

Thank you, Dr. Ambrosio, for your opening comments and your kind introduction.

It is a great pleasure to participate in this Congress here in Leeds and I thank you all for your presence here.

I am happy to have the opportunity to update you on the developments of my research on «*The private deeds of the Abbey of Santa Maria della Grotta in Vitulano, near Benevent. Patterns and functions in Notarial Practices between 10th and 13th century*», as reads the title of my talk today.

Introduction

This study is part of a wider project, which I started some years ago, intended to draw a picture of the notarial development and documentation practices in the ancient Lombard Principality of Benevento in Southern Italy. Up to now, the investigation on the notarial activity in this area between 10th and 13th century is affected by the absence of a systematic study of the surviving charters, and by the lack of comparison between documents produced in the several little towns in the area, evolved along independent paths, though they all depended from Benevento. Sure enough, most scholars have focused both on the charters produced in Benevento or in a few other cities, and on the documents of some ecclesiastical entities in the same territory. However, one must consider that there are many unpublished documents, kept in different archives, distant from each other and perhaps not well known.

In such a perspective, it is easy to understand why it is so difficult to draw a smooth and detailed picture of the legal agreements and the documentary uses, and to observe how, even far from the centre of the Principality, notaries and judges have been influenced by historical, political, economic and social affairs of their time. However, this is exactly the most important point to bear in mind, as notaries and judges played a decisive role in custom formalization and through their work they went beyond unaltered traditions, promoting the subsequent consolidation of new forms and formularies.

SLIDE 1

To overcome this difficulty, in the very first steps of my PhD research I entered in a database all the charters, more than 1500, published and unpublished, that have been written in Irpinia and Beneventan Samnium during Lombard and Norman dominations between the 8th century and 1194, now kept in different archives of Southern and Central

Italy. **SLIDE 2** Of all these parchments, uppermost I checked the date, the place of issue of the document, and its contents (you can see in the image the synthetic form of a registered document, but there is even a more complete form). The research is currently focused on the identification of the original archives creators, *id est* the individual churches and monasteries in which the documentation was preserved before being moved to the archives of the more important institutions from which they depended. **SLIDE 3** The Microsoft Acces database is structured in a way that allows different kinds of query, and I hope to be able to publish it, converted in a free software, in an on line platform as soon as possible, thus sharing with other scholars a great numbers of data, previously unknown. The documents of the Abbey of S. Maria della Grotta are among them.

As many other monasteries in those centuries, the Abbey of Santa Maria *in Gruptis*, whose origins are not yet ascertained, represented a reference point for the territory around, as we can read in its charters. **SLIDE 4** The church stood *intra tamen fines Beneventan(ensis) Diocesis, in Vallo Vitulani*, close to Mount Dragon, and for its location it was named in the most ancient documents as *Sancta Maria Montis Drogi*. Its ruins are still visible on a cliff said «*Fuosso Funno*», a deep gorge that separates the Mount Pentime from Mount Pezzuto, a strategic position near two ancient mule tracks that connected the Teleso Valley to that of Vitulano.

SLIDE 5 For informations on the Abbey and the census of the documents, please refer to the introduction written by Antonella Ambrosio in her edition of the charters of S. Maria della Grotta, where she recently published the oldest 92 parchments coming from its archive, dated between 1101 and 1199. The still unpublished documents, of which the mentioned digital edition is being completed, were produced from 1200 and 1250, as you have previously heard.

I shall speak today of the 92 oldest charters and of 69 documents written from 1200 up to 1231, edited in the digital edition by Vera Swartz, Elisa Vendemia and me (the edition of the other charters of other researchers is not yet available). Here, I just want to dwell on the documentary models adopted by notaries and on the evolution of these patterns between the 10th century and the first thirty years of the 13th, to identify the elements of continuity and discontinuity that are at the same time the reason and the consequence of a changing society.

Though the documents frequently lack of *datum*, as the absence of the *actum* is one of the characteristic features of this area, the great part of them were produced in the well-circumscribed territory of *castrum Tocci*, Vitulano and *Limata*. This is a wide area placed around the abbey, in which it held a number of goods and on which it further exerted his influence. Therefore, as has yet been written by Antonella Ambrosio in her studies, the place of issue of the documents is often to be reconstructed from other elements, first of all the identification of the close relationship between judges, writers and underwriters that brings them to act together in the documentation process. A great help is coming from the analysis of the script, of the prosopographic study of the mentioned characters, and of the places cited in the *confinationes* of the lands.

The analysis of the documents of S. Maria della Grotta, compared to the forms taken by the documentation in other towns of the ex Lombard Principality of Benevent up to the 12th century, may help to define a picture that is patiently being drawn in recent studies. A picture where we may be able to recognize, with increasing precision, common elements and differences of the documentation process in those that most times have been defined as «notarial districts *ante litteram*». This process must be globally observed both in its synchronic perspective, typical of a particular time and a specific place, and in the diachronic perspective of a dynamic dialectic, proof of a notarial activity in permanent evolution, accurately structured, and shared. In this investigation, one must also include all those variables, more or less evident, connected to the personality of the individual notaries and to the distance between Benevent, which as the capital of the Principality certainly acted as a unifying element, and the towns scattered in the region.

SLIDE 6 As in the rest of this area, also in the territory of *castrum Tocci* the documentary typologies are enough limited and are based on a formulary dating back to the 10th century, that has remained almost unchanged over the next two centuries: the *charta* or *cartula* and the *memoratorium* or *breve* are the two formal patterns most used, even if for the second only few charters have survived.

The firm distinction between the two documentary typologies, however, had already begun to fade in the 10th century, and in the following century both had begun to penetrate one another, as today is well recognized by the scholars, merging formulas and expressions typical of one or the other documentary model. The fluctuating trend of the formulary and the other small variations are a clear expression of a slow but inexorable

evolution of the ancient patterns. They have to be considered as attempts to find a formal solution to the rigidity of traditional documentary patterns and as sign of a gradual change in the documentation process, whose outcome will be the adoption of the *instrumentum* model also in Southern Italy.

In these documents, typical formulas of *memoratorium* are sometimes included in the text of the *charta* and the terms *cartula*, *breve* and *scriptum* are starting to be either used by the notaries, regardless of the documentary pattern really used to attest the legal transactions. As you can see in the power point: **SLIDE 7**

Iohannes clericus et notarius, when in 1135 he writes for *Guidelmus filius quondam Guidelmi de Fayccla* the sales agreement of a home, in spite of using the *charta* model and instead of remembering the *rogatio* requested by the parties to write the document (we remember here that the Southern Italian *charta* lacks the *completio*), as provide for the formulary («*Quam te N. notarium taliter scribere rogavimus*»), put the following declaration: «*Hanc car(tulam) scripsi ego Iohannes clericus et notarius quia interfui*», typical instead of the *memoratorium*.

and again:

Riccardus notarius writes a donation *pro anima* in 1180 for the church of S. Maria della Grotta, bringing it into the pattern of *charta*, which ends however with the writing order given by the judge in the typical form of *memoratorium*: «*Hanc cartam scripsi ego Riccardus notarius iussu dicti iudici*».

We have a lot of examples like these also in the first thirty years of the next century, but in two cases, there may be something more. **SLIDE 8** Thanks to the number of stored documents, it would almost seem that for *Iechonias notarius* and *Octavianus notarius* the writing declaration has become a «personal formula», independent from the characters of documentary typology in which it is contained. You can read in the slides that it is repeated in the same way or with minimal changes at the bottom of each document they write, as if it were a hallmark of the notary, together and alongside its *signum*.

Indeed:

Iechonias notarius in all his documents written between 1176 and 1187, independently by the typology of legal deed and of the documentary pattern used, always closes the text with the following statement: «*Hec utique preleguntur in*

scriptis redegi ego Iechonias quod notarius interfui», with minimal variants if the writing order was given by a judge.

and in the same way:

Octavianus notarius, of which we have about sixty documents written between 1186 and 1222, always states in his *chartae* or *scripta*: «*Hoc breve scripsi ego Octavianus notarius quia interfui*», or if the writing order was given by a judge: «*Hoc breve scripsi ego Octavianus notarius iussu predicti iudicis*»; and if there has been a *rogatio* by the parties: «*Quam te Octavianum notarium taliter in scriptis redegi*».

We have no time to go too much in detail on the formal characteristics of the Vitulano area *charta*, so I just want here to put the emphasis on certain elements.

SLIDE 9 Although rarely, the arenga is above all present, at the beginning or even inside of the text just before the *dispositio*, in some *donationes pro anima* or in the *scriptum pro futuri temporis memoria*, a particular typology of document, about which we will discuss shortly, focused on the need to maintain the memory of what happened and to counteract the inevitable oblivion caused by the pass of time. Such arengas are mostly based on commonplace topics, reminding the transience of life, the importance of a charitable behaviour to ensure the salvation of the soul and the remission of sins, especially through the donation of personal assets to churches and monasteries. The fact that for *Ottavianus notarius* are attested 12 arengas, different from each other, and some of them very elaborate, suggests the existence of a *liber formularius*, as Ranieri from Perugia after a few years would have compiled one, maybe a homemade *liber* to consult when it was necessary.

In case of sale and exchange, goods and rights were transferred «per cartulam», or «per scriptum», or even «per verbum et absolutionem», if their consent to perform the act was given by the *dominus* from which the good depended. However, the most common way to transfer the property, both for the Roman contracts and of Germanic transactions as well as the agreements on land rental and cultivation, was expressed by a *traditio* inflected in the formulas: «*titulo venditionis*», «*titulo permutationis*» or «*sub censo*». And this *traditio* was done «per fustem» (formula that we can find in the 12th century in 40 documents of 92 and in the 13th century in 17 of 69) or, since 1216, «per librum» o «per librum canonice» (and I'm sorry not to have the time here to explore this interesting

aspect) (BSNSP, 3AAxxx, 3AAxxx, 3AAxxx). The *traditio* is accompanied by all the typical accessory provisions and warranties of Germanic law, from the *inquisitio* for the acts made by women, compulsorily assisted by their *mundwald*, to the *launegild* in case of donation, from the traditional *defensio* followed by the *compositio*, to the *wadia* and the consequent appointment of the *mediator*.

During the twelfth century, the model of the *charta* seems to be not only simplified, as in other areas of the Beneventan Principality, but also crystallized on itself, in a repetitive dialectic between documents, writers and judges who sign them. In a circumscribed area such as the Valley of Vitulano, the stronger bond would seem to be not the one between the notaries and the underwriters, as noted in Salerno by Armando Petrucci or in other territories of the region, but rather between notaries and judges: so *Iohannes iudex et notarius* is always accompanied by *Iacobus iudex*, *Iechonias notarius* by *Willelmus iudex*, *Riccardus notarius* from *Robbertus iudex* and *Octavianus notarius* by *Willelmus iudex*.

From the second half of the twelfth century, however, it begins to appear in the documentary practices the *scriptum*, a hybrid between *charta* and *memoratorium*. **SLIDE 10** The first case in chronological order, around the half of the 11th century, concerns a writing through which the Beneventan notaries had begun to write a well-defined deed typology, useful to regulate specific relationships such as temporary land rental agreements and concessions of rights subject to an entrance or to an annual rent, as I have just written elsewhere. It was not possible to frame in the patterns of the *charta* and *memoratorium* that kind of agreements (Nos. 8, 16), cause the first was used for other typologies of negotiations with enacting or dispositive function and the second only connected to the probatory or confirmatory function. This is the first time that to the *scriptum*, previously used only as *vox media* to indicate a general writing, is instead assigned a well-defined meaning, associated to a clear type of legal agreement, even if the previous generic connotation still remained.

In addition, in fact we have to pay attention to term *scriptum*, because if in some cases it refers to these new documentary forms, in others it continues to be used in the most general meaning.

Instead, the document of december 1194 meets the model of *scriptum memorie*, of which the main features are now well defined (no. 61): although it preserves a similar structure to that of the *charta*, the text presents a preamble like: «*scriptum memorie institutum a me N. iudex, de hoc quod...*» and it is the judge to drive the documentation

process and to attend the negotiation. Moreover, it is the judge to describe in objective form the various steps of procedure and to order the writing of the document. And this *iussio* does not seem to be subject to any formal rules, appearing in subjective or objective form according to the documentary use of the individual notary. As pointed out by Alessandro Pratesi, in these cases “the document is no longer called to create the negotiation, but rather to give it full and irrefutable evidence”, but it is also aimed, as recently stated by Vincenzo Matera, “to play a clear role in the judicial documentation”, since in this case the judge is the real “promoter of the documentation”.

Since 1168 some documents begin to be defined by notaries *scripta recordationis* and *scripta pro futuri temporis memoriae*: following the formal structure of the *scriptum memorie*, they share with this pattern the *topos* of memory conveyed and safeguarded by writing, functional element to protect human actions by the inexorable oblivion of time.

Last, at the beginning of the 13th century appears the *scriptum securitatis*, the first in 1203 (BSNSP, 3AAxxx), structured according to the formal pattern of the other *scripta*, from which stands out only for the stated purpose of ensuring the negotiation or the sentence from future possible claims by the authors, the defendants or their heirs.

The term *instrumentum*, finally, appears for the first time in a *transumptum* of 1215, linked to the adjective *authenticum*, to reappear later, sometimes sustained with the adjective *puplicum*, together with the other traditional documentary patterns of *charta*, *breve* and *scripta*. All of them, at this point, no longer respect their original structure, and notaries often applied the traditional definitions of forms and documents to hybrid forms and formularies (BSNSP, 3AAxxx, 3AAxxx).

SLIDE 11 We are in fact in a moment of transition between the old and the new, which reflects the experimentation of new patterns, but also the effort to leave traditional practices and their security. The documentary practices widely express all this: we can observe more or less successful trials and attempts in overcoming the old, so that documentary models seem to have a no more precisely defined structure, depending on individual uses, personal researches and professional education of notaries.

In this context, the increase of the *scriptum* structure, declined in all its various forms, indicates a gradual evolution of the document, which inevitably leads to hesitations and uncertainties in the correspondence between documentary and negotiation typologies, in the forms to be used in the documentation process, as well as in the terms to choose for

their definition. **SLIDE 12** And if on the one hand is extremely interesting to observe how these wavering are resolved in the daily practice in different ways by different experts, on the other must be noted the appearance of a more and more clear statement of the role of notaries, in part architects but above all hermeneutists of the new documentary and negotial patterns.

In the Norman and in the first Swabian age, the notary seems to start walking along the same path – together with the judge, from whose presence and subscription depends the validity of the legal act and the authentication of the document - which in the central and northern Italy will lead to the acquisition of public *fides* and to the *instrumentum*. But this process in Southern Italy will be rather abruptly interrupted by the *Constitutiones* of Frederick II in 1231, through which local practice and documentation processes will be regulated, retraining from high the notarial institution and stating rigid standard to which judges and notaries would have follow from then on.

But this is a different story.

SLIDE 13 Thank you for your attention.