

THE PRIEST WHO FELL IN LOVE AND LOST EVERYTHING.
USE AND ABUSE OF ECCLESIASTICAL JUSTICE
IN CAROLINGIAN TUSCANY

*STORIA DEL PRETE CHE SI INNAMORÒ E PERSE TUTTO.
USO E ABUSO DELLA GIUSTIZIA ECCLESIASTICA
NELLA TOSCANA CAROLINGIA*

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Abstract English: A dossier from the Carolingian Tuscany allows us to know the long and complex judicial case of the priest Alpulo. Born from a simple affair between a priest and a nun, the trial then disturbed a king, a count, an imperial messenger, five bishops and a large number of people including lay people and clergymen. The reasons for such an expenditure of judicial energies can be recognised in the design of the Lucca episcopate to increase its land endowment in the area. Reading the dossier, however, we can get a more precise idea of the real functioning of Carolingian justice. It seems that the intentions declared by the Carolingian rulers – ensuring a greater protection of people’s rights and promoting a justice less exposed to the arrogance of the powerful – must be understood with more scepticism than we usually do. Moreover, the interest of legal historians for the long judicial process is also recalled by certain passages which show compliance with a procedural discipline that is not at all elementary.

Keywords: Carolingian justice; procedural rules; ecclesiastical jurisdiction; discipline of the clergy.

Abstract italiano: Grazie a due *chartae* toscane risalenti all’età carolingia possiamo ancora oggi conoscere la lunga, complessa e sfortunata vicenda giudiziaria di cui fu protagonista il prete Alpulo. Da una semplice *liason* tra un prete e una monaca nacque infatti una controversia che finì per coinvolgere un re, un conte, un *missus* imperiale, cinque vescovi e una lunga schiera di persone tra laici ed ecclesiastici. Dietro tanto dispendio di attività processuali, non è difficile riconoscere il disegno dell’episcopato lucchese teso ad accrescere il proprio patrimonio immobiliare nel territorio della Diocesi. Rileggere oggi i due documenti significa però soprattutto poter osservare più da vicino il funzionamento della giustizia carolingia. È noto come la monarchia franca avesse promesso una giustizia

- ❖ Italian Review of Legal History, 6 (2020), n. 10, pagg. 237-253
- ❖ <https://riviste.unimi.it/index.php/irlh/index>
- ❖ ISSN 2464-8914 – DOI 10.13130/2464-8914/14889

che fosse più vicina ai *debiliores* (o *pauperes*): maggiormente accessibile e capace, all'occorrenza, anche di proteggerli dalle angherie dei potenti. Il caso qui analizzato par confermare i dubbi che la storiografia più recente ha avanzato circa l'effettivo mantenimento di tale promessa. A richiamare l'interesse dello storico giurista sul lungo iter giudiziario vi sono peraltro taluni passaggi che denotano, nel personale coinvolto, una certa attenzione per il rispetto di una disciplina processuale nient'affatto elementare.

Parole chiave: Giustizia carolingia; regole di procedura; giurisdizione ecclesiastica; disciplina del clero.

Summary: 1. A long and winding legal case. – 2. The first trial: the court. – 3. The sins of Alpulo. – 4. A kidnapping or a serious marriage proposal? – 5. Alpulo had admitted his faults. – 6. Had there been a formal judgment and a true condemnation? – 7. A case of 'paterna correctio'? – 8. The real motivation of bishop Iacobus. – 9. A new instance of justice. – 10. Substantial truth and formal validity. – 11. Conclusions.

1. A long and winding legal case

Two charters – two *notitiae iudicati* dating back to the 803 and 813 respectively – allow us to reconstruct the complex legal case that involved the priest Alpulo, rector of the church of Saint Justus located near the city of Lucca, in Tuscany. Both charters are recently reproduced and re-edited in the second series of the *Chartae Latinae Antiquiores*¹. Already known to Ludovico Antonio Muratori in the 18th century², they have been studied more than once also over the past century³. It is certainly one of the many texts that inform us about the administration of Carolingian justice. A theme that has repeatedly attracted the attention of historians and legal historians⁴. Nevertheless, the peculiar judicial *iter* that those documents tell and which takes place for at least three different trials still contains suggestions and arguments for discussion that deserve to be considered.

Here, in a nutshell, the simple facts.

In an unspecified year – however to be placed between 796⁵ and 800⁶ – the priest Alpulo was accused before Rachinardus, bishop of Pisa, of having kept the nun Gumperga in his house for some time, removing her from the monastery of

¹ ChLA, LXXII (2002), nr. 24, pp. 83-89 and LXXIII (2003), nr. 50, pp. 164-171. The two charters has been already edited by Manaresi, 1955, nr. 16 (pp. 44-48) and nr. 26 (pp. 80-84).

² Muratori, 1741, vol. V, coll. 917-922.

³ The most recent study is that made by Andreolli, 1983, pp. 39-52. On this dossier, see anyway the opportune remarks made by Padoa Schioppa, 2003 (= 2015), p. 1651 (= 57) and nn. 104-105.

⁴ It is sufficient recall here Ganshof, 1965; Werner, 1980 and McKitterick, 1983. For Italy see Bougard, 1995 and the essay of Padoa Schioppa cit. in the previous footnote.

⁵ It is the year in which Rachinardus was elected bishop of Pisa.

⁶ The year in which died John I, bishop of Lucca (as we will see, one of the authorities

St. Peter (near Pisa) to which she belonged. The priest admitted his guilt (*confensus est de suis reatibus*) and was removed from the church that he had held up to that moment. After some time, the same priest appealed to the king of Italy, Pippin, against the decisions taken against him. A new judgment was then made which – unfortunately for Alpulo – ended with the full confirmation of the previous decision. Even this time, however, the priest did not resign himself to the outcome and, after about ten years, he made a new appeal. He asked that a further judgment be issued, at the end of which, however, for the third time he was sentenced.

Even at first glance, we immediately feel that there is something strange in this story. If already after the first consideration of the charge, the priest fully and publicly admitted his faults, why did he insist on appealing? What kind of hopes drove his persistence? How did he think he could change the judgment? On the base of what we know about the case, it is not easy to answer these questions. However, it is a little too simple to explain the peculiar and long duration of the case by attributing it solely to Alpulo's «temerarious» character as Muratori did⁷. Let us try then to retrace the story carefully in the manner that it is revealed in the two documents.

2. The first trial: the court

In July 803, by order of Pippin, the trial that Alpulo had requested was held. The priest had turned to the king because he complained that he had been expelled from the church of S. Justus without a regular judgment preceding such a decision. Pippin decided to accept the priest's request and ordered the Lucchese bishop Iacobus to re-examine the cause. The lawsuit therefore opens under the presidency of the bishop of Lucca and the court is completed by the archdeacon, by a large group of priests and clerics (one of whom also acts as 'secretary-chancellor') and, finally, also by the *gastaldius*⁸ and the *vassus domni regis*.

Even before the beginning of the suit something already captures our attention: how should we explain the presence of these two last characters, the *gastaldus* and the royal vassal? From a purely formal point of view, this would seem to be a dissonant element. The disputing parties – the priest Alpulo (plaintiff) and the bishopric of Lucca (defendant) – both belong to the ecclesiastical order. Furthermore, the object of the dispute was the legitimacy of a disciplinary measure which was also internal to the ecclesiastical order. In short, both for the subjects involved and for the question debated, this should therefore have been a judgment of exclusive competence of the ecclesiastical authorities.

involved in the affair).

⁷ Muratori, 1741, col. 918.

⁸ About the persistent presence of the *gastaldius* in the Carolingian times, see Bougard, 1995, pp. 140-144. Different opinion in Castagnetti, 2007, pp. 10 and 13 n. 17

Now, it is certainly true – as Bruno Andreolli some years ago suggested – that we find ourselves in a geographical context (the north of Tuscany) and in an era (the Carolingian one) in which there was a «profound integration between the secular and ecclesiastical world» and where it was frequent that «lay officials and ecclesiastical personalities found themselves operating in collaboration»⁹. Without underestimating the validity of the historical considerations – i.e. the correct reference to the peculiar relationship created by the Frankish sovereigns with the ‘Italian’ ecclesiastical authorities – it can however be observed that, under this apparent – at least in our eyes – confusion between the two jurisdictions, we must consider that there was a long development of thought that preceded the interaction between the Pipinids and the church. I am referring to the long reflection of the fathers of the western church on the nature of power and, above all, on its limits and on the most appropriate way of controlling its exercise. It was a theme which had already greatly interested Gregory the Great at the end of the sixth century, and after him, also Isidore of Seville and the anonymous Irish known as pseudo-Cyprian in the seventh century.¹⁰ In particular Isidore – the mature Isidore of the *Sententiae* – had first and clearly indicated that it was the duty of the good sovereign to ensure that ecclesiastical authorities operated in such a way as to make peace and justice triumph.¹¹ And such surveillance of the sovereign over clergymen was an especial concern of the good exercise of jurisdiction.¹² In short, behind this formal oddity, one could recognize a theoretical substratum which was well known to the Carolingian legislator but which, to a certain extent, was to be shared also by the protagonists of this story.

3. *The sins of Alpulo*

Let us return to follow the progress of the suit. The priest Alpulo took the floor first and reiterated his request to be judged again as had been ordered by the king.¹³ Bishop Iacobus immediately replied, stigmatizing with stern words the fact

⁹ So Andreolli, 1983, pp. 16 e 18.

¹⁰ It is worth remembering that the writings of Gregory I. and those of Isidore and the pseudo-Cyprian were by far the most read and transcribed in the Carolingian era and how they certainly drew inspiration from them, a few decades later, also Jonah of Orleans and Hincmar of Reims. See Loschiavo, 2012, pp. 302-309. Especially on Hincmar, see Nelson, 1977 and West, 2009.

¹¹ *Isidori Sententiae* 3.51.6: «The princes should know that they must account to God for how they will have defended the church which Christ entrusted to them. Considering whether the peace and discipline of the Church are spread thanks to the work of faithful principles or whether, on the contrary, they are destroyed, God, who entrusted the Church to the power of the principles, will ask them to account».

¹² V. *Isidori Sententiae* 3.52.2 e 3.52.3. On the importance of Isidore for western legal culture: Loschiavo, 2019.

¹³ ChLA, LXXII, nr. 24, p. 84, ll. 10-11 (= Manaresi, 1955, p. 46 ll. 5-6): «Ecce, paratus sum:

that the priest had continued to *ecclesiam tenere*, that is, he had remained in the church of S. Justus, even when he became unworthy because the sins he had committed. The bishop evidently did not bother to present himself as a third party and impartial judge (for him – there is no doubt about it – the trial was only a waste of time). It is a circumstance that could not fail to strike the modern jurist. However, we are not dealing with our modern concept of ‘fair trial’, which has its cornerstone in the principle of the neutrality of the judge with respect to the parties (a principle that, in reality, was not fully asserted in Europe before the second half of the eighteenth century). Rather, the fact that the judge has already taken a position in relation to the case that he has to judge is something that we must keep in mind especially in order to achieve a better historical comprehension. It should be clear that such an attitude by the president of the court cannot fail to have also conditioned the drafting of the only source we have available to reconstruct the affair and that is the *notitia iudicati* which is our current object of study.

In any case, obedient to the king, bishop Iacobus went further and ordered the reading of the report he had received from the Pisan bishop Rachinardus, which provided an account of the past events. The report is transcribed practically in full in the *notitia iudicati* and therefore we, like those people who were present in the suit of 803, come to know how, a few years earlier, the *advocatus* of the Pisan monastery of S. Peter, named Brunari, had denounced the priest Alpulo for having taken and brought to his house a nun of the monastery (*tulisset monacha sancti Petri et secum in casa abuisset*).¹⁴

The verb *ferre* used here by the scribe does not allow us to deduce whether the priest’s action had been violent (and if therefore it had been a kidnapping as stated in the notice – the ‘*regest*’ – at the beginning of the last edition)¹⁵ or if instead the nun Gumperga had followed the priest consensually. It is worth stopping for a moment on this passage. Modern eyes are certainly not the most suitable for scrutinizing that distant reality, however it is a bit surprising not to find in the report any hint of the nun’s involvement in the trial: we are not told, in particular, if the woman, at the time, had been interrogated precisely in order to better clarify the actual behavior of the priest Alpulo. Knowing if the accusation made against Alpulo concerned the committing of a crime or simply disobedience to the order of superiors is not without importance. It would allow us to better evaluate the tenor of the final judgment. The continuation of the story – as we will soon see – would lead us to think that Gumperga had offered very little resistance.

iudica inter me et te sicut domnus rex demandavit».

¹⁴ ChLA, LXXII, nr. 24, p. 84, ll. 13-14 (= Manaresi, 1955, p. 46 ll. 12-13). The appointment of an *advocatus* for each episcopate or monastery had become mandatory only a year earlier: *Capitolare missorum generale*, a. 802, nr. 33 c. 13 (*Capit. Reg. Franc.*, p. 93); see Senn, 1903. However, it is probable that the practice was widespread in Italy and Tuscany already before; Bougard, 1995, pp. 264-269.

¹⁵ And as Andreolli also thinks (Andreolli, 1983, p. 40).

4. A kidnapping or a serious marriage proposal?

However, let us continue with reading the report. Following up on Brunari's denunciation, the Pisan bishop Rachinardus had immediately asked the local *vice-dominus* to go to Alpulo to check whether the nun was actually with him and, if necessary, bring her back to the monastery (which evidently is what happened). Shortly afterwards, however, Brunari returned again to denounce Alpulo's conduct: the priest had subsequently returned to the monastery to meet the nun Gumperga and there – taking advantage of the height of his horse – he hoisted the woman over the wall of the monastery, he kissed her and then he gave her the not despicable sum of two *soledos* 'in arra' (usefully, but perhaps a little prosaically, Andreolli tells us that such a sum was sufficient to buy «two good pigs»)¹⁶. At that point, Alpulo finally returned to Lucca alone, but – we can believe – in love and happy.

At this point, Rachinardus decided to summon the same priest to answer the accusation. In the interrogation – as we still learn from the report – Alpulo then admitted what Brunari had claimed. Before going any further, it is convenient to try to understand Alpulo's behavior. The legal historian cannot fail to note how, twice, the report uses the technical term 'arra'. A payment that might suggest some form of prostitution or something like 'women to sell for coin', to use a Dante's expression, is excluded. Instead, 'arra' is a guarantee given in order to strengthen a commitment made. Should we perhaps believe that the priest had gone to the monastery for the second time with the intention of promising the nun that he would marry her? The kiss followed by the bestowal of the coins in arra would lead to suppose it was¹⁷. And it must also be considered that, at the time and despite the Charlmagne's commitment in promoting the moralization of the clergy¹⁸, the celibacy of clerics had not yet become an insurmountable dogma for the church.¹⁹ Nor was it so rare that a priest lived 'more uxorio' with a woman. Moreover, it is clear from the attitude of the nun, that she was not afraid of any violent behavior on the part of the priest: if she had not been consenting,

¹⁶ *Ivi*, p. 41.

¹⁷ See C.I. 5.3.16 (a.D. 336) and Berger (1953); Volterra, 1961, pp. 666-667 and Moursourakis, 2012, pp. 97-98. However, here is especially useful Tamassia, 1969. Among other things, Tamassia recalls a significant episode in the life of the Lombard queen Theodolinda reported by Paul the Diacon (*Hist. Langob.*, III.35).

¹⁸ For example, chapter 4 of the *Admonitio generalis* of 789 perfectly fits to the Alpulo's case (p. 186): «Item in eodem sinodo interdictum est presbiteris et diaconibus vel omnibus, qui in clero sunt, mulierem habere in domo sua propter suspicionem, nisi matrem aut sororem vel eas tantum personas, quae suspensiones effugiunt». On the moral contents of the *Admonitio*, see Fouracre, 1995, here esp. p. 776-779. On the clerical state in Carolingian Europe, see now Patzold – van Rhijn, 2016 and Patzold, 2020.

¹⁹ It will certainly become so with the II Lateran Council of 1134 (but perhaps already with the I Lateran of 1123). In the previous centuries, marital unions of priests were consid-

Alpulo would never have been able to get her over the wall. If anything, one might suspect that Gumperga was rather worried about the ‘seriousness’ of the priest’s intentions and asked for some guarantees in this regard.

5. *Alpulo had admitted his faults*

Let us go back to reading the report. The priest, therefore, would have admitted his behavior and would have made such a confession in the presence of Bishop Rachinardus as well as of many Pisan priests. Since, however, Alpulo belonged to the diocese of Lucca, Rachinardus had preferred to wait, before making a judgement, so as to do so in the presence of the Bishop of Lucca John I (the predecessor of Bishop Iacobus but also his brother).²⁰ When, shortly afterwards, the two bishops Rachinardus (of Pisa) and John (of Lucca) had the occasion to meet (in Pisan territory), Alpulo was then summoned again and, according to the report, he again admitted his faults as listed in a (short) report previously read in the hearing. It was on that occasion that the priest would have been ordered (I use the conditional not by chance) to give up the church of which he was rector and, presumably, this was also the moment at which the report read in the judgment of 803 (from which we are informed about this story) was prepared.

However, Alpulo now denied the truth of that report. It is not at all clear, in fact, what exactly the priest contested, but it is better, for the moment, to postpone the question. Bishop Iacobus – our *notitia* continues with his description of the ongoing judgment – then invites thirteen priests from Lucca (*sacerdotes nostros*) who had been present at the previous judgment held by Rachinardus and John to testify to the veracity of the report itself²¹. All thirteen clerics, unanimously, repeated that what was read corresponded to what had truly happened then, adding that, on that occasion, Alpulo had also slipped the stole (*orarium*) from his neck and, thrown himself at the feet of the prelates, he had sworn he wanted to spend the rest of his days as a monk in the monastery of the little island of Gorgona (in front of Livorno). Having heard the testimonies, the bishop asked Alpulo if he desired the priests to confirm their declarations with solemn oath. The priest replied in the affirmative and – unfortunately for him – oaths were taken.

I have to admit it is a little difficult to me to understand Alpulo’s choice to have

ered valid although illicit marriages; see Brundage, 1987, p. 220 and specifically, Gryson, 1970.

²⁰ Actually, the postponement of the judgment by the bishop of Pisa could also derive from the fact that Rachinardus – unlike what Bishop Iacobus will do later – did not intend to disregard the rule already stated in the canons according to which a seriously accused presbyter cannot be judged if not by a court made up of several bishops (see below).

²¹ At that time, the number of concordant witnesses deemed necessary to pronounce a judgment against a clergyman varied from a minimum of seven to a maximum of seventy-two, in consideration of the accused’s hierarchical rank; see Loschiavo, 2005, esp. pp. 140-145.

the witnesses sworn. In fact, it happens very often in early medieval *placita* that the litigant who is now about to be defeated refuses the oath of the opposing party. It is a completely comprehensible way of doing things: he spares the other party a procedural activity that still involves a certain risk and therefore hopes to receive something in return (something which is close to an accommodation between the parties or, in any case, a little 'reward' or 'contentment' that allows him to convince himself and others that the outcome of the trial was not a complete *débâcle*!).

Why then, considering the negative conclusion that was immanent, does Alpulo not comply with this practice? The question immediately takes us back to the one that we left open a moment ago. What, in particular, did Alpulo contest about the report read in court and confirmed by thirteen oaths? Did he deny the confession he had made to bishops Rachinardus and John? Or instead, did he intend to deny that his confession had had as effect his estrangement from his church and its annexes? The scribe, perhaps not by accident (it must be here remembered the initial remark regarding the dubious impartiality of the report), shows himself particularly stingy his wording of this passage.

6. *Had there been a formal judgment and a true condemnation?*

Going back to a couple of circumstances may perhaps help us understand what was going on. At the beginning of the *notitia* relating to the trial of the year 803, Alpulo is said to appeal against the expulsion order issued against him. But who issued that order? and when? The responsibility seems to lie with the current bishop of Lucca Iacobus. This is suggested by the words of Iacobus himself, who uses the expression «*expulissemus*», as well as those used by Alpulo, who says to his bishop «*iudicat inter me et te*» and, even ten years later, as we shall see, he imputes the decision to Iacobus only («*pro ecclesia Sancti Iusti de qua me foras expulisti*»). The reference is therefore to Iacobus and not to episcopate in the abstractly, that the singulare 'te' refers.

And yet Iacobus had not participated in the first judgment which is narrated in the report and which had seen his brother John as protagonist. On the other hand, it will be remembered that, by opening the procedure, Bishop Iacobus had severely admonished the priest Alpulo for his moral indignity that had made him unfit to hold the church of S. Justus, but he had not mentioned any formal condemnation.²² Finally, it is appropriate to underline how the report read in the court had come into the hands of Iacobus coming from those of his Pisan colleague. This means that – only few years after the first trial – it was impossible

²² In the *notitia* (ChLA, LXXII, nr. 24, p. 84, l. 6 = Manaresi, 1955, p. 45 l. 14-16) we read that Iacobus, through the priest Landiperto, had given a guarantee (*wadia*) that in court he would have clarified the way Alpulo has been removed from his office (*qualiter ipse ab honore suo remotus fuisset*).

to find any copy of the report in the Lucca episcopate. This is difficult to explain, to tell the truth, if the two bishops had actually signed a condemnation of the priest, driving him out of the church of which he was rector!

If this was really the case, if, in other words, the decision to expel the priest Alpulo from his church had been made by Bishop Iacobus, simply on the ground of the confession that was mentioned in the report sent by his colleague Rachinardus²³, the priest had then more than one reason to complain that his expulsion had been illegitimate as it was not a result of a regular trial. Nor can one fail to observe the singular absence of Rachinardus himself or even one other Pisan cleric from the judgment of 803. Do we have to believe that it was Iacobus who did not invite them or, otherwise, were the bishop of Pisa himself and his presbyters not wanting to be present deliberately?

7. A case of 'paterna correptio'?

In any case, Alpulo had publicly confessed his faults. How then could he think that the first judgment could have ended without a serious penalty?²⁴ To try to find an explanation, we must necessarily make the effort to read between the lines.

We must at first remember how – in the canonical order – the confession of the sin committed is an essential stage in the path that leads the sinner to atonement (through penance) and finally to forgiveness. On the other side, it has already been noted that Alpulo's conduct may not have appeared too serious. All this considered, I would tend to believe that, unlike the Pisan bishop (who certainly had the responsibility of the monastery to which Gumperga belonged), the bishop of Lucca, John, must not have felt too offended by the behavior of his priest and not even too much motivated to punish him harshly. Moreover, as we have seen, it is precisely Rachinardus who takes the initiative and summons the Alpulo priest a second time when he has the opportunity to meet his colleague John (l. 20). For his part, Bishop John – i.e. Alpulo's direct superior – conducts the interrogation and receives the confession of the priest (l. 21).

All in all, it is then possible that the two bishops, once being together, had in

²³ *Ivi* at ll. 11-12 (= Manaresi, 1955, p. 46 ll. 8-9). «... brevis scriptam quam nobis venerabilis Rachin[ardus Pisane] ecclesie episcopus direxit».

²⁴ In addition to the Carolingian rule mentioned earlier (n. 18), it is worth remembering how the *Collectio canonum Dionysiana* – at that time very widespread in Italy in the version *Dionysio-Hadriana* – quoting canon 27 of the Council of Chalcedon, considers (and sanctions with the expulsion of the cleric from his office) just the crime with which Alpulo could be accused (naturally, if the priest had actually 'kidnapped' Gumperga): c. 205 (27) «Eos qui rapiunt mulieres sub nomine coniugii, vel auxilium praestant, ac consentiunt iis qui rapiunt, definiit sancta synodus, si quidem clerici fuerint, proprio gradu excidere; sin autem laici, anathematizari» (ed. C. Justel [1628], reprise in Migne, PL, LXVII, 1865, col. 94). On this collection and its spread see Gaudemet, 1993, p. 26 and, more recently and widely, Kery, 1999, pp. 13-20.

fact the intention to admonish the priest seriously and that they actually threatened the excommunication and the consequent removal of Alpulo if he did not cease to try to seduce the nun. In the end, however, it is possible that Alpulo would have had to bear only a sharp reprimand and the imposition of some severe penance, in favor of which, in all probability, some 'important supporters' must have also spoken (the same ones that will guarantee him easy access to the royal court in the years to come). In short, once he returned to Lucca, the priest in love would have had to renounce the company of Gumperga, but he could very well have kept his place.

8. *The real motivation of bishop Iacobus*

Shortly thereafter, however, once Bishop John was dead, things must have taken a different turn when Iacobus, John's brother, in turn became bishop of Lucca. The new prelate must have started pressing Alpulo to leave his office with its relevant properties. The reasons could very well be those identified by Andreolli, who had also wondered if a simple 'affair' between a priest and a nun could really provoke such a lot of judicial activity. Iacobus had actually decided to insist on the policy of 'reconstruction' of the heritage of the Lucca bishopric already undertaken by John and, indeed, he intended to devote himself to it with even greater energy than his brother²⁵.

It is probably to reduce these pressures that the priest decides, only at that moment, to resort to the king, in the belief that Iacobus had no legal title to remove him from his church. If this were the reason that inspired Alpulo's actions, even his obstinacy in requesting the oath of witnesses would find an explanation. The priest – certainly carelessly and very naively – could indeed hope that some of the thirteen priests would refuse to swear that they remembered that the first judgment had not actually ended with a formal act of excommunication.

In any case, the pronouncement of oaths irremediably eliminates this possibility. The *inquisitio* can be said to be concluded and the judge's secretary, probably solicited in this regard, points out how the entire procedure was carried out «diligently according to what was ordered by our lord king»²⁶. We will see that this is not the case at all, but, in the meantime, Iacobus undoubtedly pronounced the excommunication to Alpulo²⁷, guilty of having continued to keep a church in contravention of the previous judgment (according to the canonical norm that was

²⁵ In its last years the Lombard monarchy, threatened by the Carolingians, had ordered many requisitions of goods that were part of the heritage of churches and monasteries in central and northern Italy. Not many years ago, Collavini, 2007, has analyzed the way in which Bishop Giovanni had tried to ascertain and ensure the land assets of his diocese, but also to affirm and enlarge his episcopal control over the countryside.

²⁶ ChLA, LXXII, nr. 24, p. 85, l. 31 (= Manaresi, p. 47 l. 28): «diligenti cura secundum iussio-nem domni nostri regis».

²⁷ On excommunication's procedure, see Bühner-Thierry – Gioanni, 2015.

identified in canon 4 of the Council of Antioch of 341)²⁸ and ordered his removal from the same church. Finally, Bishop Iacobus ordered subdeacon Rachiprandus to draw up the *notitia iudicati* so that «no question can arise in the future on the present case, but the aforementioned decision remains firm in the present and in the future»²⁹.

9. A new instance of justice

Nevertheless, what really happens is exactly the opposite. It is now time to move to the second of the two *notiae iudicati* which inform us on the case.

Alpulo did not resign himself to his fate even after the disastrous judicial outcome of the 803 judgement and, after ten years, he decided to resort to the power of the sovereign again. In this second case, the priest cannot have addressed the king directly (the young Bernard would have been confirmed by Charlemagne only a few months later) but rather he turned to the powerful Adalhard, abbot of Corbie, cousin and counselor of Charlemagne for Italian affairs. Adalhard had been initially appointed by Charlemagne as regent for Pippin (781-790 ca.) and subsequently for the son of Pippin, Bernard (810-814). Adalhard's importance in addressing and governing in particular the administration of justice in Italy during the age of Charlemagne is well known (and it was also underlined not many years ago by François Bougard)³⁰. The fact that Alpulo managed to get so high in seeking protection is certainly remarkable. This is a point to which we will return.

The same bishop Iacobus, then received from Count Boniface (whose jurisdiction also included Lucca) the invitation of Adalhard to judge again, ten years later, the 'rebel priest'. This time, however, the prelate from Lucca was explicitly asked to associate with him in the court at least one other bishop and several other priests, in a more fully compliance with the canonical order: «Adalardus eum commendavit Bonifatio inlustrissimo comiti nostro ut per eum nobis demandavit ut cum alio episcopo simul et cum sacerdotibus coniungere deberemus et sic eum canonico ordine iudicare deberemus».³¹

²⁸ Besta, 1905, p. 40 (quoted by Andreolli, 1983, p. 42 n. 6). At that time, this canon also could be read in the *Collectio Dionysio-Hadriana* (c. 83; see above n. 24, col. 62). However, Padoa Schioppa, 2003, p. 1651 [= 57] n. 105, thinks rather to c. 3 of the same Antiochian council.

²⁹ ChLA, LXXII, nr. 24, p. 85, ll. 35-36 (= Manaresi, p. 48 ll. 5-6): «nulla de hac re in posterum oriatur intentio, sed presenti et futuro tempore in predicta deliveratione permaneat firmiter».

³⁰ See Bougard, 1995, pp. 2, 134, 180, 189-191, but also Kasten, 1986, espec. pp. 41-47, 68-84.

³¹ ChLA, LXXIII, nr. 50, p. 166, ll. 5-6 (= Manaresi, p. 81, ll. 10-13).

10. Substantial truth and formal validity

This second appeal, therefore, also arose from a formal argument which, we must believe, had been raised up Alpulo: the 803 judgment was invalidated by a procedural defect as it was issued by only one bishop, while canon law prescribed that a presbyter could only be judged by a court composed of several bishops.³² Bishop Iacobus could only obey and initiate a new judgment. He therefore invited the Bishop of Corsica Petronius and of Luni (who sent the deacon Vualprandus in his place) to join the tribunal. In this case also there was a representative of secular power: he was Alais, a *scabinus* from the city of Pisa, specially sent there by Count Boniface.

The new trial took the same course as the previous one (and is an almost slavish repetition of it). The *notitia iudicati* of the 803 previously analyzed is read in full. The text reproduced in the act of 813 is substantially identical to that written 10 years earlier. The main variant concerns the device of the Judgment of 813: it would have also have contained the explicit prohibition for the priest to sing the mass from then on³³.

After reading the document, Bishop Iacobus asks Alpulo if he recognizes the content as true. The priest's answer deserves attention. Even in this case he does not dispute the truthfulness of the facts attributed to him (Alpulo could not ignore the fact that the priests had sworn the content of the report with the oath and that he could not challenge them to swear again). Rather, Alpulo denounces a further procedural defect that has a preliminary value: the report that Bishop Rachinardus had sent to Iacobus in 803 had never been sent, in fact, neither to the emperor nor to the pope. The omitted transmission to the two supreme authorities – this is clearly Alpulo's thesis – invalidated the deed on which his sentence was founded because, in this way, he had been effectively prevented from exercising his right of appeal.

The bishop – who, perhaps intentionally, shows himself unable to distinguish between substantial truth and formal validity – then asks Alpulo if he is able to show some attestation from which it appears that the emperor or the pontiff had reinstated the honor (and which therefore could have justified the return of the priest to his office and related goods). Alpulo does not do so, but repeats that he does not recognize the validity of the report. Iacobus again avoids taking into consideration the procedural profiles and instead continues to keep the judg-

³² Once more we can refer to the Dionysio-Hadrian Collection. It contains a couple of canons in which it is established that a presbyter can be judged only by a court of 6 bishops (these are canons 12 and 20 of the series of Carthaginian canons; above n. 24, coll. 188 e 190). See also *Concilia Africae*, pp. 104 e 107, 121, 127. Some useful remarks in Fiori, 2013, pp. 60-61.

³³ ChLA, LXXIII, nr. 50, p. 167, l. 46 and n. (ggg) *ibid.*: «ut etiam missas precare non aude-ret».

ment blocked on substantive arguments. He goes on therefore and asks the clerics present at the two previous judgments if they confirm that they have given a sworn testimony about the truth of the facts narrated in the report. The priests, of course, confirm (also because, otherwise, they would have implicitly admitted perjury) and Iacobus suddenly comes to challenge the behavior held by the priest after the judgment of 803, accusing him not only of not having complied with the old promise to retire to the monastery in the isle of Gorgona, but also of having dared to say mass even after the ban imposed on him on that occasion³⁴.

The latter is precisely the variant added to the previous *notitia iudicati* mentioned above. It might be that there were two (partly) different versions of the notarial judgment of 803.³⁵ It is equally possible, however, that the addition was inserted only in preparation for this new judicial phase. What is certain is that, in this way, Bishop Iacobus was able to divert attention from Alpulo's judicial question (thus leaving it unanswered) and instead direct it to the reprehensible behavior of the priest himself. Moreover, it must be said that the *ordo canonicus* certainly punished the fact of having said mass even after excommunication, but it provided for the simple infliction of a penance, not the deprivation of the office and of the goods that were connected to it.³⁶

Alpulo actually tries to deny having said mass after that judgment, but Iacobus immediately declares that he can produce suitable homines ready to testify to the contrary. At this point, the bishop of Lucca takes off the clothes of an accuser and assumes those of a judge. Since Alpulo was unable to present any *auctoritas* of the emperor or pope that could exonerate him from the charges, by virtue of the same canon already mentioned on the occasion of the judgment ten years earlier and also recalling the assistance received, in the present judgment, by Bishop Petronius (and by that of Luni), Iacobus renews the excommunication against the priest as well as his ban on performance of the sacred offices. Finally, on the the rule already used ten years earlier, he confirms the ban on any further appeal against the latter decision for the future.

11. Conclusions

Thus ends the story of Alpulo, priest in love and unfortunate. And it is time for us to conclude. Andreolli was certainly right when he underlined the anomaly of

³⁴ See the previous footnote.

³⁵ It is precisely what is supposed in the notice premised to the last edition of the document (ChLA, LXXIII, nr. 50, p. 165).

³⁶ Here we can remember the well-known case of the bishop of Ravenna Maximus who, put under trial for his opposition to Gregory the Great, was able to free himself from the accusation of simony by taking an oath of purgation but was unable to avoid the imposition of penance for having continued to say mass even after the excommunication. Singing mass being excommunicated therefore meant, according to the canonical order, a penance, not the loss of the office; see Fiori, 2013, p. 51.

a case that, born in a simple affair between a priest and a nun, then generated a ten years long lawsuit and disturbed a king, a count, an imperial messenger, five bishops «and a number of, more or less, sixty people including lay people and clergymen».³⁷ And Andreolli was still right – I believe – in identifying the reasons for so much expenditure of judicial energies in the design, carried out with great decision by the Lucca episcopate in those years, to «forfeit most of the land properties in the area».³⁸

On the other hand, I do not agree with the same scholar when he also deduced, from the story of Alpulo, the confirmation of how – unlike what monarchies of other ages have accustomed us to believe – the early medieval ruler, and the Carolingian one in particular, was easily to reach also by those who belonged to the subordinate classes.³⁹ It seems to me that, actually, there is more than one reason to suspect that the priest Alpulo did not belong at all to the world of subordinates and the defenseless people. Instead, he must have had, as they say, ‘well-covered shoulders’ and his channels for getting to court were certainly quite effective.

If it had not been so – that is, if Alpulo (i.e. his church) had not had properties of a certain importance and if therefore he had not belonged to the landed class – the Bishop of Lucca would have hardly had reason to rage against him in way that he did. Moreover, the diocese would hardly have preserved with care and for so long the two *notitiae iudicati* which we have dealt with so far. Indeed, just reading the two documents leads us to think that Alpulo – unless he is credited with being an expert on the canons and laws himself – must have made use of the advice of people with considerable legal competence and who certainly knew the canonical order very well as well as the content of the Carolingian reforms in the matter of justice. Also these indications would seem better to agree with his belonging to a wealthy class.

The fact that Alpulo belonged to the upper-middle class does not mean, however, that his reasons were destined to prevail in any case, as his story shows. As I have tried to highlight, the presence, in the first as well as in the second judgment, of exponents of secular power in the court did not in any way prevent Bishop Iacobus from hiding – behind a merely formal respect for the norms – an evident bias in the judgment itself and an evident abuse of Alpulo’s rights.⁴⁰

³⁷ Andreolli, 1983, pp. 45-46.

³⁸ Andreolli, 1983, p. 51.

³⁹ Andreolli, 1983, pp. 33-34. Regarding the opening of the Carolingian courts also to the lowest social strata and the peasant population in particular (but also about the substantial solidarity between the monarchy and the various *potentes* operating in the countryside), see now Provero, 2015.

⁴⁰ Nor would I agree with Andreolli’s observation (1983, p. 46) regarding the fact that the two processes that we retraced were conducted «according to a formally flawless procedure ... up to assuming scrupulous character in the last assembly».

Considered from this point of view, the complex judicial process outlined here leads us to think – and it is perhaps the most useful lesson that can be drawn from these two charters – that the intention declared – flag-waved I would say – by the Carolingian rulers, ensuring a greater protection of people’s rights, and of promoting justice less exposed to the arrogance of the powerful, must be understood with more scepticism than we usually do⁴¹.

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⁴¹ For a broader and detailed analysis of the situation of the *Regnum Italiae*, see Bougard, 1995. Very important is however Fouracre, 1995: at pp. 782-783 a critique of previous readings; at p. 787 these words especially suitable to Alplulo’s story: «In cases involving the church, their power of jurisdiction [i.e. that of the *missi dominici*] was thus both secular and ecclesiastical in origin. The power to adjudicate made therefore have operated through local vested interests, rather than derived from a strong royal authority manifested throughout the kingdom, and it does not mark a break with existing custom. In most areas the institution of government remained weak even at the height of Carolingian success, and locally power lay in the hands of counts who exercised it with little supervision». And not only in the hands of counts – as Alplulo’s story teaches – but also in those of bishops. See also Le Jan, 1997; McKitterick, 1997, and moreover Padoa Schioppa, 2003, pp. 1655-1664 [= 61-70].

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