

The Formation of the *Libri feudorum* and Its Context

1 Before the *Libri feudorum*: Milan and Lombardy in the Eleventh Century

If studies of the LF's afterlife have increased relatively recently, what we know about the formation of the book derives from several reliable works—firstly thanks to German scholars such as Ernst A.T. Laspeyres, Karl Lehmann, Gerhard Dilcher, and Peter Weimar.¹ Conventionally, even if to some extent artificially considering the significant variations in the manuscript tradition, three versions or recensions of the LF are distinguished: a first one, called *antiqua*, included eight tracts written between c. 1100 and c. 1150; a second one, misleadingly called *ardizzoniana* after the jurist Iacobus de Ardizzone, formed in the second half of the century mainly through the addition of material from Milanese judicial practice; a third one, the *vulgata*, towards the mid-thirteenth century, based on a version established by the renowned jurist Accursius, in which legislation by Lothair III and Frederick I was included.

The slow crystallisation of the LF, therefore, can be put in a European perspective, as private, non-official collections of regional customs appeared in Catalonia (the oldest core of the *Usatges*, late eleventh century), England (the so-called *Glanvill*, c. 1188), Normandy (the earliest texts of the *Très ancien coutumier*), and Saxony (Eike von Repgow's *Sachsenspiegel*, c. 1220–1234).²

1 Ernst A.T. Laspeyres, *Über die Entstehung und älteste Bearbeitung der Libri feudorum* (Berlin: Ferdinand Dümmler, 1830); Karl Lehmann, *Das Langobardische Lehnrecht (Handschriften, Textentwicklung, ältester Text und Vulgattext nebst den capitula extraordinaria)* (Göttingen: Dieterich, 1896); P. Weimar, 'Handschriften'; Gerhard Dilcher, 'Das lombardische Lehnrecht der *Libri Feudorum* im europäischen Kontext. Entstehung–zentrale Probleme–Wirkungen', in *Ausbildung und Verbreitung des Lehnwesens im Reich und in Italien im 12. und 13. Jahrhundert*, ed. Karl-Heinz Spieß (Vorträge und Forschungen, 76; Osfildern: Thorbecke, 2013), 41–91.

2 G. Giordanengo, 'Consuetudo constituta a domino rege. Coutumes rédigées et législation féodale. France, XIIe–XIIIe s.', in *El dret comu i Catalunya*, v, ed. A. Iglesia Ferreirós (Barcelona: Fundació Noguera, 1996), 51–79. On the difficult dating of this text: *The Antiqua consuetudo Normannie, or 'part one' of the so-called Très Ancien Coutumier of Normandy*, ed. and trans. William Eves (St Helier, Jersey, Channel Islands: Jersey and Guernsey Law Review, 2022),

What differentiated the earliest tracts of the LF from the contemporary collections was on the one hand the fact that they focused exclusively on fiefs, and not on the functioning of comital, ducal, or royal powers—no reference is made to local forms of government, even though the superior authority of the Roman-German emperor on feudal matters is recognised. On the other hand, these texts stemmed out of an older tradition of legal study, apparently stronger than anywhere else at the time.³ Our point of departure to understand the birth of the LF is, therefore, the earlier context.

We are in eleventh-century Lombardy, the core of the Kingdom of Italy, subject to the Roman-German empire, and in its capital Pavia, once the seat of the royal palace—it was destroyed in 1024. This region, and Pavia in particular, knew the flourishing of the first known law school in the kingdom, the so-called school of the Lombardists, a milieu of law experts who in the first half of the eleventh century arranged a compilation known as *Liber legis Langobardorum* ('the book of the law of the Lombards'), then associated with Pavia and thus called *Liber Papiensis* ('the Pavian book'). The collection gathered together, in strictly chronological order, royal and imperial legislation concerning the kingdom enacted from 643 onwards—i.e., edicts of the Lombard kings, Carolingian capitularies, and later constitutions by Roman-German emperors.⁴

That these judges, in the second half of the century, used this collection not, or not just, as a reference book for court practice but also to train new generations of experts, is made clear from the commentaries on the *Liber Papiensis*, which we generally find in the form of *expositiones*—extensive glosses in the margins of the extant manuscripts.⁵ These glosses expound the judicial procedure of the time and the mostly oral functioning of trials; perhaps more importantly, they also denote an analytical attitude towards these pieces of legislation, which the authors of these glosses question and compare to resolve

xlvi–lvi. On the codification of law in Western Europe, see: Emanuele Conte, Magnus Ryan, 'Codification in the Western Middle Ages', in *Diverging paths? The Shapes of Power and Institutions in Medieval Christendom and Islam*, ed. John G.H. Hudson, Ana María Rodríguez Lopez (Leiden: Brill, 2014), 75–97.

3 Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850–1150* (New Haven/London: Yale University Press, 1988); G. Giordanengo, 'Consuetudo', 51–54.

4 *Liber legis Langobardorum Papiensis dictus*, ed. Alfred Boretius (MGH, *Legum*, t. iv; Hannover, 1868), 289–585; Mario Ascheri, *The Laws of Medieval Italy (1000–1500). Foundations for a European Legal System* (Leiden: Brill, 2013), 40.

5 This is the case of the glosses by Walcausus (1055–1079): C.M. Radding, *Origins*, 95; C.M. Radding, 'Petre te appellat Martinus. Eleventh-century judicial procedure as seen through the glosses of Walcausus', in *La giustizia nell'alto medioevo. Secoli IX–XI* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44; Spoleto: CISAM, 1997), 827–861.

their inconsistencies—an attitude that soon led to the systematisation of the *Liber Papiensis* in a new collection, called *Lombarda*, in which the same material was reorganised by subject to ease its consultation and use.⁶

This contextualisation is very important to us for at least two reasons. Firstly, it demonstrates that the earliest texts that would then constitute the LF did not come out of thin air but were produced in a fertile terrain for legal reasoning. Secondly, one of the imperial constitutions included in the *Lombarda*, enacted in 1037 by Emperor Conrad II, would be one of the foundational texts for the development of feudal law, the most obvious touchstone to which Lombard lawyers would compare local usages concerning fiefs and vassals.⁷ To understand this constitution, which would provide authoritative legal grounds for relevant matters concerning fiefs such as succession, fair judgment, and right of appeal, it is necessary to understand the context in which the emperor decided to enact it.

After the post-Carolingian fragmentation of royal power in the kingdom of Italy, political authority had slipped into the hands of regional and local leaders, among whom bishops played a leading role.⁸ By 1000 the archbishop of Milan had become the main public figure in his vast archdiocese, the ruler of a city that was by far the most important and powerful in Lombardy. The archepiscopal rule rested on the support of the local military elite, whose power relied on extensive estates and rights across the region, often held as archepiscopal grants, and who by the early twelfth century constituted the ruling class of the Milanese city commune.⁹ The highest stratum of this military aristocracy was composed of about twenty families, called *capitanei*, whose origins have been debated but who, in the mid-eleventh century, possessed vast holdings, often including castles and jurisdictions, which were then consolidating into

6 This is the case of the *Expositio ad librum Papiensem* ('Explanation to the Pavian book'), a broad commentary to the *liber Papiensis*: M. Ascheri, *The Laws*, 41. On the *Expositio*: Giovanni Diurni, *L'Expositio ad Librum Papiensem e la scienza giuridica preirneriana* (Biblioteca della Rivista di storia del diritto italiano, 23; Rome: Fondazione Sergio Mochi Onory, 1976).

7 Hagen Keller, 'Das *Edictum de beneficiis* Konrads II. und die Entwicklung des Lehnswesens in der ersten Hälfte des 11. Jahrhunderts', in *Il feudalesimo*, 227–257; Piero Brancoli Busdraghi, *La formazione storica del feudo lombardo come diritto reale* (2nd edn., Testi Studi Strumenti, 15; Spoleto: CISAM, 1999).

8 *Formazione e strutture dei ceti dominanti nel medioevo: marchesi, conti e visconti nel regno italico* (secc. XI–XII). *Atti del primo convegno di Pisa* (10–11 maggio 1983), ed. Amleto Spiccianni (Rome: ISIME, 1988); Vito Fumagalli, 'Il potere civile dei vescovi italiani al tempo di Ottone I', in *I poteri temporali dei vescovi in Italia e in Germania nel medioevo. Atti della Settimana di studio* (Trento, 13–18 settembre 1976), ed. Carlo Guido Mor (Bologna: il Mulino, 1979), 77–86; Luigi Provero, *L'Italia dei poteri locali. Secoli X–XII* (Rome: Carocci, 1998), 21–51.

9 Cinzio Violante, *La società milanese nell'età precomunale* (2nd edn., Rome/Bari: Laterza, 1974).

stable lordships.¹⁰ Their tie to the archbishop was sealed through the grant of a 'benefice' (*beneficium*, later called *feudum*: fief), which constituted only part of their wealth and generally consisted in rural districts called *plebes* and the exaction of tithes. Indeed, the *capitanei* of Milan were considered so powerful that chroniclers described them as defenders rather than clients of the archbishops—who often themselves came from *capitaneal* families.¹¹ Below the *capitanei*, the lesser aristocracy was composed of a heterogeneous group of knights called *valvasores*, a social stratum of free men elevated to knighthood more recently, who emerged from the wealthy peasantry. The *valvasores* also held benefices, sometimes directly from the archbishop, more often as grants or sub-grants from the *capitanei*; in their case, however, fiefs were not just markers of status but in most cases the principal means of sustenance or political prestige, so that loss of the fief could risk throwing a *valvasor* into poverty, endangering a social hierarchy that was then being established.¹²

If fiefs came to be the main social markers of the Lombard elite, they also entailed duties towards the grantor. One of these duties, perhaps the principal one, was to support the archbishop when the emperor summoned the lay and ecclesiastical aristocracies of Italy, usually before his customary expeditions to Rome or, in exceptional circumstances, for military campaigns beyond the Alps. This support could consist in the actual provision of men and the payment of a tax, the imperial *fodrum*.¹³

In 1034, the Milanese archbishop, Aribert of Intimiano had led the Milanese army in support of Emperor Conrad II in a successful military cam-

10 Cinzio Violante stressed both the rural roots of the archepiscopal military clientele and the formation of the *capitaneal* class only from the late tenth century, mostly through enfeoffments to this clientele and part of the urban wealthy classes: C. Violante, *La società milanese*, 178–189. Hagen Keller, instead, has insisted on the long-standing wealth, political prestige, and direct bond with royal powers of the *capitanei*: Hagen Keller, *Adelsherrschaft und städtische Gesellschaft in Oberitalien: 9. bis 12. Jahrhundert* (Tübingen: Max Niemeyer, 1979), 197–250.

11 Landulphi senioris Mediolanensis, *Historiae libri quatuor*, ed. Alessandro Cutolo (RIS, iv/ii), 51: the *capitanei* were the defenders of the church ('tutamen ecclesie'), by whose power the archbishop Landulph da Carcano (d. 998) held his office ('quorum virtute archiepiscopatum teneret').

12 C. Violante, *La società milanese*, 178–189; H. Keller, *Adelsherrschaft*, 194–196.

13 If the grant of a 'benefice' was supposed to secure the provision of men to the imperial army, it has been noted how this link was far from being certain at the time: Giovanni Tabacco, *Gli orientamenti feudali dell'impero in Italia*, in *Structures féodales et féodalisme dans l'Occident méditerranéen (xe–xiii^e siècles). Bilan et perspectives de recherches. Colloque international (Rome, 10–13 octobre 1978)*, ed. Konrad Eubel (Rome: École française de Rome, 1980), 219–240.

paign in Burgundy against Eudes of Champagne. Upon his return to Milan, he faced widespread discontent among the men who had accompanied him, whose rebellion spread soon to the whole kingdom. Chroniclers spoke indeed of seditions, armed uprisings, unprecedented confusion, and bloody battles, sometimes of a conspiracy of 'inferiores milites' against the 'iniqua dominatio' of 'superiores'—i.e., of *valvasores* against *capitanei*.¹⁴ Although *valvasores* had started the revolt, its development was soon made more complex by the number of interested actors involved: the emperor, the archbishop, *capitanei*, and non-aristocratic citizens (the *populus*), each of these parties being liable to back or oppose one another depending on the contingent turn of events.¹⁵

Conrad repeatedly failed to pacify the rebellion and tried in vain to take Milan by storm. During that siege, on 28 May 1037, he promulgated an edict which would become known as *edictum de beneficiis* or *constitutio de feudis*.¹⁶ The emperor acted apparently in great haste, as suggested by the unusual form of the document; he made general legal provisions concerning fair judgment, appeal, and heritability concerning the benefices held by both greater and lesser *valvasores*—i.e., respectively *capitanei* and *valvasores*.¹⁷ No knight was to lose his benefice without a proven wrong being acknowledged by his peers; greater knights were granted the right to appeal to the imperial court, whilst lesser knights could appeal to imperial envoys. Furthermore, benefices could be inherited by a deceased knight's son or by his brother, if the benefice had been their father's, as long as greater knights continued to observe the customary gift of horses and arms to their lords. Finally, the emperor renounced the payment of the imperial *fodrum* for any newly built castle but confirmed the levy of this tax from the castles that had customarily paid it to his predecessors.

As Hagen Keller suggested, these provisions indicate on the one hand Conrad's apprehension concerning the difficult organisation of the imperial army in Italy and on the other one some of the reasons underlying the rebellion. Then, the knights holding 'benefices' of imperial or church land aimed at securing them by preventing the arbitrary judgment of lords—through judgment by peers and the right to appeal against them or the lord—and by receiving imperial acknowledgement of the heritability of benefices. Furthermore, the

14 C. Violante, *La società*, 233; H. Keller, 'Das Edictum', 239. According to Arnulf of Milan, the *casus belli* was the confiscation of the benefice of a 'certain powerful man', ('cuiusdam potentis'): Arnulfus Mediolanensis, *Liber gestorum recentium*, ed. Irene Scaravelli (Bologna: Zanichelli, 1996), 90.

15 For different perspectives on this conflict, see: H. Keller, 'Das Edictum'; P. Brancoli Busdraghi, *La formazione*, 72–93.

16 See *infra*: Appendix 3.

17 H. Keller, 'Das Edictum', 230–231.

exemption from imperial taxation accorded to new castles seems to favour those knights—or lords—who were consolidating new lordships in the Italian territory.¹⁸

Many aspects of the edict remain unclear: the provision, although enacted at the siege of Milan, is meant to be universal and is not addressed just to the Milanese or Lombard knights, which makes it difficult to understand if it was solicited by *capitanei*, *valvasores*, or both.¹⁹ The most controversial point, however, is the extent to which the edict established new norms or confirmed a pre-existing custom. There is strong disagreement on this matter between historians, who tend to stress how it just corroborated practices that had already emerged in the late tenth century,²⁰ and legal historians, who instead tend to see in it the foundational act that caused the emergence of feudal law.²¹ One could argue that the main divergence concerns the notion of custom: an established usage for the former, an enforceable right for the latter. Be that as it may, the importance of the edict lay in the fact that with this act the emperor provided a solid basis for the development of a separate procedure for controversies over fiefs, which was detached from the ordinary jurisdiction and was then tied to the imperial court.²² It is no wonder that the edict soon became

18 H. Keller, 'Das Edictum', 245–249.

19 According to P. Brancoli Busdraghi, *La formazione*, 72–93, this edict was a political manoeuvre aimed at undermining the unity of the Milanese aristocracy by backing the claims of *valvasores* and lesser knights; a similar view is expounded by G. Dilcher, 'Das lombardische Lehnrecht', 52–62, who suggests that the edict would formally establish the inclusion of *valvasores* within the nobility. H. Keller, on the contrary, suggests that Conrad was principally addressing the greater knights by confirming their privileges, and that the inclusion of the lesser *valvasores* in the edict is just a collateral effect: see the discussion after P. Brancoli Busdraghi, 'Rapporti di vassallaggio e assegnazione in beneficio nel Regno italico anteriormente alla costituzione di Corrado II', in *Il feudalesimo*, 149–173, at 172–173.

20 H. Keller, *Adelsherrschaft*, 305; C. Violante, 'Fluidità del feudalesimo nel regno italico (secoli X e XI). Alternanze e compenetrazioni di forme giuridiche delle concessioni di terre ecclesiastiche ai laici', *Annali dell'Istituto storico italo-germanico in Trento*, 21 (1995), 11–39, at 19; François Menant, *Campagnes lombardes au Moyen Âge. L'économie et la société rurales dans la région de Bergame, de Crémone et de Brescia du Xe au XIIe siècles* (Rome: École Française de Rome, 1993), 597–600.

21 According to Brancoli Busdraghi 'nothing in the content of the decree induces to think that its dispositions (...) were merely a confirmation of previously valid custom': my translation from P. Brancoli Busdraghi, *La formazione*, 77–112n. The opinion is the same as in: K. Lehmann, *Das Langobardische*, 158; M. Ascheri, *Istituzioni medievali. Una introduzione* (Bologna: il Mulino, 1994), 195; Ennio Cortese, *Il diritto nella storia medievale*, 2 vols. (Rome: Il cigno Galileo Galilei, 1995), I, *L'alto Medioevo*, 284. Susan Reynolds seems to accept this view: S. Reynolds, *Fiefs and Vassals*, 44, 192–207 (especially at 199, where she stresses the 'uncertainties of customary law in a fragmented kingdom').

22 G. Dilcher, 'Das lombardische Lehnrecht', 52.

part of the Lombard law collections and was subsequently used and analysed by generations of lawyers.

2 The Early Tracts (c. 1100–1136)

Conrad's edict was included in the *Liber Papiensis*, even though no *expositio* is available in the form of marginal commentaries.²³ The edict also appears in the *Lombarda*, which was put together in the late eleventh century. It has been argued that the earliest treatment of feudal law was contained in a *summa* on the *Lombarda* written about 1100 or slightly later, but recent studies have convincingly questioned both the authorship and the date of the commentary, which is more likely to be a product of the mid-twelfth century, or even later.²⁴ Nonetheless, such texts prove that the edict was used and analysed in the same milieu where the early tracts of the LF were written, so that it seems reasonable to conclude that the Lombard feudal law was at the beginning linked to the exegesis of the *Lombarda* but soon developed independently from it.²⁵

The formation of the LF as a consistent collection began in the mid-twelfth century, with the uncertain and somehow incomplete stabilisation of a version of the book which historians refer to as *antiqua* after Ernst Laspeyres's work and Karl Lehmann's edition.²⁶ The *antiqua* is indeed transmitted in the manuscript tradition in versions that slightly differ from each other and that are not always

23 *Liber legis Langobardorum*, 583–584.

24 P. Weimar, 'Die legistische Literatur der Glossatorenzeit', in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. i, *Mittelalter* (1100–1500). *Die gelehrten Rechte und die Gesetzgebung*, ed. Helmut Coing (Munich: C.H. Beck Verlag, 1973), 129–260, at 209. The *summula* is published in August Anschütz, *Die Lombarda-Commentare des Aripbrand und Albertus. Ein Beitrag zur Geschichte des germanischen Rechts im zwölften Jahrhundert* (Heidelberg: Kessinger, 1855; repr. Frankfurt am Main, 1968), 194–197.

25 Magnus Ryan, 'Lombardist Glosses on Feudal Custom: Text, Gloss and *Usus Feudi*' in *Juristische Glossierungstechniken als Mittel rechtswissenschaftlicher Rationalisierungen. Erfahrungen aus dem europäischen Mittelalter—vor und neben den großen 'Glossae ordinariae'*, ed. Susanne Lepsius (Berlin: Erich Schmidt Verlag, 2022), 65–79.

26 E.A.T. Laspeyres, *Über die Entstehung*; K. Lehmann, *Das langobardische*; P. Weimar, 'Die Handschriften', 31–35. Having analysed all the manuscripts containing the *antiqua* and their differences, I agree with Gérard Giordanengo and Gigliola Di Renzo Villata's judgment about the artificiality of Lehmann's edition: G. Giordanengo, 'Les feudistes', 69; Gigliola Di Renzo Villata, 'La formazione dei *Libri feudorum*: tra pratica di giudici e scienza di dottori', in *Il feudalesimo*, 651–721, at 656–660. Nonetheless, the edition is still a fundamental point of reference for the study of the early tracts, and so is the subdivision in chapters it offers.

subdivided in titles as in the edition. It was a collection of eight tracts, six of which were written in the first decades of the twelfth century, or slightly earlier:

- A Ant. I–II [= LF 1.1–6]
- B Ant. III–V [= LF 1.7–12]
- C₁ Ant. IX [not included in the *vulgata*]
- C₂ VI.1–6 [= LF 1.13–17]
- D Ant. VI.7–14 [= LF 1.18–23]
- E Ant. VII [= LF 1.24–26]
- F Ant. VIII [= LF 2.1–22, without LF 2.6–7pr., inserted only in the thirteenth century]
- G Ant. X [= LF 2.23–24]

The earliest tracts (A–E) seem to have been produced in different areas of Lombardy: B (V.3 = LF 1.12) reports that the Milanese ('Mediolanenses') follow a different rule than the one stated by the author, who is therefore likely to be from another city. The author of C₁ is a Pavian judge, Hugo de Gambolado, active in Pavia between 1099 and 1112.²⁷ E reports the Milanese usage on oaths as current (VII.4 = LF 1.25) and highlights divergences between the usage of Piacenza, where the investiture of a fief belonging to someone else was not deemed valid without the holder's consent, and those of Milan and Cremona, which allowed such transactions (VII.7 = LF 1.27.1). In light of all this, there is no reason to contradict Lehmann's hypothesis that these tracts were produced in Pavia, or under the direct influence of the Pavian school.²⁸

Precise dating of these early tracts is more problematic. A mentions Pope Urban II (1088–1099), which can be taken as a reliable 'terminus non ante quem'. C₁, by Hugo de Gambolado (the *capitula Hugonis*, 'Hugo's chapters'), was probably written in the first or second decade of the twelfth century, when the Pavian judge is documented. However, some doubts could be raised concerning C₂: it has been assumed that it was a reworking of C₁, most likely by a different author, but there is no substantial reason why one should not presume the reverse, as the use of the term *beneficium* for *feudum*, and *senior* for *dominus* in several passages of C₂ suggests that Hugo in C₁ used a more up-to-date vocabulary, and thus that his tract was perhaps later than C₂.²⁹ As for D and E, their

²⁷ Luca Loschiavo, 'Ugo di Gambolado', DBGI, 1993.

²⁸ K. Lehmann, *Consuetudines feudorum: libri feudorum, jus feudale langobardorum* (Göttingen: Dieterich, 1892; repr. Aalen, 1971), 2–4; K. Lehmann, *Das Langobardische*, 76–78.

²⁹ On the shift from *beneficium* to *feudum*: Anna Laura Budriesi Trombetti, 'Prime ricerche sul vocabolario feudale italiano', *Atti dell'Accademia bolognese delle scienze dell'Istituto di Bologna. Classe di scienze morali. Rendiconti*, 62 (1973–1974), 277–401, at 378–389. That C₁ came after C₂ would also explain its position in the *antiqua* as title IX, well after C₂, which

silence on the legislation by Lothair III on the alienation of fiefs, enacted at the Diet of Roncaglia in 1136 and eventually inserted in the later versions of the LF, under title 2.52.1, seems a plausible reason for dating them before that year, since Lothair's constitutions forbade explicitly the sale of fiefs, whilst D ignores it when treating the reasons for which a fief ought to be lost.³⁰ In conclusion, these tracts were all probably written between c. 1100 and 1136.

3 Fiefs and Vassals at the Time of the *antiqua*

The texts of the *antiqua* tackled a variety of problems—how a fief could be acquired, maintained, and given away; who could succeed; on what grounds it could be lost; how controversies over fiefs were to be carried out and by whom, i.e. the lord, the vassal's peers, or other persons. Much importance was also bestowed upon the rituals of investiture and fealty, the nature and number of witnesses, proof and purgatory oaths, and the social boundaries within which feudal law applied—i.e., who was allowed to resort to this extra-ordinary procedure and on what terms.

To describe these features, as Gerhard Dilcher has outlined, the authors of these treatises chose expressions stressing the educational purpose of the

occupies chapters VI.1–6. The presence of C2 in a famous French Midi code copied and assembled in the second half of the twelfth century (ms. Troyes, *Bibliothèque Municipale*, 1317, fo. 71^{rb}–71^{va}) at the end of a treatise on succession based on excerpts from the *Authenticum* and the *Lombarda*, shows that the tract circulated independently about the time of its inclusion in the LF. On this famous manuscript and its content: Federico Patetta, *Il manoscritto 1317 della Biblioteca di Troyes* (Turin: Carlo Clausen, 1897).

30 Peter Classen sustained that this argument is not conclusive, as a treatise on emphyteutic contracts, written well after 1136 by the Milanese lawyer Anselminus de Orto, does not mention Lothair's constitution, which makes it plausible that the authors of the *antiqua* did the same: Peter Classen, *Studium und Gesellschaft im Mittelalter* (Schriften der Monumenta Germaniae Historica, 29; Stuttgart: Anton Hiersemann, 1982), 64–65. Of the same opinion is S. Reynolds, *Fiefs and Vassals*, 486. However, Anselminus's treatise deals with emphyteusis, *precaria*, and other types of land conveyance described as *investitura*—by which Anselminus does not mean 'feudal grant': Anselminus de Orto, *Super contractibus emphyteosis et precarii et libelli atque investiturae*, ed. Rudolf Jacobi (Weimar: Typis Boehlavianis, 1854). For other types of non-feudal *investitura* in Milan and Lombardy see at least Antonio Padoa Schioppa, *Aspetti della giustizia milanese dal X al XII secolo*, in *Atti dell'11° Congresso internazionale di studi sull'alto medioevo* (Milano, 26–30 ottobre 1987), 2 vols. (Spoleto: CISAM, 1989), I, 459–549, at 486–498. The silence on Lothair's decrees, which regulated fiefs alone—more specifically, those fiefs which entailed the provision of military aid to the imperial army—in a tract about private contracts would seem more than reasonable.

texts ('let us see', 'it must be noted'), often proposing hypothetical situations ('If someone ...'), with the speaker sometimes representing himself as a party in a court case. Therefore, these tracts aimed to elucidate their subjects in a clear and accessible manner for students.³¹ The basis of this didactical material was not just the old 1037 edict, but the practice developed in the different *curie*, or signorial courts, where fiefs were granted to cement a lord's clientele: an important aspect of the most politically relevant *curie* was that they had formed mainly around bishops and great prelates residing in the main cities of Lombardy. Although fief-giving followed some shared basic rules, each *curia* had to some extent developed its own distinctive tracts, local usages part of which is reflected in the *antiqua*.³²

Another relevant element of these tracts is their lexical evolution, a phenomenon that is noticeable also in archival sources: the word *feudum* was used ever more often in place of *beneficium*, which retained a more general meaning, and the word *vasallus* came to indicate any fief-holder—a broader term than *miles* ('knight'), which in the LF indicates a noble fief-holder owing military service.³³ Beyond these lexical shifts towards greater definition, other changes were in progress, both legal and social, as Piero Brancoli Busdraghi has outlined concerning the notion of 'fief'. In his view, until the eleventh century, *beneficia* (or *feuda*) would be nothing more than wages or gifts granted by powerful men to reward past services or obtain new ones; these 'benefices' were very often pecuniary or in-kind revenues from land already held by unfree peasants or free tenants, who would consequently pay to the benefice-holder part of the due rents. Therefore, the link of fiefs to the land would at that point be mostly indirect. The shift Brancoli Busdraghi portrayed was towards a new conception of fiefs in terms of property rights (*ius in re*), which was possible only when these 'gifts' had become mainly land grants—a tendency that he found mostly for fiefs granted to knights for military service.³⁴

Although Brancoli Busdraghi's work is the most comprehensive account of such developments and has been generally welcomed by scholars, his views have been criticised by Susan Reynolds and Giovanni Tabacco. Reynolds stressed that until c. 1100 grants of fiefs did not convey property rights and that such a view relied 'on the use of ... anachronistic legal concepts and ignored evidence that does not fit'; only in the twelfth century, with the emergence of

31 Dilcher, 'Das lombardische Lehnrecht', 50.

32 Dilcher, 'Das lombardische Lehnrecht', 47–50.

33 A.L. Budriesi Trombetti, 'Prime ricerche'.

34 P. Brancoli Busdraghi, *La formazione*.

professional lawyers, would more precise legal categories apply to a previously inconsistent property law framework.³⁵ Giovanni Tabacco, while sharing several points of Brancoli Busdraghi's reconstruction, contended that the processes described therein were not just legal, as they were signs of social change and had paramount consequences on the sphere of politics.³⁶

Such intertwining of legal and social phenomena brings us back to the tight relationship between the LF and twelfth-century Milanese practice. Not only are their contacts confirmed by the high number of passages of the LF that survived in Milanese custom, as appears from the *Liber consuetudinum Mediolani*, the 'book of customs of Milan' codified in 1216.³⁷ This relationship appears even more clearly from Lombard archival evidence, which shows how the LF provide precious information on both social practice and political developments in Milan and Lombardy.³⁸ There, fiefs could range from entire rural districts, castles, and tithes to land revenues or even small farms; service requested in the grant of a fief could involve military support, political cooperation and loyalty, castle-guard or armed escort, manual labour or even the humblest farm work. Such variety reflects the idea that both the nature of a fief and the personal tie sealed with its grant depended on the relative status of the parties—it could be an act of benevolence or authority of a lord towards a subject, as much as an agreement between two persons of equal rank.³⁹ Mutual expectations were therefore very important and could often change the shape of contextual relations that were sustained by feudal grants; this aspect could well explain why the LF remained vague on the matter of service or the substance of fiefs, aiming rather at providing a flexible framework with which different social

35 S. Reynolds, *Fiefs and Vassals*, 194–198.

36 G. Tabacco, 'Fiefs et seigneurie dans l'Italie communale. L'évolution d'un thème historiographique', *Le Moyen Age*, 75 (1969), 5–37, 203–238. Tabacco also suggested that these processes were not just Italian and urged further comparison with France and Germany, where he believed one could identify similar patterns.

37 *Liber consuetudinum Mediolani anni 1216*, ed. Enrico Besta, Gian Luigi Barni (Milan: Giuffrè, 1949), 119–132 (ch. 24–27); Alberto Spataro, 'Ein unbekannter Brief Innocenz' III. betreffend den deutschen Thronstreit und die Entstehung des *Liber consuetudinum Mediolani* von 1216', *Mitteilungen des Instituts für Österreichische Geschichtsforschung*, 127 (2019), 407–418, at 413–415. There are at least forty-five textual convergences with the LF: H. Keller, 'Die Kodifizierung des Mailänder Gewohnheitsrechts in ihrem gesellschaftlich-institutionellen Kontext', in *Atti dell'11° Congresso internazionale di studi sull'alto medioevo (Milano, 26–30 ottobre 1987)*, 2 vols. (Spoleto: CISAM, 1989), i, 145–171.

38 G. Di Renzo Villata, 'La formazione'; Attilio Stella, 'Bringing the feudal law back home: social practice and the law of fiefs in Italy and Provence (1100–1250)', *Journal of Medieval History*, 46 (2020), 396–418.

39 A. Stella, 'Bringing', 400–407.

realities could be framed.⁴⁰ Of course, one should not expect the legal obligations expressed in the LF to reflect social practice: on the contrary, the actors involved in the exchange of fiefs seemed to be constantly on the verge of evading those stipulations when they sensed personal advantage—an attitude that seems to be widespread not just in Lombardy.⁴¹ Further to that, as Tabacco pointed out, one should not overestimate the public nature of fiefs and the predominance of military service, as Conrad's edict concerned only imperial or ecclesiastical land traditionally bound to such provision, and did not consider other kinds of fiefs.⁴²

In conclusion, whatever the nature of fiefs, their strategical use, and the relative status of lords and vassals, by the time the early tracts of the LF were written the bulk of these customary grants had become, or were about to become, enforceable rights for most holders. In light of these phenomena, Brancoli Busdraghi's idea that the privileges held by the most powerful holders would be sought after by the ones who were excluded from them looks correct.⁴³ Gerhard Dilcher, following Hagen Keller, sees in this process the establishment of a strictly 'feudal hierarchy', formed in the first place by *capitanei* and then by *valvasores*, who acquired a knightly status in the eleventh century; in the twelfth century, he suggests, a progressive closure of this military aristocracy, characterised by fief-holding, took place so as to limit attempts by lesser (or less ancient) fief-holders at accessing the privileges concerning security of possession and fair judgment.⁴⁴ Obertus de Orto, the author of the two last tracts of the *antiqua*, implied that to prove their noble status fief-holders had to demonstrate the antiquity of their fiefs (LF 2.10). Although one may argue against this view that the LF provided a solid legal basis for the claims of lesser holders, it is undoubted that the focus of the *antiqua* is pointed principally towards the Lombard *capitanei* and *valvasores*. It is true that in the Kingdom of Italy social and political practice was not then shaped solely or even primarily by feudal notions, which were only one among various alternatives to conceptual-

40 M. Ryan, 'Ius commune feudorum in the Thirteenth Century', in *Colendo iustitiam et iura condendo: Federico II legislatore del regno di Sicilia nell'Europa del duecento*, ed. Andrea Romano (Rome: De Luca Editori d'Arte, 1997), 51–65, at 51–56.

41 Christoph Dartmann, 'Lehnsbeziehungen im kommunalen Italien des 11. und 12. Jahrhunderts', in *Ausbildung und Verbreitung*, 105–132.

42 G. Tabacco, 'Fiefs et seigneurie'.

43 P. Brancoli Busdraghi, *La formazione*, 93–96.

44 G. Dilcher, 'Das lombardische Lehnrecht', 53–62; at 55–56 the author expresses the difficulties in pinpointing with clarity these phenomena in twelfth-century Lombardy and Milan.

ize social facts, and not necessarily the most important one.⁴⁵ It is nonetheless beyond doubt that in Milan the military aristocracy whose status was sanctioned by fief-holding not only owned or held sizeable estates and jurisdictions within and outside the boundaries of the city's *contado* but constituted the core of the archiepiscopal *curia* and soon ended up forming the backbone of the early civic government. Fief-holding might not have been the only way to seal political alliance or patronage even in this specific context but was certainly one of the most politically relevant ones.

4 The Romanisation of the Fief: Obertus de Orto and the *antiqua*

The civic government that in the first decades of the twelfth century stemmed from the archiepiscopal *curia* did not include just knights, but also legal experts (*iudices* or *causidici*) some of whom came from knightly families, some others from the class of free citizens (the *populus*). Indeed, the first consular governments which were renewed every year included members of the three principal social classes—*capitanei*, *valvasores*, *cives*.⁴⁶ The framing of fiefs as *iura in re*, enforceable rights, which Brancoli Busdraghi connected to an alleged decline of the personal elements of feudal relationships, especially service, all the more often subject to contractual agreements, took place in parallel with this process of institutionalisation.

The legal development of fiefs, therefore, cannot be considered separately from its political and institutional context, in particular from the need to frame any right within the forms of legal actions that the Italian civic courts were then deriving from Roman law. If this problem was not seemingly expressed by the authors of the first tracts of the LF, it had become compelling towards the mid-twelfth century.⁴⁷ A central figure to analyse such developments is Obertus de Orto, a judge, politician and imperial representative (*missus*) documented in Milan in 1140–1174 and active well beyond Lombardy.⁴⁸ The fact that Obertus

45 C. Dartmann, 'Lehnsbeziehungen'.

46 H. Keller, *Adelsherrschaft*, 386–401.

47 A. Padoa Schioppa, 'Il ruolo della cultura giuridica in alcuni atti giudiziari italiani dei secoli XI e XII', *Nuova Rivista storica*, 64 (1980), 265–289; A. Padoa Schioppa, 'Aspetti', 503–549; A. Stella, 'Bringing'.

48 For a biographic and bibliographic profile, see: Giancarlo Andenna, 'Dall'Orto, Oberto', *DBI*, 32 (1986), 145–150; Luca Loschiavo, 'Oberto dall'Orto', *DBGI*, 1448–1449. For Obertus's activity as a jurist and legal practitioner: G. Di Renzo Villata, 'La formazione', 662–683; Giovanni Rossi, 'Oberto Dall'Orto "multarum legum doctus auctoritate" e le origini della feudistica', in *Il secolo XIII: la "renovatio" dell'Europa cristiana*, ed. Giles Constable, Gior-

wrote the last two tracts of the *antiqua* (F–G) induced later scholars, starting from the thirteenth century, to think that he compiled that collection, which was misleadingly called *obertina* even when it became clear that Obertus had nothing to do with it.⁴⁹

These two tracts were both seemingly composed shortly after 1150 and are written in the form of letters addressed to his son Anselminus, who is portrayed as a law student, presumably at Bologna, where feudal law was not taught. The main purpose of Obertus was to define the Milanese custom of fiefs by updating the earlier texts, whose heterogeneous and disorganised material needed to be systematised and conceptualised. Obertus's texts, indeed, denote greater precision in definitions than their predecessors and a more methodical approach—each subject is developed consistently and more thoroughly. Local practice and Lombard law, in particular Conrad's 1037 edict, were the main sources for tracts A–E. With Obertus this approach began to change. At the outset of the first letter, he revealed a very sceptical attitude towards Roman law and its scant usefulness in disputes over fiefs.⁵⁰ Indeed, Obertus suggested that these controversies were to be resolved through customs that differed from region to region and from court to court, leaving to Lombard and Roman law, i.e. the 'written laws', a subsidiary function (LF 2.1). Despite his scepticism, Obertus's knowledge and utilisation of notions derived from Roman law to frame some key features of fief-holding show how a Romanisation of the fief was then taking place.⁵¹ This change was to some extent necessary since the judicial system of Milan—as in most Italian city communes—relied ever more extensively on categories derived from the *Corpus iuris civilis*, especially the theory of legal actions expounded in the Institutes (Inst. 4.6). As Dilcher showed, the outcome of this encounter of feudal custom with Roman law reveals a general sense of unease and incompatibility: Obertus fluctuated indeed quite uncertainly between *possessio*, *ususfructus*, and *dominium* to describe the legal position of a fief-holder, and only later doctrine, starting from Pillius de Medicina, developed the notion of *dominium utile*, to grant holders a factual and enforceable real right over fiefs without hindering the legal position of lords, described as *dominium directum*, within a conceptualisation known as *duplex dominium* ('double ownership').⁵²

gio Cracco, Hagen Keller, Diego Quaglioni (Annali dell'Istituto storico italo-germanico in Trento. Quaderni, 62; Bologna: il Mulino, 2003), 329–365.

49 P. Weimar, 'Die Handschriften', 32–35.

50 G. Dilcher, 'Das lombardische Lehnrecht', 84.

51 P. Brancoli Busdraghi, 'Le origini del concetto di feudo come istituto giuridico', *Melanges de l'École française de Rome. Moyen-Age*, 114 (2002), 955–968.

52 G. Dilcher, 'Das lombardische Lehnrecht', 84–85; Emanuele Conte, 'Modena 1182, The Ori-

At one point, Obertus made a ‘clumsy attempt to qualify the fief as a usufruct (in the Roman law sense) perpetual and transmissible to descendants’;⁵³ but in another chapter he set out in more precise terms an effort to frame the right of a fief-holder within the new judicial procedures, in a passage of paramount importance for later conceptualisations of *duplex dominium*: a vassal who has been rightly invested with a benefice may ‘quasi-vindicate’ it from any possessor as if he were its owner; if he is sued by another person on account of that same thing, he may mount a defence against him (LF 2.8.1). By ‘quasi-vindicate’ (*quasi vindicare*) Obertus referred to a legal action called *rei vindicatio* which allowed full owners to recover their property against anyone; therefore, according to fief-holders this action, he implied that a fief could be defended in court as if it were full property, equating thus a holder’s right with that of a full owner. In some way, Obertus was implicitly anticipating a fundamental feature of the *duplex dominium* defined by Pillius in the 1180s.

If this problematic legal framing of fiefs aimed at embedding feudal custom within property law categories and their forms of legal actions adopted in the civic court, it might be surprising that no mentions of the city commune or its institutions are to be found in the LF. Furthermore, whilst at the outset of the LF the archbishop is named first among those who can grant fiefs, in Obertus’s writings his figure disappears, even though the definition of *capitanei* is still implicitly anchored to archepiscopal fiefs—they are described as holders of *plebes*, i.e. ecclesiastical districts comprising several parish churches, which represented the jurisdictional cells of local power under the archepiscopal rule. This silence may be explained—following Dilcher—on the one hand by the fact that the LF depicted extra-ordinary procedures within the framework of the empire, and by doing so was mostly concerned with *capitanei* and *valvasores* and their relation to the higher ranks of the realm rather than to the civic government. On the other hand, the feudal law, in so far as it was the law

gins of a New Paradigm of Ownership. The Interface Between Historical Contingency and the Scholarly Invention of Legal Categories’, *GLOSSAE. European Journal of Legal History*, 15 (2018), 4–18. Robert Feenstra published a series of fundamental contributions on this subject: Robert Feenstra, ‘Les origines du *dominium utile* chez les glossateurs (avec une appendice concernant l’opinion des *ultramontani*)’, in R. Feenstra, *Fata iuris romani. Etudes d’histoire du droit* (Leiden: Presse Universitaire de Leyde, 1974; 1st edn. 1971), 215–259; R. Feenstra, ‘*Dominium* and *ius in re aliena*. The Origins of a Civil Law Distinction’, in R. Feenstra, *Legal Scholarship and Doctrines of Private Law, 13th–18th Centuries* (London: Ashgate, 1996; 1st edn. 1989), 111–122; R. Feenstra, ‘*Dominium utile est chimaera*? Nouvelles réflexions sur le concept de propriété dans le droit savant (à propos d’un ouvrage récent)’, *Tijdschrift voor Rechtsgeschiedenis*, 66 (1998), 381–397.

53 My translation from P. Brancoli Busdraghi, ‘Le origini’, 966.

protecting a military aristocracy that was intimately involved with the civic government, was not perceived as an issue and, on the contrary, was an integral part of the civic legal system.⁵⁴ This point looks indeed correct if one considers the entrenchment of feudal law, mostly derived from the LF, and the Milanese customs recorded in 1216.⁵⁵

5 The Intermediate Recension Known as *ardizzoniana*

The early tracts constituting the *antiqua* underwent several stages of textual augmentation and sedimentation in the second half of the twelfth century. This stage of codification, traditionally called *ardizzoniana*, offers an even more complex picture. For a start, this conventional name derives from the wrong belief that Iacobus de Ardizzone had based his *Summa feudorum* on this recension in the 1230s, but it is today known that he was using a different version of the LF, which he had reshaped, and that the recension *ardizzoniana* was available decades before Ardizzone was born.⁵⁶

This heterogeneous stage of codification is characterised by a series of extensions which in the *vulgata* would amount to LF 2.25–51, with the *capitula Hugonis* (C1) keeping their place between LF 2.22 and 2.23, and with 2.6 and 2.7pr. still missing. Although this recension seemingly stabilised in the last decades of the twelfth century, the seventeen manuscripts bearing it offer editions that combine features of both the *antiqua* and the *vulgata*, which can be viewed as either late versions of the former or transitional versions towards the latter. All these manuscripts also bear the so-called *extravagantes*, chapters that were copied after the text proper, without a specific order—the term itself means ‘wandering outside’, referring to their erratic occurrence. It is worth noting that these *extravagantes*, a distinctive mark of the intermediate versions, included already all the material that was eventually integrated into the *vulgata*. I now try briefly to sketch the evolution of this recension following, for the sake of simplicity, the subdivision in titles and chapters used in Lehmann’s edition of the *vulgata*.

54 G. Dilcher, ‘Das lombardische Lehnrecht’, 80–82.

55 H. Keller, ‘Die Kodifizierung’.

56 P. Weimar, ‘Die Handschriften’, 35–46; Emil Seckel, ‘Quellenfunde zum lombardischen Lehenrecht, insbesondere zu den Extravaganten-Sammlungen’, in *Festgabe der Berliner juristischen Fakultät für Otto Gierke*, 3 vols. (Breslau: M. & H. Marcus, 1910), i, 47–168; A. Stella, ‘The *Liber Ardizonis*. Reshaping the *Libri Feudorum* in the Thirteenth Century’, *Studi Medievali*, 58 (2017), 175–227, at 181–192.

The added material, excluding 2.27 (Frederick I's constitution *De pace tenenda*, 1152), points straight at Milanese practice: much of it is reported in the form of *consilia* ('legal briefs') or opinions by Obertus and other Milanese lawmen, such as Gerardus Cagapistus and Stephanardus, or other unnamed *sapientes* (lit. 'wise men', i.e. the consuls or high officers of the civic government).⁵⁷ The most evident feature of this material (LF 2.25–26, 2.28–51) is indeed its practice-oriented approach: it addresses an audience of practitioners, providing opinions or examples through a very dry and direct language, as opposed to the much more elaborate style of Obertus. In his reconstruction, Laspeyres thought that LF 2.25–26 were the first texts to be added to the *antiqua* mainly because they come before 2.27 (which Laspeyres believed to date to 1155),⁵⁸ but there is no other substantial evidence for this. He also thought that LF 2.28–49 were a consistent set of titles produced by the same author: expressions such as 'quod supra diximus' ('what we have said above') seem to prove him right—for instance, 2.45 contains a cross-reference to 2.28.3; 2.46 refers to 2.34.1.⁵⁹ Finally, the last three titles (2.49–51) look like notes or *quaestiones*, but there is no reason to believe that they came from the same hand or that they were added at the same time as the previous titles.

If the addition of these titles reinforced the localised nature of the LF, the *extravagantes* on the contrary opened the text to a much broader context. Most of them were imperial constitutions: some would find their way to the *vulgata* (LF 2.52 I–III, 2.53, 2.54, 2.55, 2.56), whilst some would not as, for instance, Conrad's 1037 edict, the peace of Constance (1183), the constitutions enacted by Frederick II at his crowning in 1220. Two of these *extravagantes* titles regarded fealty: the first is the *epistola Philiberti* (LF 2.6), a letter that Bishop Fulbert of Chartres addressed to Duke William V of Aquitaine early in the eleventh century, and later included in Gratian's *Decretum*, which would become a standard model for oaths of fealty; the second is a customary oath known as 'the new form of the oath of fealty' (LF 2.7pr.).⁶⁰ Finally, there were some learned commentaries, possibly glosses to the text proper, some of which were incorporated

57 G. Di Renzo Villata, 'La formazione', 683–693. As several opinions by Gerardus Cagapistus are reported (LF 2.25, 28, 30, 32, 34, 36, and 51), he was eventually thought to be the original compiler of the LF: Gigliola Soldi Rondinini, 'Cagapesto, Gerardo', DBI, 16 (1973), 279–282.

58 *Constitutiones et acta publica imperatorum et regum*, ed. Ludewicus Wieland, t. I (MGH, Legum, s. iv; Hannover, 1893), 194–198 (n. 140); *Friderici I. Diplomata*, ed. Heinrich Appelt (MGH, Diplomata regum et imperatorum Germaniae, x; Hannover, 1975), I (1152–1158), 39–44 (n. 25): 1152 July/August, Ulm.

59 E.A.T. Laspeyres, *Über die Entstehung*, 203–217.

60 G. Giordanengo, 'Epistola Philiberti. Notes sur l'influence du droit féodal savant dans la pratique du Dauphiné medieval', *Mélanges d'archéologie et d'histoire*, 82 (1970), 809–853.

in the *vulgata* (LF 2.57), whilst others were excluded, becoming part of a separate collection called *capitula extraordinaria* ('supplementary chapters').

Peter Weimar has unveiled all the recurring patterns in the occurrence of *extravagantes* in the surviving manuscripts of the LF, which in some cases were copied in consistent sets in the same order as they appear in the *vulgata*. If in some cases these affinities may reveal further steps towards the new recension, in many others they can be more likely seen as signs of the influence of the *vulgata* on manuscripts bearing older versions of the LF—several manuscripts of the intermediate recension carry indeed later glosses.⁶¹ This is not surprising as when the *vulgata* was established at Bologna after a version approved by Accursius (c. 1250), its success was not immediate and alternative reshaped versions (*reconcinnationes*, 'recompilations'), most of which had been put together before the establishment of the *vulgata*, continued to circulate.⁶²

The fact that the owners of these manuscripts, many of which date to the thirteenth century, thought it useful to copy additional material at the end of the text proper, and that some jurists and professors thought it convenient to reshape the texts sedimented in that book, which was not organised by subject, stand as proof of its increasing success. Even more importantly, this success was no longer limited to Lombardy: already in c. 1180 a Bolognese professor, Pillius de Medicina, had written a short treatise on the book which he used for teaching at a new law school founded in Modena. In the following years, he produced the first known apparatus of glosses to the LF, bringing that compilation to the attention of other learned jurists.⁶³ This was a momentous passage in the history of the book. For the first time, the interpretive techniques that the Bolognese dogma had reserved for the ancient, authoritative Justinianic Corpus were applied to a present-day customary law collection, which was not yet

61 P. Weimar, 'Die Handschriften', 36–42, and the synoptic table at 98.

62 E. Seckel, 'Quellenfunde'; A. Stella, 'The *Liber Ardizonis*'; A. Stella, 'The *Summa Feudorum* of MS Parm. 1227: a Work by Iacobus Aurelianus (1250ca.)?', *Reti Medievali Rivista*, 20/2 (2019), 271–327.

63 The *summa* is available in a recast version that, according to E. Seckel, 'Über neuere Editionen juristischer Schriften aus dem Mittelalter', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Röm. Abt.*, 21 (1900), 212–338, at 255–271, was written by Iacobus Columbi, but that according to P. Weimar, 'Die Handschriften', was a reworking by Accursius. In the most recent edition, the reworked *summa* was mistakenly attributed to Hugolinus Presbiteri: Hugolinus, *Summa super usibus feudorum*, ed. Giovanni Battista Palmieri (Bibliotheca iuridica medii aevi, ii; Bologna, 1892), 181–194. Pillius's apparatus was edited based on a Roman manuscript in: Antonio Rota, *L'apparato di Pillio alle Consuetudines feudorum e il ms. 1004 dell'Arch. di Stato di Roma* (Bologna: Cooperativa tipografica Maregiani, 1938).

stabilised and, more importantly, had not been enacted by imperial authority but put together by private lawyers. It is no wonder that this bold passage was not carried out in Bologna, but in a new *studium*, by a jurist who had not spared the Bolognese professors harsh critiques.⁶⁴

6 The Accursian Recension and the *vulgata*

The path towards the *vulgata*, therefore, was not a linear one, and Pillius's apparatus was perhaps the most important step, which bestowed authority upon one specific version of the LF, presumably making it more practical for later interpreters to rely on it. The *vulgata*, indeed, as reflected in the principal modern editions, including Lehmann's, would eventually result from an extension of that version based on systematisation of the extravagant material: LF 2.6 and 2.7pr. on the oath of fealty, imperial constitutions by Lothair III and Frederick I (2.52–56), and the so-called *notae feudorum*, short commentaries on the LF (2.57). The *capitula Hugonis* (C1 in the *antiqua*) were omitted—probably because the compilers saw them as a repetition of C2, which instead kept its original place—and the subdivision into two books became a stable feature.

This transition towards a standardised version was mainly due to the interest showed by the great Accursius, the most influential law professor at Bologna.⁶⁵ In a stage which Peter Weimar calls *proto-vulgata*, Accursius glossed all the material that would find its way to the *vulgata*, even though it was seemingly still outside the text proper, perhaps at the end of it.⁶⁶ The *proto-vulgata*, therefore, was not yet a standardised text. Weimar then identified a second stage, which he recognised as the 'Accursian recension', which included the *capitula Hugonis*—missing in the *proto-vulgata*—and the constitution issued by Frederick II upon his coronation, in 1220, with a solemn introduction and a final confirmation by Pope Honorius III.⁶⁷ Eventually, the *vulgata* recension developed independently of the Accursian recension through the definitive

64 E. Conte, 'Modena'; E. Cortese, *Il diritto*, ii, *Il basso Medioevo*, 145–174.

65 Giovanna Morelli, 'Accursio (Accorso)', *DBGI*, 6–9.

66 P. Weimar, 'Die Handschriften', 46–48. The author suggests that in ms. Vaticano, *BAV*, Vat. lat. 3980, fo. 38^{vb}–39^{rb}, the Accursian glosses to LF 2.6–7pr. are copied between his glosses to 2.56 and 2.57. This would prove that Accursius had originally commented on a text that had this material in a different order than the *vulgata*. A further step of the *proto-vulgata* would be reflected in ms. Vienna, *Österreichische Nationalbibliothek*, Cvpl. 2094, as outlined in E. Seckel, 'Quellenfunde', 71, as well as in mss. Venezia, *Biblioteca Nazionale Marciana*, Lat. V. 119 and Oxford, *New College*, 174.

67 P. Weimar, 'Die Handschriften', 49–53.

exclusion of the *capitula Hugonis*, whereas Frederick II's coronation constitution—which does not appear in the principal modern editions of the LF—is reported in a shorter version which lacks the solemn *intitulatio* and the closing confirmation by the pope.⁶⁸ This recension, implemented with the apparatus of glosses systematised by Accursius, started being copied in the new editions of the *Corpus iuris civilis* as the tenth *collatio* ('collection') of the *Authenticum*—the high medieval name given to Justinian's Novels until then subdivided into nine books.

One cannot stress enough how fundamental the establishment of an apparatus of glosses was for the crystallisation of the *vulgata*.⁶⁹ Accursius was at the time carrying out the monumental operation of normalising the apparatus of the entire *Corpus iuris civilis*: he selected, implemented, and systematised marginal commentaries that had been produced since the early twelfth century and had since been used in law schools for the exegesis of the Justinianic texts, thus to adapt this authoritative, yet ancient source to the concrete needs of the time. By the early thirteenth century, the study of these glosses had superseded the direct analysis of the texts themselves, but the increasing stratification of commentaries, often anonymous or signed with just an initial, could impede the proper interpretation of the text. The systematisation carried out by Accursius over years of patient work aimed to put a remedy to the inconsistencies due to this alluvial stratification and resulted in the selection and reordering of more than 96,000 glosses in a new apparatus, which would soon be known as *glossa ordinaria*, the official commentary and teaching tool adopted in Bologna, the apotheosis of the glossatorial method.⁷⁰

The systematisation of the glosses to the LF was the last effort by Accursius in this direction, the prelude to a *glossa ordinaria feudorum* and the subsequent inclusion of the LF in the *Authenticum*. In this way, a group of texts originally rooted in eleventh- and twelfth-century Lombard custom had in little more than one century become an authoritative source of the *ius commune*. This trajectory was revolutionary: it was against all dogmas of the Bologna school to

68 P. Weimar, 'Die Handschriften', 53–67. The constitution begins with the words 'Ad decus' and ends with the words 'nichilominus puniendus'.

69 Ugo Gualazzini, 'I "Libri feudorum" e il contributo di Accursio alla loro sistemazione e alla loro Glossa', in *Atti del Convegno internazionale di studi accursiani (Bologna, 21–26 ottobre 1963)*, ed. Guido Rossi, 3 vols. (Milan: Giuffrè, 1968), ii, 577–596.

70 Guido Astuti, 'La glossa accursiana', in *Atti del Convegno internazionale di studi accursiani (Bologna, 21–26 ottobre 1963)*, 3 vols. (Milan: Giuffrè, 1968), ii, 289–379; Giovanni Diurni, 'La glossa accursiana: stato della questione', *Rivista di storia del diritto italiano*, 64 (1991), 341–367.

quote or mention texts that did not belong to the ancient Justinianic corpus, whose prestige and validity rested mainly on imperial authority.

A further element must be stressed: crossing the boundaries of local custom went hand in hand with the inclusion of imperial legislation which claimed universal legal validity. This inclusion is important for at least two reasons: because it bestowed upon the entire collection the aura of imperial law and because it helped bridge the divide between local custom and the doctrines taught in the law schools.

What is more remarkable, this legislation did not necessarily treat feudal matters. The *Landfrieden* ('territorial peace') of 1152 (LF 2.27), the first constitution to find its way into the LF, touches on controversies over benefices only in three paragraphs (§§ 8, 9, 17); furthermore, it was issued by Frederick I when he was crowned king of Germany and therefore is not, technically, an imperial act.⁷¹ Frederick I's *Landfrieden* issued at Roncaglia in 1158 (LF 2.53) does not even mention fiefs, and neither does the famous definition of regalian rights provided in the same Diet (LF 2.55) nor the so-called 'three lost laws of Roncaglia' (1158), which were issued together with the latter but were eventually excluded from the *vulgata*.⁷²

The two most important constitutions concerning fiefs are those of Lothair III (1136: LF 2.52.1) and Frederick I (1158: LF 2.54) prohibiting the alienation of fiefs. Both emperors faced problems similar to those confronted by Conrad II in 1037, but they sought completely different remedies. While Conrad had tried to secure the military service due to the empire by granting privileges to fief-holders, Lothair and Frederick issued strict rules to limit unlawful transfers of fiefs, for which holders refused to provide the customary service due to their lords and the royal army. The second of these constitutions, in particular, enjoyed widespread success in the later legal tradition since it is often cited as proof for the legitimization of the LF under imperial law, helping thus to reinforce the idea that feudal law developed within the framework of the empire.⁷³

71 The fact that the opening of the constitution describes Frederick as emperor has been deemed an interpolation by the compilers of the LF, who transmitted the only known copy of this document: *Constitutiones*, i, 194.

72 Vittore Colorni, *Le tre leggi perdute di Roncaglia (1158) ritrovate in un manoscritto parigino* (Bibl. Nat. Cod. Lat. 4677) (Milan: Giuffrè, 1967). In particular the *lex Omnis iurisdic-tio* regulated the relationship between the emperor, portrayed as the supreme source of jurisdiction, and a kingdom of Italy characterised by the increasing liberties of the city communes: G. Dilcher, 'Das lombardische Lehnrecht', 62–67, 82–84.

73 M. Ryan, 'Zur Tradition des langobardischen Lehnrechts', in *Gli inizi del diritto pubblico*, 2. *Da Federico Barbarossa a Federico II* [= *Die Anfänge des öffentlichen Rechts*, 2, Von Friedrich

7 The *capitula extraordinaria*

The establishment of the *vulgata* did not entail the immediate extinction of the *extravagantes* that were left outside of the text proper. I have mentioned the existence of some thirteenth-century *reconcinnationes* or recompilations of the LF, alternative versions which eventually were superseded by the *vulgata*, even though some of them were still known and occasionally used in the following centuries. Virtually nothing is known of the *reconcinnationes* by Symon Vicentinus and Iacobus de Aurelianis,⁷⁴ but we do know that the *reconcinnatio* by the Bolognese jurist Odofredus Denari was a reordering by subject of a *proto-vulgata* recension, which did not alter its content but just the chapter order.⁷⁵ More interesting for its influence on later traditions is the *reconcinnatio* by Iacobus de Ardizzone, also known as *liber Ardizonis*, a vast extension of an intermediate recension that included all the extravagant material that would eventually find a place in the *vulgata*.⁷⁶

This extension did not alter substantially the content of the text proper—only LF 2.27, Frederick I's *Landfrieden* of 1152, was moved from its original place to a new section devoted solely to imperial legislation. Instead, it collected and systematised an enormous mass of material in a series of new titles which Ardizzone attached at the end of the text proper. A preliminary systematisation was concluded in the late 1220s, after which Ardizzone went on gathering any piece of legislation that in his opinion could help improve the range of sources for the study and teaching of feudal law. He selected almost two-hundred chapters, derived from Gratian's *Decretum*, papal decretals, imperial legislation, the *Lombarda* (with both Lombard edicts and Carolingian capitularies), the statutes of Verona, his native city, and, more importantly, some

Barbarossa zu Friedrich II.], ed. Gerhard Dilcher, Diego Quaglioni (Annali dell'Istituto storico italo-germanico in Trento. Contributi, 21; Bologna: il Mulino, 2009), 225–245, at 230–243.

74 E. Seckel, 'Quellenfunde', 61–62, 64–65, had already noted the presence of some 'additions' by and references to Iacobus de Aurelianis in ms. Vienna, ONB, 2094; after a first-hand scrutiny of that manuscript, I outlined some preliminary hypotheses on the *reconcinnatio* by this largely unknown author: A. Stella, 'The Summa feudorum'. The manuscript, however, also offers evidence for a partial reconstruction of Symon Vicentinus's *reconcinnatio*.

75 E. Seckel, 'Quellenfunde', 66–68; P. Weimar, 'Die Handschriften', 68–69.

76 On Iacobus's life and works: Federico Roggero, 'Iacopo di Ardizzone', DBGI, 1101; Gian Maria Varanini, Attilio Stella, 'Scenari veronesi per la *Summa feudorum* di Iacopo di Ardizzone da Broilo', in *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri*, ed. Paola Maffei, Gian Maria Varanini, 4 vols.; iv: *La formazione del diritto comune* (Florence: Firenze University Press, 2014), 266–280.

anonymous tracts and commentaries on fiefs which he inserted in the title *De capitulis extraordinariis et alterius compilacionis feudorum* ('Concerning supplementary chapters on fiefs and those of another collection').⁷⁷

Thanks to Emil Seckel's works, we know that this title was originally composed of three sets of chapters.⁷⁸ The first set would soon find its way into the *vulgata* as LF 2.57.⁷⁹ The second one⁸⁰ was probably circulating as an autonomous tract in the early thirteenth century: Ardizzone quoted some of these chapters in his *Summa feudorum*, but Lehmann, who inserted them in an appendix to his edition of the *vulgata*, derived them from a much later collection, the *Libellus reformatus* by Bartholomeus Baraterius (1442), and attributed them to him (*Capitula extraordinaria Baraterii*).⁸¹ The third set,⁸² through a largely unknown path, was inserted in the sixteenth-century printed editions of Ardizzone's *summa* as the first part of a larger batch (which in his *summa* occupies chapters 149–150) which Lehmann published in the appendix of the *vulgata* as the *capitula extraordinaria Iacobi de Ardizzone*.⁸³

However difficult the reconstruction of this tradition may be, the *liber Ardizonis* and these chapters, in particular, are a reminder that the establishment of the *vulgata* did not entail the immediate obliteration of other versions of the LF, with their respective augmentations. About 1260, perhaps slightly earlier, the Provençal lawyer Iohannes Blancus in his *Summa feudorum* did not rely on the *vulgata* and saw it as convenient to insert at the end of the treatise a sort of correlation table of the different versions he knew.⁸⁴ In the same period, the enigmatic author of a *summa* on the LF, once thought to be the Orleanais jurist Jacques de Revigny, but who is perhaps identifiable with Iacobus de Aurelianis,

77 This encyclopaedic effort resulted in a voluminous collection of which no manuscript survives but which can be derived from ms. Vienna, ONB, 2094: E. Seckel, 'Quellenfunde'; A. Stella, 'The *Liber Ardizonis*'. The contents of this title would be cited by later scholars relying on either Ardizzone's *reconcinnatio* or a tradition stemming directly from it: V. Colorni, *Le tre leggi*.

78 E. Seckel, 'Quellenfunde', 74–79; see also A. Stella, 'The *Liber Ardizonis*', 200–205, 216–217.

79 Extr. I. 1–11 in Seckel's reconstruction.

80 Extr. I. 12–22.

81 See *infra*, Appendix 2. K. Lehmann, *Langobardische*, 199–200.

82 Extr. I. 23–54.

83 See *infra*, Appendix 1. Iacobus de Ardizzone, *Summa super usibus feudorum* (Astae, 1518), fo. 35^{ra}–36^{va}; K. Lehmann, *Langobardische*, 186–198; whilst E. Seckel deems the third set (Extr. I. 23–54) as spurious, mainly on the basis that Ardizzone does not quote these texts in his *summa*, I suggested that it can be nonetheless attributed to him in Stella, 'The *Liber Ardizonis*', 200–204.

84 G. Giordanengo, 'La littérature juridique féodale', in *Le vassal, le fief et l'écrit*, ed. Jean-François Nieu (Louvain-la-Neuve: Université Catholique de Louvain, 2007), 11–34, at 14.

had at hand these titles of the *liber Ardizonis*, which he cited in his treatise and possibly implemented in his *reconcinnatio*.⁸⁵ The tradition originating from the *liber Ardizonis* can be traced until the late fourteenth century, when the great jurist Baldus de Ubaldis, in his *Lectura super usibus feudorum*, although relying on a *vulgata*, also used its extravagant collections.⁸⁶ Furthermore, in the fifteenth century other *reconcinnationes* were composed, e.g. by Antonius Minuccius, in six books (1428), and the above-mentioned Bartholomeus Baraterius (1442),⁸⁷ followed one century later by Jacques Cujas, who reorganised the text proper and a considerable amount of extravagant material in five books (*De feudis libri quinque*, 1566), perhaps the most influential edition of the LF in the modern era.⁸⁸

Therefore, when Lehmann worked on his edition of the *vulgata* and decided to insert the *capitula extraordinaria* by Ardizzone and Baraterius, he understood their relevance in the history of feudal law, but he could not know that they had already been put together, most likely by Ardizzone, in the first half of the thirteenth century. With this short history of the *capitula extraordinaria* our description of the formation, development, and stabilisation of the LF has come to its natural conclusion.

85 For an updated edition of this treatise and hypothetical attribution to Iacobus de Aurelianus see now: A. Stella, 'The *Summa feudorum*'. On his various identifications, from Jacques de Revigny to Iacobus de Arena or Iacobus Balduini: Iacobus de Ravanis, *Summa feudorum*, ed. Corrado Pecorella (2nd edn.; Milan: Giuffrè, 1959); Kees Bezemer, 'Iacobus Balduini: Probably the Author of the *Summa Feudorum Parmensis*', *Tijdschrift voor Rechtsgeschiedenis*, 74 (2006), 325–335, where the debate on the *summa*'s authorship is outlined.

86 V. Colorni, *Le tre leggi*, 136–137.

87 P. Weimar, 'Die Handschriften', 69–70; Annalisa Belloni, *Professori giuristi a Padova nel sec. xv* (Ius commune Sonderhefte. Studien zur europäischen Rechtsgeschichte, 28; Frankfurt am Main: Klostermann, 1986), 138–140; E. Laspeyres, *Über die Entstehung*, 130–133.

88 Iacobus Cuiacius, *De feudis libri quinque* (Lugduni: ad Salamandrae apud Claudium Senetonium, 1566).