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THE LIFE IN THE SCROLL: MEDIEVAL NOTARIES AS MEDIATORS IN THE TRIAL, IN WILLS AND IN CONTRACTS[1]

LA VITA SULLA PERGAMENA: I NOTAI MEDIEVALI MEDIATORI NEL PROCESSO, NEI TESTAMENTI E NEI CONTRATTI

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Abstract English: The essay brings together the results of two researches carried out within the project: *Limen, Languages of Notarial Mediation between the Middle Ages and the Modern Age*, presented in July 2019 at the Extraordinary Call for Interdepartmental Projects of the University of Milan and considered worthy of funding with the recognition of the Seal of excellence in 2020. In the two interventions previously published in italian language (*L'attività di mediazione del notaio nella Summa di Rolandino* in Mediazione Notarile. Forme e linguaggi tra Medioevo ed Età Moderna, a cura di Alessandra Bassani, Marta Mangini e Fabrizio Pagnoni, Quaderni degli Studi di Storia Medievale e di Diplomatica VI, Milano Pearson 2022 e *Notaio mediatore: la distanza fra la vita e la pergamena* in Giustizia, istituzioni e notai tra i secoli XII e XVII in una prospettiva europea. In ricordo di Dino Puncuh, a cura di Denise Bezzina - Marta Calleri - Marta Luigina Mangini - Valentina Ruzzin, Notariorum Itinera Varia 6, Società Ligure di Storia Patria, Genova 2022) the Author used the hermeneutic tool of the 'function' of mediation to connect the results of the historical-legal research with those equally in-depth of the historians of society, institutions and the economy. Thus the medieval notary's activity emerges from the examination of testimonial depositions, mortis causa deeds and contracts of writing and discipleship: the notary was protagonist of the institutional, social and economic life of the medieval municipality and also a spiritual and family mediator in his customers' most intimate and personal life.

Key words: Notary; middle ages; trial witnesses; mortis causa deeds; contracts

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Abstract Italiano: Il saggio riunisce l'esito di due ricerche svolte nell'ambito del progetto *Limen, Linguaggi della Mediazione Notarile tra Medioevo ed Età Moderna*, presentato nel luglio 2019 al Bando Straordinario per Progetti Interdipartimentali dell'Università degli Studi di Milano e ritenuto meritevole di finanziamento con il riconoscimento del *Seal of excellence* nel 2020. Nei due interventi precedentemente pubblicati in italiano (*L'attività di mediazione del notaio nella Summa di Rolandino* in Mediazione Notarile. Forme e linguaggi tra Medioevo ed Età Moderna, a cura di Alessandra Bassani, Marta Mangini e Fabrizio Pagnoni, Quaderni degli Studi di Storia Medievale e di Diplomatica VI, Milano Pearson 2022 e *Notaio mediatore: la distanza fra la vita e la pergamena* in Giustizia, istituzioni e notai tra i secoli XII e XVII in una prospettiva europea. In ricordo di Dino Puncuh, a cura di Denise Bezzina - Marta Calleri - Marta Luigina Mangini - Valentina Ruzzin, Notariorum Itinera Varia 6, Società Ligure di Storia Patria, Genova 2022) l'Autrice ha sfruttato lo strumento ermeneutico della 'funzione' di mediazione per mettere in comunicazione gli esiti della ricerca storico-giuridica con quelli altrettanto approfonditi degli storici della società, delle istituzioni e dell'economia. Emerge così dall'esame delle deposizioni testimoniali, degli *atti mortis causa* e dei contratti di scrittura e di discepolato l'attività del notaio medievale: non solo protagonista della vita istituzionale, sociale ed economica del comune medievale ma anche mediatore spirituale e familiare negli aspetti più intimi e personali della vita dei suoi clienti.

Parole chiave: Notariato; medioevo; testimonianza; testamenti; contratti

Sommario: 1. Introduction. – 2. The notary in the process. – 3. *The notary mediator in the* mortis causa *deeds:* voluntas *and* solemnitates. – 4. *The notary mediator in contracts:* voluntas *of the contractors and* publica utilitas.

1. Introduction

Law is system, abstraction, conceptualization. Only through such intellectual processes can it play its ordering role in guaranteeing equity and justice.

In medieval cities, in particular, the translation/mediation activity carried out by the notary arose in the gap between the disorder of life and the plan of the jurist: the notary is situated between real life and legal rarefaction, because it is in their hands and on their parchment that life becomes a legal institution.[2]

Legal historiography has dealt in depth with the mediation activity between reality and legal form as performed by notaries through participating in the process, drafting wills and contract packaging, particularly regarding the works

[2] Chiodi, 2002, p. 484 writes that the most significant data that emerges from reading these prescriptions is that concerning the role, which is anything but passive, that Rolandino assigned to the notary. A dynamic figure since the early Middle Ages, at the height of the communal age the leading role suits him even more, where we see him working now as a guarantor for the authenticity and lawfulness of deeds, now as a legal advisor to the testator, to whom the most suitable formula for translating his will into writing must be suggested. Giansante, 2000 and Tamba, 1998.

of Rolandino.[3]

This role as a link between life and parchment is expressed in very different ways depending on whether the mediation performed by the notary applies during trials, rather than to *mortis causa* deeds, such as wills, or to *inter vivos* deeds, such as contracts.

2. The notary in the process

We start with the practice of notaries who assist judges during civil and criminal trials, often replacing them in the delicate task of questioning witnesses.[4]

It concerns the life and assets of those involved in judicial proceedings: the evidence that decides the case comes from the hands of the notary. There are very serious consequences—sometimes the very life of the *reus*—relating to how he asks, understands and transcribes the questions.

When I read the answers that the peasants and shepherds gave to the judge about possessing a fund or the theft of some oxen in the *Cartulario* of the Savonese notary Martino—published by Dino Puncuh, and collects *positiones attestationes* and *sententiae* written between 1203 and 1206,[5] transcribed into Latin from the vernacular in which they had certainly expressed[6] themselves—I know that the legal content of those words has been heard, interpreted, translated and written by a notary: it is legal content with a high 'specific weight', because it is evidence, the fulcrum around which all procedural law revolves.

Ranieri da Perugia was the first to definitively legitimize the activity of notaries in the court, officially inserting it into the *Ars notariae.*[7] During the period Ranieri worked in, the involvement of notaries in the judiciary had been a fact for nearly a century[8] and the copious and precious activity that notaries carried out in aiding the judging magistrates of the municipalities deserved to be described, especially for educational and practical purposes, in support of less experienced colleagues.

In the *rubrica De testium productionibus et ipsorum apertione* Ranieri describes

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[3] This reference is, in particular, to the essays Padoa Schioppa, 2002*,* Massetto, 2002, Di Renzo, 2002, Sarti, 2002, Storti Storchi, 2002, Chiodi, 2002*,* Sinisi*,* 2002 all published in *Rolandino and the ars notaria* edited by Giorgio Tamba in 2002. On the works that Rolandino dedicated to *mortis causa* deeds see in particular Chiodi, 2002*,* pp. 466–477 and pp. 575-582 in *Indice delle fonti*.

[4] Conte – Menzinger 2012; Sinisi 2006; Lett 2020; Giustizia, istituzioni e notai 2022. On the methods of conducting the investigation and on the possibility of delegating its execution Mausen, 2006, pp. 283-303, particularly pp. 295-298; Padoa Schioppa, 2002, pp. 596-598; Padoa Schioppa, 2007, pp. 287-288; Padoa Schioppa, 2013, p. 3 and pp. 15-16.

[5] Puncuh, 1974, pp. 285-332 for depositions; Padoa Schioppa, 2007.

[6] On vernacular language in legal documents from the Middle and Modern Ages, see *infra*, n. 15.

[7] Padoa Scuioppa, 2002, pp. 587-588; Sarti, 2002, p. 619.

[8] Costamagna, 1970, pp. 14-20; Liva, pp. 70-73.

what colleagues must do if a contract is to be proven: they must ask where the witness was, who else was present, when the transaction was concluded (year, month, day and time), who had spoken and what they had said. But above all the notary was required to ask if the witness had knowledge of what he said for having seen it or for having only "heard it said" by someone and, in this second case, he had to be questioned about the exact words he had heard and who had said them: he would thus have contributed to reconstructing the *omnis veritas negotii*.[9]

In evaluating testimonies and their probative validity, the *causa scientiæ* is, legally, the central point: the direct witness, *de visu* and *de auditu*, proofs, the indirect and *de fama* witnesses, at most, constitute a clue or *adminiculum*:[10] the judge is bound by the quality of the evidence brought to the trial.[11]

In the witness depositions drawn up by the notaries we can read how this classification requirement for depositions, which their probative force depends on, operated concretely in determining the conduct of the *examen*.

The accusatory scheme of Roman-canonical trials states that the procurator of the plaintiff submits the questions to the judge that he believes should be asked to the witnesses he has produced to support the claims set out in the introductory *libellus* for the dispute so that the judge can decide which ones to allow during the *examen*. The attorney for the defendant will do the same once the claims of the plaintiff have been read, thus filling in the *interrogatoria* of the *reus.*[12]

In one case that the notary, Martino, listened to the witness and drafted his statements, Ottone accuses Iacopo of having stolen some animals from his herd, while Iacopo claims he took the beasts to satisfy his credit against Ottone: the questions that Martino asked to the witness, Anselmo, after he confirmed the content of the *capitula* are as follows:

> Anselmus ... iuratus dixit sicut in titulo continetur. Interrogatus quomodo scit respondit: Quia fui ipse Iacobus minaba<t> illas res...
> Interrogatus de quo loco cepit illas res respondit: "De Stella"
> Interrogatus quomodo scit quod valerent libras CCC, respondit "Quia ... et egomet,

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[9] Ranieri da Perugia, 1917*,* CCXCI. *De testium productionibus et ipsorum apertione*, p. 149: «... quomodo sciat testis, quod dicit, si visu vel auditu; nam si dicat, se audivisse verba ab illo eodem, qui factum fecit, stabitur dicto eius; si ab alio, secus. Unde debet statim interrogari, que verba fuerint illa, que dixit se audivisse, et a quo fuerint dicta. Et sic inquiras diligenter per istas interrogationes omnem negotii veritatem.»

[10] Padoa Schioppa, 2002, p. 597; Mausen, 2006, pp. 266-268 and pp. 276-277; Bassani, 2012; Padoa Schioppa, 2013, pp. 15-16; Bassani, 2017.

[11] Padoa Schioppa, 2003, pp. 251-292 deals with the theme, and, specifically, on the *plena probatio* pp. 280-283; Mausen, 2006, pp. 681–749; Vallerani, 2008; Vallerani, 2009.

[12] Mausen, 2006, pp. 219–256; Bassani, 2017, pp. 12-38 with reference to *de auditu* testimonies.

> si eas haberem, non darem eas pro libris CCC."
> Interrogatus quo tempore fuit et quot anni sunt transacti et quo die, quo mense et qua hora, respondit: "De estate fuit, et de annis de quatuor et dimidio, de die credo in die iovis"; de mense dixit in madio, de hora dixit in mane.[13]

So far the verbalization, although translated from the vernacular into Latin, must not have required any specific intervention by Martino, except perhaps a certain insistence on making Anselmo reflect on the information of the value of the stolen goods and a somewhat pedantic investigation to ascertain exactly the time elapsed since the events.

But in the same trial the notary, reporting the answer of the witness, Natalino, implicitly reveals the dialogue that took place between them, in which he evidently urged Natalino to reflect and sincerely report "how" he learned the content of the deposition:

> Nadalidus, iuratus pro utraque parte dicere verum, dixit: "Magister bone, non vobis mantiar, quoniam nescio quod Iacobus caperet illas res nisi auditu, quia non vidi ipsum Iacobum eas ducentem, sed bene fertur per villam quod Iacobus predictus cepit illas res . . ." [14]

It is clear from the formulation of the answer that Natalino had not until then reflected on the way he aknowledged what he declared, and in using the vocative (*magister bone*), clearly shows Martino ability to render the immediacy of the dialogue that had taken place between him and the witness, and how the notary had pressed him, (*non vobis mantiar*), forcing him to remember how, and where, and from whom he had come to know what he was reporting.

The knot of the translation/mediation carried out by the notary in the process is embodied here, because law is system and abstraction: a fact seen is a *semiplena probatio* that has certain legal consequences; a fact felt by others, who perhaps have seen, perhaps have in turn heard, is an *indicium fragile*, which far from proving, still helps the judge to establish a conviction.[15]

The witness, a shepherd, a farmer, a blacksmith, a merchant, recounts what he knows; the notary, during the examination and in the act of transcribing it, converts it into proof. He has to make the witness dwell on his deposition, must probe him so that he becomes aware of the way he has learned what he is reporting and then the notary has to transcribe what the witness said, remaining faithful to his words but "translating" them, not only and not so much from the vulgar into Latin[16] but, above all, from the real occurrence into the legal category.

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[13] Puncuh, 1974, pp. 311–312.
[14] Puncuh, 1974, p. 312.
[15] Bassani, 2017, pp. 159-296.
[16] Bambi, 2019a, p. 103 writes that the notary by professional obligation had to translate from Latin into the vernacular: to have his clients understand the meaning and effects

This point emerges in an almost comical way in another deposition, again from the records of the Savonese, Martino. When the witness Gionata, is forced by the notary Martino to deepen the source of his knowledge, the outcome of this Socratic process is transcribed as follows:

> Per credentiam sum certus et non aliter, quia non sum certus certitudine, nisi quia ita credo.[17]

The phrase *non sum certus certitudine*, allows us to appreciate Martino's literary skills, and to follow the path set out by Gionata under the guidance of the examiner in the vernacular and then translated by Martino into medieval Latin.

3. The notary mediator in the mortis causa *deeds:* voluntas *and* solemnitates

A man who is about to make a will, who enters into what has been defined as "existential, as well as juridical, space"[18] is faced with his own death, therefore the will is an act of faith, and of hope,[19] that has to take on a "binding" form, through the correct *solemnitates*, that is, a form that has in itself the strength to impose the will that the *de cujus* has placed there.[20]

In this act the patrimonial and emotional aspects encounter a unique combination that must be translated into a form: the notary ensures, guarantees, makes the *voluntas* of the one who no longer exists eternal, or at least tries to do so.

This tension struck me: there is a continuous coming and going between the will of the testator and the technique of the notary that is well expressed in the words with which, in 1430, Giovanni di Matteo Corsini closed the draft of his final will, entrusting its drafting to the notary Domenico d'Arigo Mucini:

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of the deed written in *gramatica* they were about to make; or, to spread the content of the norms of the statutes written in Latin among the citizens, which he read in the vernacular, translating them to the imprint, or put on the parchment of a codex to be available to the citizenry, so that even those who did not know the language of Rome could know what the rules that guided common life were. Thus, the famous phrase of Bartolo da Sassoferrato captures the role and function of the notary well: 'Tota die notarii vulgarizant rustico, quod est dictum in literali sermone.' Bambi, 2018; Bambi, 2019b.

[17] Puncuh, 1974, pp. 298; Padoa Schioppa, 2013, p. 16.

[18] Giansante, 2011, p. 215.

[19] di Renzo Villata, 2009a, p. XLVIII writes that testaments are also a tool for taking a retrospective look at one's own existence and taking stock of the experience looking to the future: we think of death but also of the destiny of those who will live on after us, a link in the chain of life that develops through generations, a projection of us into a tomorrow, of one perhaps we will not see the light of.

[20] This mixture of patrimonial and emotional elements is witnessed in the introductions placed in the opening of the acts of final will: Zagni, 1976; Mosiici, 1976; Bartoli Langeli, 2006; di Renzo Villata, 2009a, p. XLIX and bibliography n. 6.

> And to the said ser Domenico the license to set down said testament with those words he considers appropriate, not abandoning the tenor of my own will[21]

There is an evident tension in this sentence written by Corsini: on one hand, the notary is left free to the use words, that is, the *solemnitates*, that his legal wisdom considers most suitable, while on the other, as if the testator did not have complete trust, there is a recommendation not to betray his *voluntas*.

The «words the notary considered appropriate» *vs* the wording of the «will of the testator.»

That this is the fulcrum of the mediation activity of the notary. It is also the point where we jurists can appreciate that it is clearly grasped in the history that has, as its protagonist, the notary, Tealdo, studied by Marta Calleri: the reading of the deed in the presence of the testator Caracosa de Predi is essential. It is the fulcrum of underwriting, so much so that in the absence of re-reading, made impossible by the sudden death of Caracosa, Tealdo refuses to sign the will[22] because it lacks that moment in which the *voluntas*, re-read by the notary and confirmed by the dying, is taken over by the notary himself, who takes it into his hands and becomes responsible: this passage must take place in a direct way, *vis à vis*, between him and his client and is the core of his work, which is substantiated by a personal, one could almost say intimate, relationship.

Rolandino reflects on the *voluntas* of the testator:[23] the client who pours his desires into the ears of the notary when he is perfectly *compus sui* and has been able to reflect calmly on what he wants to happen to his assets after his death does not create problems for the professional with regard to establishing his will. It will be a question of understanding how and in what forms it is more convenient and safer to bring about these desires: which is the most suitable testamentary form, which are the safest clauses, which and how many witnesses.

But when a notary is called to the bedside of a sick person to make his will and is faced with a frightened, confused, person who perhaps until then had not reflected on the structure he wished to give to his assets, the problem of correctly forming his will arises to the attentive professional.

There are two closely intertwined aspects to be considered in this case: the first consists of verifying, even with the help of a doctor, if the testator is 'fully competent', if what he says is not dictated by the weakness and mental confusion induced by

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[21] *Il libro di Ricordanze,* p. 133. Corsini drafted the act in 1430 canceling *in toto* the previous one dated 1423: see *Ibidem* p. 122.

[22] Calleri, 2018*,* p. 75: «loqui non potuit neque testamentum sive ultimam voluntatem non potuit confirmare ... unde dictus scriba noluit predicta que superius scripta sunt testare».

[23] Here I leave out the point on ascertaining the identity of the testator, a problem however far from obvious in the medieval context and carefully considered by Rolandino, see Chiodi*,* 2002, pp. 483-484, in particular on verifying the identity of the testator no. 40 where the provisions of the contemporary Bolognese Statute are reported.

the condition. The second aspect, more delicate, concerns the influences, more or less strong, from relatives or other interested parties that may come to sway the testator in one direction rather than another. In these cases, after ascertaining that the patient, although prostrate, is lucid, acting as an arbitrator in family disputes and correcting the wishes expressed by the client, even if influenced by friends and relatives, cannot be among the tasks of the notary: he can advise, warn, induce reflection and propose alternative solutions, but his task is to realize the *voluntas* of the testator, however misdirected it may be.

The discourse changes if relatives and friends come to use violence, for example by not allowing witnesses or the notary himself to access the place where the dying person is located, physically preventing him from making a will.

The theme of violence exercised on the will of the testator was present to the glossators, who, however, did not have conforming opinions, and the one who will note and complete the Rolandinian work, Pietro d'Anzola, deals with it thoroughly, considering precisely the hypothesis that the heir *ab intestato* does not allow the *de cuius* to make a will, in which case he must be disinherited.[24]

This theme is of little interest to Rolandino:[25] the *princeps notariorum* prefers dealing with the instruction of the 'simple-minded' notaries (he speaks precisely of *tabellionum insensata simplicitas*), but we could also say superficial, sloppy, who trust the friends of the testator to ascertain his identity and verify his wishes, while the conscientious notary who understands his job, must scrupulously verify not only the identity of the testator but also see that his will is not clouded by illness or senescence.

It is interesting to underline the 'material' aspect of the instructions that Rolandino imparts to his less scrupulous colleagues: taking care that the room where the ailing testator lies is lit when the witnesses enter, that attention is paid to making him sit and having them speak a few words, so his or her identities can be verified and that he or she is not in a condition of total prostration when his *voluntates* are reread.[26]

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[24] *Ibidem* pp. 480-481 and n. 35.

[25] Chiodi, 2002, pp. 479-484, in particular pp. 480-481: «The incidence of violence on the validity of a will is a problem that Rolandino is not interested in expounding upon: Pietro d'Anzola will take care of filling the gap by proposing a particular case solved by drawing, as his habit, on the thought of his teacher Francesco d'Accursio, of whom he is a fervent popularizer» and n. 34.

[26] Rolandino, *Flos testamentorum, Quid sit testamentum, et unde dicatur*, f. 240v: «Igitur acutus tabellio intret ad ægrum, et audiet verba plurima, et aliquando repeti faciat, ut bene videat, si ex compoti mente procedant. Non tamen impedimento est si illius ęgri balbutientis, et somnolenti lingua: verba determinate non proferat, dummodo ex intellectu sano procedere videatur, ut C. de testamentis l. quoniam. Senium vel ægritudo corporis synceritatem mentis tenentibus testamenti factionem certum est non auferre, ut C. qui testa. fa.pos. l. senium. Procuret etiam tabellio un scripto testamento: et uocatis testibus aperiatur fenestra vel accendatur candela, et si possit sedeat æger, et coram

Among the duties of the notary, then, a large part is played by carefully selecting witnesses, of whom there must be at least seven according to the formalities of Roman law, and also the rigor in the convocation procedures of the same, both in the case of nuncupative and *in scriptis* wills, which the *princeps notariorum* treats with some attention in the *Flos.*[27]

Rolandino does not deflect from this severity even considering the two decretals that Alexander III wrote in the second half of the twelfth century and which sanction the sufficiency of two witnesses:[28] «the lesser formal rigor of canon law (the interpretation of which created many problems) and of some statutes has been passed over in silence»,[29] on the contrary, the recommendation is to draw up a greater number of witnesses than the seven envisaged, to protect themselves in the event of that someone is unavailable.[30]

Already in relation to these types of deeds, the totally fiduciary relationship between client and notary emerges clearly: the delicate role carried out is combined with the technicality of the professional background in a way that goes beyond the purely legal sphere. It is not only a professional that the testator needs, but an expert jurist who has the interests of the testator and, in some cases, his feelings at heart, as much as a brother or friend, and nevertheless knows how to remain neutral with respect to the patrimonial structure that his client wants to have drawn in the will, a project that might be unwelcome to relatives or close friends, who often have expectations about the patrimonial structure that will take shape after the death of the testator.

But the *mortis causa* deeds observed from this angle only present a partial image of the myriad forces of which the notary was the fulcrum in medieval times.[31]

If we study the career under the lens of mediation, only the legal aspect gives us a mutilated image: the more we deepen the role of this legal 'agent', the more we can glimpse its heuristic potential compared to the complexity of the medieval

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testibus aliqua uerba loquatur, ut eum uideant et cognoscant testes, et perpendatur eum sanæ mentis esse. Consulo autem cuilibet tabellioni fideliter ut nullius ultimam voluntatem scribat, si uel eum notum non habeat uel saltem adhibeantur testes quorum eum aliqui cognoscant: quibusdam enim tabellionibus turpiter super hoc illusum audiui.»

[27] Chiodi, 2002*,* p. 485: «The will *in scriptis*, however, remains a species that can be used if necessary and Rolandino, in the *Flos*, unlike in the *Summa*, does not neglect it, although he is convinced of its lower frequency, and describes it with a certain detail.» See Rolandino, *Flos testamentorum, De testamento in scriptis,* ff. 266r-267r.

[28] X.3.22.9 and 10 (= Comp. I.3.22.9 and 10). See the concise reconstruction of Sheehan, 1963*,* pp. 120-135; Migliorino, 1992*,* pp. 145-175 and in part. pp. 147-149; Padovani, 1993*,* pp.180-183; Chiodi, 1997, pp. 537-556 and Condorelli, 2010, pp. 55-92.

[29] Chiodi, 2002*,* pp. 485-486, in particular, for the quotation p. 486; Bassani, 2018, p. 233 and p. 243.

[30] Chiodi, 2002*,* p. 486 and n. 50.

[31] Useful observations by Rava, 2016*, Introduzione*, pp. XV-XVIII.

world. If the study of wills reveals the instances and contradictions that crossed the emotional, familiar and social world with which the notary came into contact and that he gives us back through documents, when we examine other kinds of deeds, such as legacies, we can see a complex spiritual and cultural network that vivifies medieval society, and that risks not being caught if it is not observed with a multidisciplinary approach.[32]

This way, one aspect of the activity of the notary that brings him closer to the confessor is increasingly attracting the attention of historians: I refer to the legacies for restitution of illicitly acquired items, the *male ablata*.[33] However, even the spiritual, cultural and religious interpretation key to interpreting these deeds risks not being exhaustive: a volume published in 2019 in the École Française de Rome series clearly demonstrates this and invites historians, as well as legal historians, to study it further.[34]

In the collected essays, the inseparable connection between the spiritual and the economic spheres is clearly discussed. The instrument of testamentary legacies is indispensable in creating a balance between earthly and otherworldly life, which constitutes an immanent dimension for medieval men and women, like the air they breathe, and the notary is an indispensable agent for guaranteeing this fundamental balance.

Rolandino is the central figure in this complex interweaving of religion, culture and economics: let's see the interesting reflections on the *proemio* of the statute of the Bolognese money-changers studied by Giansante. In the *proemium* laid out by Rolandino, early on, notaries and money-changers are the fulcrum of the architrave that governs municipal society: they constitute the backbone of an organism, the *civitas*, in which religious belief, cultural heritage, economic alacrity, professional ethics and political commitment are related and inseparable from each other as the aspects of the personality of a living organism.[35]

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[32] About this topic see Mediazione notarile 2022.

[33] Chiodi, 2002, pp. 493-496 and Giansante, 2011, pp. 183-191, in particular, on the function of restitution pp. 189-191.

[34] Gaulin, 2019, p. 2: « . . . nombreuses études ont conforté l'idée d'une société médiévale où le crédit (sous des formes multiples) structure les comportements économiques et les relations sociales. Déjà documenté dans l'Occident du haut Moyen Âge, le crédit devient, à partir du XII[e] siècle, l'un des motifs du recours plus fréquent à l'écrit, et en particulier à l'écrit notarial. Mais son intense développement ne saurait être étudié en lui-même et sans tenir compte de son interaction aves d'une part l'action de l'Église qui définit et sanctionne le *crimen usurarum* et d'autre part avec des constructions politiques fondées sur des critères d'appartenance parmi les quels les comportements économiques jouaient un rôle important».

[35] Giansante, 2008, pp. 51-77 and Todeschini, 2002, pp. 89-185 and also Todeschini, 2019, p. 19: the Author writes that since every economic act has a meaning that goes beyond the particular one of the interindividual relationship, restitution must also be understood, rather than as a behavior aimed at restoring the abstract balance of a virtual

The activity of loaning at interest was an instrument of enrichment known and regulated in Bologna throughout the thirteenth century but vividly deplored, especially by the Franciscan and Dominican monastic orders.[36] The Church dealt intensely with the problem of usury, producing some canons, in particular, on the occasion of the Third Lateran Council (c. 25) and the Second Council of Lyons (1274), during which a strict framework was outlined that excluded *usurarii manifesti* from the communion of the altar and forbade their burial in consecrated land, with all that this meant for the afterlife of the deceased usurer and for the earthly life of the family members, devastated by scandal and shame.[37] The prohibition of Christian burial, it was specified in the framework of the Lyon canons, was also arranged for those usurers who had given provisions for the restitution of illicitly lucrative sums but had not prepared everything possible for them to ensure that the ill-gotten gains were actually returned: the legacies that had been drawn up without the necessary provisions to carry out the reparation of the wrongs committed in life were declared invalid.[38]

Notarial professionalism was therefore heavily involved not only in the otherworldly destiny of his 'malefactor' client but also the honor and social and economic well-being of the remaining relatives and of the other successors in title, jointly responsible for the *restitutio*, all of which depended on it: from this resulted widely debated legal, as well as moral, problems.[39]

The theme then had a strong impact in many other directions because reusing illicitly produced wealth did not only ricochet within the domestic walls but circulated throughout the *societas christiana*, at least at the level of the city

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social 'body', as a real practice whose objective is to improve the system of economic and civic relations within a very precise 'body' which is that of a *res publica* specifically.

[36] Giansante, 2011, p. 189 writes that the inseparability of ownership of money from its use was obsessively reiterated in all the economic works of the Franciscan and Dominican mentors and irreparably closed any space to the possible legitimization of loans at interest. Rava, 2016, *Introduzione,* XVI writes that the mendicant orders and the elaboration of the canonists contributed powerfully to forming this new conception of the testament. The mendicant orders played a central and propulsive role in consciously and programmatically promoting, in open conflict with the secular clergy, testamentary practice, understood as the salvation of the soul.

[37] Gaulin, 2019*,* p. 3: «En effet, les relations entre créanciers et débiteurs sont aussi à replacer dans la problématique plus vaste de l'appartenance des acteurs du crédit à un corps politique. Que l'on se situe à l'échelle du village, de la ville, de la principauté, du royaume, ou de la chrétienté tout entière, le crédit a pu être, selon les cas, source d'inclusion ou d'exclusion sociale.» A striking example of the pressure exerted by the 'bad reputation' of the usurer of the *de cujus* on the family in the *quaestio* examined by Condorelli, 2006, pp. 222-223.

[38] Condorelli, 2006, pp. 215-219, On the textual tradition of the two Lyonnais canons see no. 24.

[39] Giansante, 2011*,* pp. 191-195.

community. Wealth, in order to be ethically approved, 'had' to be reused for the poor, for culture, for *pietas*, for the well-being of the community and for its artistic beauty: the duty of restitution required that, where precise beneficiaries could not be identified, the 'ill-gotten gains' were destined for charity, for community relief, like hospitals, the construction of useful and at the same time artistically significant buildings. The family of the deceased usurer was required to redeem the sinful origin of their well-being by investing part of the inheritance in favor of the community.[40]

For all these reasons those who enriched themselves through this activity used *pro anima* legates to clear their conscience and present themselves candidly during their encounter with the Heavenly Father.

The possible solutions to the problem of conscience of the lenders of money at interest had already been dealt with in the forms of Ranieri and Salatiele[41] but not with the awareness that Rolandino treats the problem with: at the chronological height in which he writes, it is no longer time for hypocrisy: even his closeness to Dominican spirituality[42] will certainly have played a role in the choice of the notary 'teacher' to no longer hide the theme of usury under the generic formula of the *pro anima*[43] legate.

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[40] Giansante, 2011, pp. 190–191. Rava, 2016, p. 138 writes that the Church, in order to protect itself from the consequences deriving from this fault, admitted that the sums unlawfully earned or of which the exact origin was not known could be converted to other uses in the event that it was not possible to trace back to all the injured parties to provide compensation for the ill-gotten gains, generically investing the *male ablata* and the uncertain in the exercise of good deeds.

[41] Giansante, 2011, pp. 198-199 and Giansante, 2019, pp. 96–97.

[42] Giansante, 2011 writes that Rolandino was very close throughout his life to mendicant spirituality, and in particular to the Dominican one so much so as to establish the convent of San Domenico as its universal heir in his second testament from 13 August 1297: v. Tamba, 2002, pp. 111-114.

[43] Giansante, 2011, pp. 198-201, in particular p. 201 writes that Rolandino shows himself ready to accept the principles and juridical principles of the theological tradition and canons on the theme of restitutions and to translate them into wise operational guidelines, into effective instruments of guidance for the profession: the advice on confidential restitutions and the central role attributed to the *religiosae personae* in the destination of *male ablata* uncertain are enlightening in this regard. In a different geographical context, that of the bishopric of Asti, chronologically parallel, Pia, 2019, p. 111 notes that central, to understanding the scope of the Church's action in credit dynamics, is the intervention of the vicars on the management of usury and *male ablata.* The documentation received (confessions of certain and uncertain usury; trials for non-compliance with the obligations of restitution: receipts against those who respect the commitments; processes for contracts that hide usurious conditions) allows for analyzing the political and economic value of the concept of usury, a category that allows to evaluate the correctness of credit relationships and to define criteria for inclusion and social exclusion.

Rolandino devotes particular attention to legacies for the restitution of *male ablata* because his «constant concern is to have the testator achieve the salvation of the soul. The release of the testator depends on the mediation of the notary»,[44] so from the first type of legacy, in which the oppressed are few and the figures defined, which can be established through a simple formula, we move on to the one in which the testator knows that he has carried out so many extortions over time that he cannot remember them all. It will be up to specially chosen executors to identify those entitled on the basis of the evidence they themselves will present.

Halfway between the two formulas just described is one devised by Rolandino that gives shape to a particular *voluntas* of a usurious client: he is so ashamed of what he has done that he does not want the content and the recipient of the legacy aimed at returning the ill-gotten gains to be described in the will, *propter timorem infamię*. According to the formula suggested by Rolandino, the testator will therefore describe the person (or persons) to whom the 'reparation' is addressed and the amount due in a *cędula mano sua vel alterius secreto scripta*: this document must be sealed in the presence of two witnesses, who are not aware of its contents, and delivered to the confessor, or to another trusted person. In the will a legacy will be established in favor of this person, depositary of the sealed document, who must discreetly fulfill the will of the deceased described in it.[45] As we can see a complex juridical 'contraption' that makes the secret of confession coexist with the publicity of the will: precisely in reference to the legacies aimed at returning the *male ablata* and the choice of the most suitable formula it has been affirmed that "this is the point at which the role of the notary approaches more closely to that of the confessor or spiritual counselor."[46]

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[44] Chiodi, 2002, p. 493.

[45] Rolandino, *Flos testamentorum, De legatis factis pro restitutione illicite acquisitorum* ff. 260v-261r: «Circa restitutiones usurarum et aliorum quæ indebite acquisita sunt: quatuor solent casus contingere ex quorum quolibet et sua forma consurgit. (...) Secundus est quando testator personas, quantitates, res et causas illicitorum propter timorem infamię in testamento exprimi non uult forte: quia a communi suo, vel ab alijs personis ea ex turpibus causis extorsit. Et tunc solet habere ea notata, vel manu sua, vel alterius secreto scripta in aliqua cędula quam confessori suo, vel alteri personę fideli sigillatam exhibet coram duobus testibus: licet ignorantibus quid contineatur in ea quo facto in testamento dicetur. Item reliquit de bonis suis tali sacerdoti, uel tali priori centum libras soluendas et conuertendas in his, et circa ea quæ ei in secreto commisit.» See Chiodi, 2002, p. 494 and Giansante, 2002, p. 200 and Giansante, 2019, p. 96.

[46] Giansante, 2011, p. 200 and Chiodi, 2002, nt. 63.

4. The notary mediator in contracts: voluntas *of the contractors and* publica utilitas

In contracts, especially in an era of tumultuous economic development like the thirteenth century, the role of the notary is less intimate: it is a matter of meeting practical and economic needs in continuous transformation.[47] Here, the mediation work by Rolandino – who, it should not be forgotten, was a central figure among Bolognese notaries in many fields – professional, didactic, doctrinal, and even political[48] – acts by considering factors related more to *publica utilitas*, in full respect of that two-faced role that everywhere, and in particular in Bologna, the notary plays in his business, as guardian of private interests and certifier of *publica fides.*[49]

The contracts I would like to mention, those of discipleship and writing, have already been examined by Gian Paolo Massetto in the volume dedicated to Rolandino edited by Tamba in 2002.

It is these two contracts that illuminate fundamental aspects in Italian cities, and, in particular, in thirteenth century Bologna: on one hand, in fact, the trade guild development and the structuring of access rules require that attention be paid to the form in which the relationship between apprentice and teacher is regulated so that all three parties are protected, the member of art, the father and, in part, the son. On the other hand, Bologna thrives on *Studium*, and the activity of transcribing texts of the *Corpus Iuris* is not only cultural and does not only concern the one who commissions the copying of the *Codex* or the *Digestum Vetus*, but it is a fundamental economic 'asset' of the university city

[47] Useful indications, also bibliographic, in the essay of Piergiovanni, 2002.

[48] A summary and a bibliographic panorama in Birocchi, 2013. More extensively Pini, 1999 and Tamba, 2002. The symbiotic relationship between Bologna, the University and the notary has been effectively illustrated by Tamba, 1998, pp. 13-41, (*Ibidem*, p. 13 we read that University, municipality and notary operated in Bologna in an almost symbiotic situation) but it was no exception: see for a very different geographical and political context Mangini, 2007, p. 15 where she writes that if the notarial guild of the Larian city assumed, from the beginning, a strong political connotation (in the etymological sense of the term) that derived from having been constituted as an organized group, able to play its own role both within the *officia* administrative of the city and the *districtus* and, more generally, of Como society, it follows that the origins and the very reasons for associating cannot constitute an autonomous object of study, but must necessarily be related and partly subordinated to broader historical-institutional questions.

[49] This is not the place to reconstruct the passages that led notaries to play fundamental roles in relation to document authenticity in the Late Middle Ages. Summary pages, particularly effective from a historical-legal point of view, in Sarti, 2002, pp. 624-648. For the completeness of reconstruction, from a bibliographic point of view as well, I refer to the essays by di Renzo Villata, 2009b, in particular pp. 15-45, for central-northern Italy, and Condorelli, 2009, in particular pp. 65-102, for Southern Italy.

par excellence.[50]

For both these types of contract, the notarial tradition used the scheme of the *locatio-conductio*, without deciding stably between the two alternatives of the *locatio operarum* and the *locatio operis*.[51]

In the first type the lessor was the worker, who leased his services – the *res locata* – while the lessee was the one who received the service, directed the work and paid the fee. For the second scheme, on the other hand, the owner of a *res*, the lessor, undertook delivering it to a specialized worker, the tenant, who in turn undertook achieving a specific result, working or transforming the *res* (in the case of the *scriptor* copying it, in the case of the *magister* instructing the apprentice) in exchange for a fee, to then return it to the lessor: the tenant was therefore burdened with an obligation of results.[52]

Regarding the writing contract, the contribution of the category of notaries was profound: Salatiele, after having framed it in the first draft of the *Ars notarie*, where the *scriptor*-lessor of his work undertakes writing *totum Decretum* against a remuneration agreed to by the student, client-tenant, changes the perspective in the second draft and, like Ranieri da Perugia before him, attributes to the *scriptor* the role of lessee, while the client-student becomes the lessor, so that «the object of the contract is that 'unum Decretum faciendum,' that the conductor 'promisit ei scribere manu propria,' that is to say the 'opus scripturae,' the finished work and that the payment of the *merces* is made by the lessor-client to the lessee-*scriptor*.»[53]

Rolandino frames the relationship between student and scribe in the *locatio operarum*: the *scriptor*, lessor of his work of writing, solemnly promises to write, for example, a *Digestum Vetus* and to persevere until the work is completed. The client, lessee, promises to pay, in four installments, 40 Bolognese lira. The *princeps notariorum* therefore chooses to rely on the scheme for which the *scriptor* lends his professional business, his *operae*, in exchange for a *mercede*.[54]

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[50] In recent decades, historiography has observed medieval cities with the awareness that despite the absence of a 'state' ordering center, those diversified institutional structures by procedurally redefining their objectives and mutual positions nevertheless ensured order, satisfaction of interests and comprehensibility to society. And social bodies, corporations, communities were an active part of that action. They did politics because collective interests were immediately recognized as politicians. See Mozzarelli, 1988, p. 4. About the link between Bologna and *the Alma Mater* the historiography is extensive: for the historical juridical profile it remains fundamental, although dating back a while, Bellomo, 1979 and see also Pini, 1990, e Pini, 1987.

[51] The story has been thoroughly reconstructed by Massetto, 2002; see also Birocchi, 2006, pp. 102-113.

[52] For a general framework of the Roman discipline Fiori, 1999, and Zimmermann, 1996, pp. 338-412.

[53] Massetto, 2002, p. 258.

[54] Rolandino, *Summa*, I, Chap. V, *Instrumentum locationis operarum ad opus scripturæ*

To evaluate the choice of Rolandino, it must first be considered that a central profession in the economy of a city is subject to tensions. On one hand, it has a strong bargaining power and tends to impose its own rules in the market, while on the other hand it becomes the object of interest and control by politics, to protect the *publica utilitas* which derives from that activity. In the case of Bologna, the satisfaction of students and the effective production of essential tools for carrying out university lessons, one of the main, if not the main, city 'industry'.

Thus, the formula chosen by Rolandino can be the subject of conflicting evaluations.[55] On one hand, this choice 'photographs' a change in the role of *scriptor*: he is now the owner of a workshop, where the tools of the *scriptor* are used and not the writing material provided by the client, and also organizes the work of the employees so that the times for completing the work and product quality are under his control. On the other hand, however, the *locatio operarum* still remains a scheme that had its origin in leasing slaves, the fruits of whose labor were advantageous to the tenant, the client: this contractual 'type' therefore guaranteed, even by coercive means, completion of the work, even in the presence of an organization of the now proto-industrial *scriptoria*.[56]

It is worth dwelling on this last point: if we look at the debate that arose among the *doctores* of the *Studium* in the first half of the thirteenth century, the *quaestio* on the possibility for the *scriptor* to free himself from the obligation to complete the work by paying interest to the pupil is discussed: the *glossa* of Accursio firmly supports «quod scriptor potest cogi precise ad scribendum»

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faciendæ, f. 119v: «Antonius promisit et convenit solenniter sine aliqua exceptione iuris vel facti se obligando Corra. pro se et suis hæredibus stipu. scribere sibi unum Digestum vetus in textu de tali forma et litera vel æque bona ut fecit, et scripsit in primo folio primi quaterni eiusdem Digesti. Quam quidem literam ostendit, et ad aius similitudinem formam obtulit, et convenit illud Digestum se scripturum, et etiam de meliori si poterit et sciverit, bonafide continuando bene diligenter, et fideliter dictum opus sine sui, vel alterius operis interpositione, usquequo dictum Digestum totum scriptum fuerit et completum. Et hoc pro .xl. Lib. Bo. de quibus contentus et confessus fuit idem Anto. se a dicto Corra. habuisse et recepisse .xx. Lib. Bono. Exceptioni sibi non datę et non solutæ quantitatis omnino renuncians. residuum autem ipsius summæ dictus Corra. solemn stipu. promisit ipsi Anto. solvere et dare eidem hoc modo .s.x. lib. Bono. duabus partibus ipsius digesti factis. Reliquas vero .x. lib. finite et complete ipso works. Quę omnia et sing. suprascripta promiserunt vicissim.s. unus alteri ad invicem solemnibus stipu. hincinde intervenientibus signature. et rata habe. et tene. observare et adimplere et non contrafacere vel venire aliqua ratione vel causa de iure vel de facto: Sub poena dupli dictæ quantitatis pecuniæ stip. in singu. capitulis huius contractus a quolibet eorum vicissim insolidum promissa. Item reficere et restituere unus alteri adinvicem omia et singu. damna et expensas, ac interesse litis et extra. Pro quibus omnibus et singu. firmiter observandis obli. unus alteri ad invicem omnia sua bona: et poena soluta vel non, prædicta firma perdurent.» See Massetto, 2002, p. 287.

[55] Massetto 2002, p. 288.

[56] Fink-Errera, 1983, e Giansante, 2008, pp. 46-47.

and even being placed in prison for this purpose: according to Accursio, and the other *doctores*, it was possible to reach such a point «ne turbetur publica utilitas idest studium»[57] and so Rolandino affirms, taking up the Accursian equivalence between the *Studium* and the *publica utilitas*, in his *summa*.[58]

Here there is a triangle: the scribes, holders of an essential economic activity, the students, a source of wealth for the city, and the city itself, which wants clients/students to be satisfied so they continue to come study, and spend, in Bologna. Mediating between these poles there is the notary, who must draw up a contract that protects everyone and guarantees *publica fides*, that is, the security of economic relations: the right of scribes to work according to their own rules and to be paid, and that of students to receive a usable, in the sense of complete, study text within a reasonable timeframe.

Equally, if not more complex, was the work of the Bolognese notaries to frame the contract of discipleship, or apprenticeship.[59] The works of Greci concluded that «the practice of the written contract spread widely at the beginning of the thirteenth century.»[60] By setting aside the dynamism of the Bolognese economy, Greci draws from the «freedom of Rolandinian proposal», which frames apprenticeship among the unnamed contracts,[61] the demonstration of a tendency to be equal between the parties to the contract, the father and the mentor, who established «contractual commitments based on a certain reciprocity.»[62] This

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[57] Accursio, *Glossa Ordinaria*, gl. *Sive* ad D. 39.1.21.§ 3 *de operis novi nuntiatione*. *Stipulatio*, § Opus autem factum: «Ex hac litera collige argumentum, quod scriptor potest cogi precise ad scribendum, et poni in compedibus: vel tenetur ad interesse, si hoc placeat scholari ... et ita concordant omnes Doctores Bononienses residentes. et est ratio, ne turbetur publica utilitas. idest studium sicut et hic ne contemnatur edictum prætoris.»

[58] Massetto, 2002, p. 289 and n. 121

[59] Franceschi, 2017, pp. 413-416. See also Bezzina, 2013 and 2015.

[60] Greci, 1988b, p. 183.

[61] Birocchi, 2006 p. 102 writes that it's known that medieval jurists did not know the abstract paradigm of the contract: as is often stated, in fact, they operated mainly according to 'types,' falling into a residual category substantially assimilated to the species of real contracts and deprived for the rest of special dogmatic attention on the part of doctrine, and yet the attention to 'types' was not at all exclusive (one can speak of 'centrality' of the types and no more). Moreover, medieval legal science, even that devoted to the practical aspects, manifested an early need for order with respect to the infinite variety of contracts.

[62] Greci, 1988b, p. 184. V. Birocchi, 2006, p. 104 where he writes about the labor contract, then usually inserted within the type of 'lease': perhaps it was discussed if it was *locatio operis* or *operarum*, but the lease qualification was undisputed. For his part, Rolandino feels free and builds the contract as an agreement between the mentor craftsman and the father of the apprentice directed, on the one hand, to ensure the teaching of the rudiments of art to the young apprentice and, on the other hand, to make sure that the apprentice was in the workshop, serving the mentor as much as possible: a *facio ut facias*, with the addition of small periodic ancillary services of *do ut des* which, as in

labor market mobility would have already been stiffened during the final decades of the thirteenth century, a period in which the statutes of the Arts, although with significant differences, move in the direction of «removing the internship relationship from the sphere of individual bargaining by arrogating a systematic control over the matter to the guild.»[63]

We can analyze the freedom to which Greci refers to the Rolandinian[64] formula which, as studied by Gian Paolo Massetto, abandons the traditional *locatio-conductio* scheme and frames discipleships contract among unnamed contracts.

The approach Rolandino takes is a novelty. If you look at the path taken by Salatiele you will find the second thoughts that we have already observed for the writing contract: at first he had, in fact, opted for the *locatio operarum*, where it was the mentor who rented his teaching work to the apprentice *pro certa mercede* and in a second version of the *Ars notariae* for the *locatio operis*, in which it was the father who gave the *magister* to lease his son, the *res locata*, so that he could teach him.[65]

Rolandino choice of the unnamed contract in the years immediately following the mid-thirteenth century is significant:[66] the scheme of the *locatio-conductio* could not contain the multiplicity and variety of services that the two *voluntates*, the mentor and the *pater familias*, brought together in the mobile economic reality of the mid-thirteenth century.[67]

In the discipleship contract formalized by Rolandino, the father solemnly

practice, took place in nature and were aimed at satisfying essential needs (food, shoes).

[63] Greci, 1988b, p. 184 and Greci, 1988a, p. 236.

[64] Rolandino's freedom and security certainly descended from his authority but constituted a characteristic feature of the entire category, not only in a center like Bologna but also in more 'provincial' areas. Significant in this regard are the conclusions of the study on the Bolognese and Romagna notary in Bruschi, 2006, p. 237 who writes that the notary is a creative subject, self-confident and does not feel, more than that, subjugated by doctrine. As far as can be seen, this independent attitude is not only directed towards the mentors of *ars notaria*: on some issues the autonomy of the notary (sometimes, above all, his inattention or indifference to certain reflections of science) will create some embarrassment to subsequent doctrine.

[65] Massetto, 2002, p. 257.

[66] *Ibidem*, pp. 260–262.

[67] Birocchi, 2006, pp. 104-105 writes that Rolandino believes that the confines of the lease are too narrow to enclose a type of relationship that was now very frequent in the daily life of the thirteenth-century cities – it was a typical product of corporate society – and that, moreover, was variously characterized both in relation to the profession from time to time at stake, both to the conditions of the parties and ultimately to their structure of interests. It was a question of understanding and enhancing a complex relationship, since those who went to the workshop learned, but at the same time served and more or less soon became useful to their mentor in carrying out *ars* operations; in particular, it was important to manage time legally – the contracts were of long duration – because it was at a stage in which it began to be considered an economic good.

promises to take upon himself the obligations to *dare* (give), that is, the son and sums in money and goods in kind, and to ensure that he does not run away or ruin the tools entrusted to him, in which case penalties are established. Likewise, the *magister* promises to *fare* (do), to instruct the boy, and to *dare*, to provide him with clothes, means of sustenance, tools of the trade. There is no longer any translation of the *dominium utile* on the *res*, that is, the boy in the *locatio operis* or the fruits of the work rendered by the mentor in the *locatio operarum*, according to the scheme of the *locatio-conductio*, but there is an exchange of promises, of reciprocal services of giving and of doing: these are two corresponding services.[68]

As a matter of fact, Massetto subtly notes that the *instrumentum* prepared by Rolandino is implemented through the scheme of the *stipulatio*,[69] whose existence is proven by the phrase «promittens solenniter» referring to the father, as well as by the use of the *future verb form* (*se facturum et curaturum – quod dabit et deferet*) and the final part of the contract: «Quae omnia et singula suprascripta promiserunt vicissim, scilicet unus alteri ad invicem solennibus stipulationibus hincinde intervenientibus.»

In this way the unnamed contract is put into the form of a *stipulatio*, which is a mutual promise to do or give something in the future. Even in the Roman world the mutual promise, lent through the ritual exchange of precise and solemn words, was widely used to contract obligations.

In the early Middle Ages, the *stipulatio* had various uses, because its rituality

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[68] Rolandino, *Summa* I, Chapter V, *Instrumentum locationis seu conventionis factæ de aliquo qui futurus sit disciplulus in aliqua arte*, f. 125v: «Antonius posuit et ex pacto dedit Micha. filium suum magistro Corra. cerdoni ad addiscendam et operandam artem calzolariæ hinc ad. V. annos proximos. Promittens solemniter sine aliqua exceptione iuris, vel facti se obligando dicto Cor. pro se et suis hæredibus stip. se facturum et curaturum quod dictus Michael eius filius hinc ad dictum terminum perseuerabit, et continue dicto magistro Cor. morabitur, et fideliter, et studiose faciet, et operabit quæcunque dictus magister sibi circa doctrinam et exercitium ipsius artis perceperit, et res eius et cuiuscunque alterius quę essent penes eum, bona fide custodiet et saluabit, et furtum non faciet, vel discedet ab eo hinc ad terminum supradictum. Quod si aliquod eorum fecerit, satisfaciet de hoc ipse Anto. dicto Corra. et eum indemnem seruabit, et specialiter faciet et curabit, quod ipse Mi. quot diebus ante terminum præter ipsius magistri voluntatem discedet, vel se remouebit a continuo exercitio dictæ artis ei reficiet, et restaurabit in eodem opere et exercitio ad suam voluntatem post terminum supradictum, quod dabit et deferet eidem magistro domui suę unum anferem .s. et duas fogacias, et duos capones quolibet anno in sesto Sancti Stephani. Et hoc ideo quia contradictus magister Corra. promisit dicto Anto. Pro se et suis hæredibus uice e nomine dicti Michaelis stip. quod docebit et instruet ipsum Michaelem bonafide in arte prædicta, et dabit eidem quolibet anno duos subtulares. Quæ omnia e sing. suprascripta promiserunt vicissim, scilicet unus alteri ad invicem solemnibus stipu. hincinde intervenientibus et c. ut supra habes in primo instrumento huius capituli.»

[69] Massetto, 2002, pp. 251-252 and nos. 2-7 and, with reference to the discipleship contract, p. 261. On *stipulatio* see Zimmermann, 1996, pp. 68-94.

«had the power to evoke a formal energy, a *solemnitas* regarded as a provider of *firmitas*.»[70]

In the hands of a late medieval notary, to whom is attributed by the community/city *publica fides*, the *firmitas* of the *stipulatio* does not reside so much in the repetition of ritual formulas, which in fact are partially lost, but is transferred to reciprocal promises whose boundaries are malleable, which welcome the *voluntas* of the two parties:[71] the boy will live or will not live at the home of the *magister* , who will provide him, or will not provide him, with clothes and tools, and will or will not be paid, the father will reward the *magister* in money, or will bring him two capons, or a goat, every year on the occasion of certain holidays, etc.

The two *voluntates* of the parties find shelter, reassurance, *firmitas*, in the translation that the notary lays out on paper: the *fides* of the two contractors is ensured by the transcription work of the professional. The handshake, the exchange of words, the agreement reached after a discussion between the parties is not enough. The personal relationship, the *fides* that the contractors should have drawn from previous knowledge, from community reputation, are replaced by the role that the notary has assumed in the social and political life of the city. Rolandino, who was a conscious and skilled interpreter of this role, who managed, even as a professor and politician, to play it with strict attention to both the *humanitas* of his client and the *utilitas* of his city.[72]

For all these reasons the space occupied by the notary in the city as a mediator, which comprise the remarks of the present contribution, is affirmed as a hermeneutic perspective indispensable for the inter and multidisciplinary connection between the studies, that from multiple and differentiated angles of observation, expand upon the theme of notaries in the Middle Ages.

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[70] Massetto, 2002, p. 254 and n. 21.

[71] Birocchi, 2006, p. 105 writes that the notary renounces the presumed clarity of the lease outline and prefers wandering in the open seas of the agreement; as usual, then, to strengthen the store and protect it from the uncertain contour of promises, seals the deed evoking the reassuring function of two *stipulationes*, mutually rendered by the parties.

[72] *Ibidem*, p. 107 where Birocchi writes that the form of Rolandino is even 'sparkling' in grasping and proposing the creative autonomy that was emerging in practice.

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