each other. Indeed, Marrocchi has suggested that Leo of Vercelli was one of those who facilitated the entry of Winizo into the inner circle of collaborators surrounding Otto III<sup>127</sup>.

In summary, the proximity of Edili's most likely owners, Monte Amiata and Farfa, to the Ottonian court and to figures such as Gerbert of Aurillac and Leo of Vercelli suggests we cannot treat the Edili 82 decree as merely a whimsical monastic fantasy. This text was probably drafted at a monastery intimately connected to the leading circles of Ottonian rule in Italy<sup>128</sup>. By implication, we should take its content seriously.

#### THE OTTONIAN ROYAL COURT AND SOCIAL CHANGE IN ITALY

The prosopographical and institutional context does not of course make the content of the decree

any less startling. As already noted, a ban on married judges has no direct parallel in any early medieval legislation. But we should remember that we only have traces of the conversations that took place at early medieval royal courts, traces that have been patterned by archival practices that remain understudied. In other words, our view of early medieval legislative activity has been curated, and for nowhere is that more the case than the Ottonian court. Even the records of key meetings, such as the Council of Pavia in 998 which Wolter thought was intended to instigate "an overarching renewal of legal life in Italy", are preserved only in fragments<sup>129</sup>.

As a consequence, we do not have a view of Ottonian court culture that is comprehensive enough to be able to rule certain ideas as *a priori* inadmissible, especially given how innovative and disruptive the circles around rulers such as Otto III and Henry II, rulers whose courts are well known for their ideological originality and creativity, could be<sup>130</sup>. It might therefore be sensible to consider whether the decree reflected concerns present at the late Ottonian court. Two issues are particularly relevant here: the question of priestly celibacy on the one hand, and the steady rise of a new class of professional lawyers on the other. In some ways, the decree stands at the convergence of these two developments.

Celibacy emerged as a hotly debated topic in reforming church circles in the mid-eleventh century, especially as applied to priests<sup>131</sup>. The question had however deeper roots, which have often been connected to "reformed" monasticism. That is a convenient label for monastic practices

124. D. O III no. 331 (999), with quotation at p. 759.

125. Hugh had been appointed by the pope, and was often at Rome, like Leo in 998. Tomei 2016, p. 361-362. On Hugh's so-called *Constitutum*, Lucioni 2006, p. 195-6.

126. D. H II no. 68, p. 70-72. For the identification of Leo of Vercelli with Heribert E, Huschner 2003, p. 268-270, though see too the comments of Hoffmann 2005, p. 467-468.

127. Marrocchi 2014, p. 172-173. For the identification of Hugh of Tuscany with the recipient of the *Metrum Leonis*, Gamberini 2002, p. XXXI-XXXII.

128. On the role played by Gerbert of Aurillac and Leo of Vercelli in the Ottonian chancery, see also the remarks in Bougard 1999, p. 555-557.

129. Wolter 1988, "einer umfassenden Erneuerung des Rechtslebens in Italien", p. 163.

130. Cf. here Görich 1993 on difficulties of establishing Otto III's «programme», amplified (for the disruption) by Warner 1999. On Otto III, Althoff 1996 and Roach 2013; on Henry II, Weinfurter 2002. On the differences between the rulers, Schneidmüller 2000, p. 45. For an illustration of Otto III's readiness to innovate, see the unprecedented grant by which he changed someone's ethnic legal status, discussed by Bougard 2004 (the text was omitted from the standard edition of Otto's charters). New light is shed on the late Ottonian court's apocalyptic traditions by Bonura 2016.

131. There is a very large bibliography: Moore 1980; Laudage 1984; Balzaretto 1999; McLaughlin 2010, esp. p. 31-35; Parish 2010; Althoff 2013, esp. p. 55-74. For an important re-evaluation of Carolingian precedents, Stone 2017.

which sought to uphold strict moral standards, including those relating to celibacy – and which had a tendency to apply these values to the world beyond the cloister too, with implications for aristocratic masculinities more broadly. The Ottonian court's sympathy with these monastic ideals is demonstrated not least by its support to Farfa under Abbot Hugh and to San Salvatore under Abbot Winizo, both of which – in different ways – were bastions of reforming monasticism<sup>132</sup>. And these values were shared more broadly within the Ottonian court itself<sup>133</sup>. After all, Otto III was said to have wished to have become a monk himself, a claim to which historians have recently accorded some credence, while Henry II is notorious for his efforts to apply monastic values to kingship<sup>134</sup>.

The interest of the Ottonian court in monastic reform was composed of different and sometimes competing strands. Otto III was an enthusiastic patron of Byzantine-style hermits, men such as Romuald and Nilus of Rossano; but Greek influence also took on more institutional form through the monastery of Sts Bonifacio e Alessio that was established at Rome in 977 by Greek-speaking monks, though the monastery soon mostly housed Latin-speaking residents<sup>135</sup>. From here circulated the legend of Alexis, the saint who dramatically fled from marriage on his wedding day, choosing instead a life of holy celibacy and severe asceticism. It is all but certain that Otto III knew this story:

he made a number of grants to the monastery, including the gift of his coronation mantle, and its abbot Leo was one of his close confidants (Otto even appointed him as archbishop of Ravenna to replace Gerbert)<sup>136</sup>. The popularity of the Alexis legend, with its heavy emphasis on celibacy, at the reforming centre of Montecassino may not be coincidental<sup>137</sup>. Priestly celibacy was also an issue for Adalbert of Prague, another eremitic figure close to Otto III (and who stayed at Sts Bonifacio e Alessio, and wrote a sermon about Alexis), to judge by a conciliar decision in which he was apparently involved<sup>138</sup>.

Alongside these Byzantine and eremitic connections, we should however also consider Cluniac influences, in whose traditions celibacy was again a prominent theme<sup>139</sup>. Despite tensions with representatives of the revived eremitic tradition, Abbot Odilo of Cluny was prominent at the court of Otto III<sup>140</sup>. He also maintained connections to the imperial court with Henry II, to whom he sent letters and books, and whom he met in Italy in 1004, 1013 and again in 1014, before Henry travelled to Cluny himself around 1020<sup>141</sup>. Indeed, the Edili decree's notion that an unmarried secular leader might actually be more just and equitable in his judgements than one with a family finds echoes in another remarkable text, the tenth-century Cluniac *Life of Gerald of Aurillac*, in which a count is praised both for his justice and for his

132. The paths to monastic reform pursued by the two abbots were however quite different: while Hugh of Farfa (a repentant simoniac) actively looked for new forms of *regularis perfectio* and finally embraced Cluniac customs, Winizo remained faithful to the "old" ideal of an imperial church supported by his patrons (Hugh of Tuscany, Otto III and Henry II). This might in turn have led to conflict with Romuald of Ravenna and to Winizo's temporary loss of his abbacy around 1021-1022: Marrocchi 2014, p. 194-199. For the passage in Peter Damian's *Life of Romuald* suggesting that Romuald obtained Monte Amiata and failed to reform it, *Vita Romualdi*, p. 106-109. However, Tomei does not observe any break in Winizo's long abbacy: Tomei 2016, p. 369, n. 77.

133. On the influence of monastic reformers at Otto III's court, D'Acunto 2006b; on the importance of monasticism more widely to Otto's Italian politics, D'Acunto 2003, p. 84: "una precisa progettualità politica che si imperniava proprio sui cenobi".

134. Seibert 2000, p. 244-5; D'Acunto 2002, p. 149-151; Hoffmann 1993; Weinfurter 2002, p. 168-185.

135. Wickham 2015a, p. 203-4; on this period also Hamilton 1965.

136. On the appointment of Leo, *Regesta Imperii* II, 3, no. 1321; for Otto's patronage of the monastery, D. O III 209 (1996) and *Regesta Imperii* II, 3, no. 963, and discussion in Görich 1993, p. 247-8. For the coronation mantle, and discussion of its apocalyptic imagery, Palmer 2014, p. 202-205.

137. BHL 286, the most popular *Vita* of Alexis was compiled in Rome in the late tenth/early eleventh century; BHL 287 was compiled a little later at Montecassino. Engels 2002; useful overview in Werner 1990; and wider discussion in Perugi 2014.

138. Vatican Pal. lat. 973, f. 130v (Mordek 1995, p. 804-805): *Presbiteros nubere prohibuerunt*. For Adalbert of Prague's interest in Alexis, Engels 2002.

139. For instance in Odo of Cluny's *Collationes*, commenting at col. 556 that *corporea pulchritudo in pelle solummodo constat. Nam si viderent homines hoc quod subtus pellem est, sicut lynces in Boetia cernere interiora feruntur, mulieres videre nausearent*. Rosé 2008 for a general study; and Rosé 2010 for a specific investigation of this text. A useful overview of Odo's writings is provided in Bultot-Verleysen 2009.

140. Seibert 2000, p. 255-6; Görich 1993, p. 243-248; Huschner 2002, making a bold identification of Odilo and the notary Heribert D.

141. Hoffmann 1993, p. 45-7; Seibert 2000, p. 221-222.

celibacy. Whether Henry II knew of or even read the *Life of Gerald* we cannot say, but it combined two themes that might especially have appealed to the childless ruler, though it was not made into a model for all to follow<sup>142</sup>.

Whatever their precise origin, monastic anxieties about celibacy were visibly working their way into clerical discourse more broadly in the eleventh century, re-emphasising and sometimes re-interpreting Late Antique norms. These had frowned on priests marrying after ordination, but had always tolerated married men entering the clergy. Now, though, monastic standards, including an insistence on the value of celibacy, were increasingly used to measure the conduct of priests in general, perhaps as part of a broader restructuring of western European society which demanded that priests be more clearly distinguished from their flock<sup>143</sup>. The extent to which this movement was promoted from the top-down is contested, but Otto III's close advisor Gerbert seems at least to have been sympathetic, as far as can be judged from his short pontificate as Pope Sylvester II. In letters he sent around 1000 to the Doge of Venice Peter II Orseolo and to the Patriarch of Grado, Gerbert called for a synod in which priestly marriage would be one focus alongside simony, though as a result of Otto's and then Gerbert's death the synod never took place<sup>144</sup>. Matters were made clearer a little later, at Pope Benedict VIII and Henry II's Council of Pavia in 1022, which prohibited clerical marriage in newly emphatic fashion, and anticipated further, still more decisive action<sup>145</sup>.

If courtiers at the courts of Otto III and Henry II were therefore certainly talking about ideals of celibacy, we might suppose that they were also talking about lawyers and judges. By the early eleventh century, early medieval Europe already had a long history of worrying about judicial corruption<sup>146</sup>. It was a key theme in Alcuin's *De Virtutibus et Vitiis*, for instance, whose Chapter 20 warns judges not to take gifts (*munera*)<sup>147</sup>. Carolingian capitularies too, including ones circulating in Italy, were full of anxieties about judges<sup>148</sup>. For the most part, these anxieties centred on bribery and unauthorised gift giving. But there was also an early medieval tradition of worrying about the potential for family ties to affect judicial decisions – something that Theodulf of Orleans had complained about already in the ninth century<sup>149</sup>.

In this respect, Theodulf was in line with an Italian tradition, as evidenced for example by an eighth-century sermon by Ambrosius Autpertus<sup>150</sup>. Fears about corrupt judges continued to be expressed in tenth-century Italy, formulated independently by two influential bishops, Rather of Verona and Atto of Vercelli<sup>151</sup>. Little *florilegia* were written on how judges ought to behave, such as the extracts from Isidore preserved in a Modena manuscript, labelled as "Admonition for

142. This theme is present in both versions of the *Life*, BHL 3411 and BHL 3412. A new edition of the *Vita Geraldii* is provided in Bultot-Verleysen 2009. Mathew Kuefler has recently cast doubt on the dating of these texts, but see Bruce 2016 for a cautious reception. For wider context, Rosé 2008, p. 456-490. On Henry II's childless marriage – already in 1007 he publicly acknowledged that he and Kunigunde would not have children, and their marriage was described as chaste immediately after his death – Weinfurter 2002, p. 93-97, and especially Ubl 2011.
143. From a vast bibliography, see the seminal work by Moore 1980; more recently, Moore 2017. See also Stone 2017.
144. *Papsturkunden*, II, nos. 390 and 391. Gerbert's interest in simony had already been expressed in the council of Ravenna in 998, *Concil. VI, ii.*, p. 543-547.
145. A new edition of the Council of Pavia by Hehl in MGH *Concilia* is forthcoming. In the meantime, see the edition in Labbe 1671, cols. 819-833, in preference to the incomplete text provided in *Const.* I, no. 34. For general discussion of the council, Laudage 1984, p. 84-89 (with emphasis

- on precedents) and Hoffmann 1993, p. 56-59. For Gerbert, *Papsturkunden*, II; *Regesta Imperii* II, 3, no. 921. For connections between the council's emphasis on celibacy and the *Collectio V librorum*, Laudage 1984, p. 83 and 85-6.
146. A useful discussion is provided by Siems 1995, focusing however specifically on legal texts. Jan van Doren's forthcoming Princeton PhD will shed new light on judicial corruption in the Carolingian empire.
147. Alcuin, *De virtutibus*, c. 20 (devoted to judges), col. 628-9: *Nihil enim iniquius est, quam munera accipere in iudiciis*, and *Acceptio munerum in iudiciis, praevaricatio est veritatis*.
148. *Capitolari Italici*: e.g. no. 32 (202), c. 5, p. 148; no. 37 (211), c. 2, p. 174; no. 46 (219), c. 5, p. 216.
149. Theodulf, *Versus contra iudices*, p. 511, lines 691-714, warning against the influence of wives. West wishes to thank Amy Nightingale for bringing this to his attention.
150. See the important new assessment of this text by Diesenberger 2016. Note also King Ratchis's reference to kinship swaying judgement: *vel ad parentum, aut ad amicum suum, vel ad premium, et legem non iudicaverit. Leges Langobardorum*, p. 190.
151. Rather, *Praeloquia* I. VII. 16; Atto, *Perpendiculum*, in Vignodelli 2011, p. 95-6 (in anticipation of Vignodelli's forthcoming new edition). More broadly, see Bordone 1997. Cf. the *Collection in Five Books*, I. 247-50 on judges; cf. also the early eleventh-century Roman formula for appointing a judge in Schramm 1969, p. 353, in which the emperor warns the judge against *acquirendam sibi pecuniam*.

the judging judge" (*Ammonitio iudicis iudicandi*)<sup>152</sup>. The suspicion of judges did not dissipate in the eleventh century, as the writings of Peter Damian show<sup>153</sup>.

However, the eleventh century witnessed the beginnings of a major change in the workings of the Italian legal system. Already from the mid-ninth century, there are clear indications that judges in Italy were more professionalised and lawyerly than elsewhere in the Latin West, gradually excluding both the community-based justice represented by the *scabini* and the educated but untrained aristocrats who had previously dominated court decision-making<sup>154</sup>. At first this "ceto di giudici professionali", based around the royal court and perhaps centred in Pavia, and by the late ninth century palaeographically visible through their distinctive handwriting, acted as a conduit of royal power, and indeed may have been deliberately promoted as an alternative to aristocratic networks by King Hugh<sup>155</sup>. But in the late tenth and eleventh centuries, this professional elite became increasingly independent of royal authority, as a new "legal culture" emerged<sup>156</sup>. The title of "judge of the sacred palace", echoed in the Edili decree, was increasingly taken by legal experts working in the localities, whose connection to Pavia or to the Ottonian kings is difficult to discern. The *Liber Papiensis* is best seen as the handbook of this increasingly numerous group, reflecting their professional needs and priorities<sup>157</sup>.

The reaction of influential clerics to this development was expressed in the 1022 Council of Pavia, jointly issued by Emperor Henry II and Pope Benedict VIII, and drafted, as already mentioned, by Leo of Vercelli, which accused judges of putting the law above the best interests of the church as a whole by freeing the sons of unfree clerics<sup>158</sup>. These judges were warned that if they continued "judaizing" (*iudaizantes*) instead of judging, they would lose the *honor palatii*<sup>159</sup>. The "judges of the palace" should either go and find "canonical masters" to teach them better, or else they should hastily repent. As the council's canons explained in a significant turn of phrase, a judge who attacks the *ecclesia* will not be honoured in the *palatium*<sup>160</sup>. In a series of decrees that followed on from the conciliar record, the king declared that the hands of such judges would be amputated. This hostility to expert judges, a legacy that Peter Damian and others took up in later decades, can plausibly be seen as a reflection of concern about the growing prominence, autonomy and indeed power of an emerging elite in Italian society<sup>161</sup>. This was after all an elite that was built upon horizontal solidarities, and that would later be involved in helping the communal movements establish their domi-

152. Modena, Biblioteca Capitolare O. I. 2, which also contains Lupus of Ferrières's collection of Frankish law, the *Liber Legum*, itself drawing on a lost Italian collection of capitularies. On this manuscript, Münsch 2001, p. 71-76, and n. 77 above.  
 153. Bougard 1995, p. 295-296; D'Acunzio 1999, p. 361-378.  
 154. Overview in Bougard 1995, p. 281-296 (and p. 140-158 for the background of the *scabini*).  
 155. Witt 2011; Castagnetti 2008 (quotation from p. 115). For doubts both about their institutionalisation at Pavia and about their role in top-down royal initiatives, Nicolaj 1997.  
 156. For the new «legal culture», Bougard 1995, p. 292-296. On professionalisation, Reynolds 2003; cf. the brief comments by Radding 2003, pulling the chronology forward. See also Witt 2011, p. 166-174; Ansani 2012; Ascheri 2013; and the articles collected in Padoa Schioppa 2015.  
 157. On the shift in the title, Radding 1988, p. 73-4: "From being national and royal judges, by the last decades of the tenth century many *iudices sacri palatii* had become essentially very prestigious regional judges". Cortese 1995 for the general background: «un gruppo folto e compatto».

158. Labbe 1671, cols. 819-833. In 999, Leo had accused an archdeacon of Vercelli named Gisalbert of having fled the diocese despite being part of Vercelli's *familia* (D. O III no. 323, p. 750), which could be a relevant context here. Though perhaps technically unfree, Gisalbert was the son of a judge Liudprand, and his family of *servi fugitivi* included a judge named Giselbert: Keller 1979, p. 285, with n. 183.  
 159. Labbe 1671, col. 827: *Iudices autem non iudicantes, immo iudaizantes...et honorem palatii legibus perdant et rationem post mortem...verissime reddant*. On this text and illegitimate judges, Bougard 1997, p. 313.  
 160. *Ibidem*: *Sed neque honorabitur in palatio qui ecclesiam, palatii matrem, non erubuit impugnare*.  
 161. For hostility, see Peter Damian's lament in his *Vita Romualdi*, p. 9, that the world does not have learned holy figures, only those *qui in pretoriis iudicium negotiorum secularium lites et causarum iurgia continuis valeant declamationibus perorare*. Cf. Bernard of Clairvaux's later laments about the use of secular law at the curia in his treatise addressed to Pope Eugenius III, the *De Consideratione*, p. 399: *Et quidem quotidie perstrepunt in palatio leges, sed Iustiniani, non Domini... Hae autem non tam leges qua lites sunt et cavillationes, subvertentes iudicium*. Cf. too Leo of Vercelli's annotation to a passage of the *Scriptores Historiae Augustae* in the ninth-century Bamberg, Staatsbibliothek Msc. Class. 54, f. 104v, praising Emperor Severus Alexander's decision to remove all *iudices* from their office: Dormeier 2002, p. 180.

nance over Italian cities: suspicion on the part of established authorities was only to be expected<sup>162</sup>.

Edili 82's decree on judges makes a great deal of sense if we see it as marking the intersection of an interest in moral reform springing largely from monastic circles with growing anxiety about the autonomy and proliferation of a strengthening social group, that of the Italian lawyers, more and more of whom were calling themselves "judges of the sacred palace" whether resident in Pavia or not<sup>163</sup>. The application of an originally monastic standard of celibacy to this group might be read as an innovative clerical, monastic and maybe even royal response to the growing power of the judicial cadre, and an attempt to make them conform to the new rules for holding power that were being established by monastic and clerical elites. Although undoubtedly radical, the text reads as an attempt to assimilate a new social group into this new paradigm, demanding that, like ordained clerics, this judicial upper echelon should adopt celibacy as the sign and token of their professionalism<sup>164</sup>. In its 85 words, the text thus gives us a glimpse of two major currents of social change in late tenth- and early eleventh-century Italy as they met.

## CONCLUSION

It may be tempting simply to dismiss the decree preserved in Edili 82 as a forgery, not so much on the basis of its transmission – which as we have seen is not especially unusual – but for its content, as too far-fetched to be authentic. Yet uncritically to apply a binary distinction of authentic/forged to a text such as this, written in an imperial voice and copied by a contemporary at a well-connected institution, is to risk applying anachronistic categories based on diplomatic conventions for analysing charters, which are not necessarily suitable for evaluating early medieval kinds of legislation<sup>165</sup>. We

certainly cannot prove whether a ruler approved this text or had it read out, or tried to enforce it, or whether some courtier or cleric perhaps drafted the text in the hope that he would. But the same doubt applies of course to other Ottonian legislation, such as Otto III's *Capitulare Ticinense*.

For that matter, it applies too to many of the Carolingian capitularies which often provide the benchmark for assessing Ottonian normative texts. As we have already noted, historians are increasingly minded to read these Carolingian capitularies not as more or less accurate transcriptions of imperial commands, but rather as heterogeneous traces of court discussions and decisions, mediated both orally and through writing: in other words they are essentially dialogic texts, rather than primitive versions of statute law<sup>166</sup>. In light of the Edili 82 text's connections with important central Italian monasteries, which enjoyed strong connections to the royal court and to key figures at that court who were themselves engaged in drafting legislation, perhaps we should treat it similarly. It is clear both from its wording and its context that this text was taken from a compilation that is now lost. We cannot know what that compilation looked like, who had put it together, or for what it was intended – but the Edili scribe considered it authoritative enough to set an excerpt from it amidst a short dossier of normative texts on marriage, and to provide it with a rudimentary gloss.

Read in this light – and much like other unique or outlying texts – the Edili 82 decree is not so much a problem to be resolved as evidence to be interpreted, and evidence moreover of a distinctive historical conjuncture. In this case, we can see in it a creative and imaginative response on the part of reforming elites close to the imperial court to specifically Italian social and cultural conditions, as this already complex society continued to evolve in new and unprecedented ways, and as cities grew and technical experts took on new importance in managing them, at arms length from hallowed sources of authority<sup>167</sup>. That response seems to have been to attempt to fold these changes into the wider programmes of

162. Fried 1974. For the rise of communal movements, Wickham 2015b.

163. Bougard 1995, p. 286-7 and 292-293.

164. Leyser 2010.

165. For difficulties of *discrimen falsi* even with charters, see the famous Meissen charter, D. O. III 186, discussed in Althoff 2005, p. 174-5. Recent analysis of this charter in Kölzer – Ludwig 2000, suggests that it was genuinely produced by the chancery, but perhaps never authenticated (an "unvollzogene Kanzleiausfertigung"). Levi Roach is working on a project which will shed new light on forged charters.

166. See above, n. 24.

167. Cf. MacLean 2010 for comparable earlier circumstances in which Frankish legislative traditions met with Italian documentary culture.

moral reform that dominated the ecclesiastical court circle of the later Ottonians. There was a long tradition of using capitulary-style edicts to set out demands that were aspirational rather than or as well as simply pragmatic, as documented in the Carolingian rulers' repeated demands for justice and peace. Admittedly, no one had ever drafted a decree quite comparable to this one – but then, nor had earlier rulers and their advisors faced the challenge of combining a reform programme focused in part on celibacy with the difficulties posed by ruling Italy around the year 1000 before either. The Edili text suggests that the Ottonian ruling elite took these challenges seriously, and in doing so came up with an idea without any direct ancient or medieval precedent.

Of course, idealistic decrees such as this would have been of little interest to (or would perhaps even provoked consternation amongst) early eleventh-century Italian lawyers. As they took charge of textual transmission as well as of

procedure in the law courts, these lawyers were increasingly interested in creating a coherent legal system built on selected rules chosen from traditional sources, whether Lombard, Carolingian or Roman, and firmly oriented towards practice in the courtroom. Kings and their councillors could continue to decree all kinds of things in councils or meetings – about the plunder of shipwrecks or perhaps the marriage of palace judges – but it was no longer clear how relevant this was to what happened in the courtroom or indeed outside it, in an Italy in which kings were becoming peripheral figures, culturally as much as politically<sup>168</sup>. As imperial authority in Italy grew steadily more hazy and remote, it became confined to the edges and the blank spaces of manuscripts, or ignored and forgotten altogether. That is the paradox that we suggest underpins this text: maybe early medieval rulers and their advisors were never so radical as when their ideas were becoming essentially marginal, in more senses than one.

## Appendix

### *De vita et continentia iudicum*: a diplomatic edition

Since the image of the text copied in Firenze, BML Edili 82 is attached to the article, and to complement the working transcription provided above, we here present a diplomatic transcription of the decree. The layout of the text, as observed in the manuscript, is not reproduced in this transcription, but the original line breaks are indicated with vertical bars. The spelling of the Latin as found in Edili 82 is maintained: no distinction is made between the vocalic and consonantal sound of the Latin grapheme 'V' found in the title given in capital letters and the minuscule 'u' used throughout the decree. Our interpretative interventions have been reduced to the minimum: an evident scribal omission has been corrected - the preposition 'in' missing before the locative abla-

tive *sacro palatio* (line 2) - and reintegrated into the text between angle brackets, which have also been used to restore the abbreviation sign on the letter 'o' for *omnibus* (line 3). We have also spelled out the abbreviations in parentheses to facilitate reading the decree. The text presents its own punctuation, featuring *puncti* placed in the middle of the line throughout, which we have rendered in modern punctuation as commas. However, we opted for a full stop (line 6) to mark a break between the narrative and the dispositive sections of the decree, which has also the merit of introducing a longer pause allowing a smoother reading of the text. The two interlinear glosses attached to the text are given in the apparatus.

168. Wickham 1985.

MS: Firenze, Biblioteca Medicea Laurenziana, Edili 82, f. 169r

- 1 DE VITA ET C(ON)TINEN|TIA IVDICUM  
Nulli p(re)t(er)ea ex iudicib(us) n(ost)ris, | <in> sacro palatio iura  
dan|tib(us)  
u(e)| in o<m>nib(us) regnor(um) n(ost)ro(um) | finib(us),  
liceat c(on)trahere matrimoniu(m)<sup>a</sup> | ne forte filior(um) inducti  
5 diligetia, | a ueritatis et legis declinantes | semita, aliena iniuste |  
subrepta, ambitione filior(um) | ad opus eor(um)dem p(er) sua  
trahant | discrimina. Sed huius noxii | c(on)tempnentes<sup>b</sup>  
s(ae)c(u)li delicias, norma(m) | ueritatis ubiq(ue) teneant,  
morib(us), | uestib(us) atq(ue) totius bonitatis | insignib(us)  
10 sic(ut) superius in alio cap(i)t(u)lo | religiosor(um) sacerdotu(m) |  
uestigia imitent(ur), eor(um)q(ue) per | om(n)ia inhereant legib(us).  
<sup>a</sup>i(d est) mulierem *superscr.*  
<sup>b</sup>i(d est) respuentes *superscr.*

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