DOCUMENTS OF DISPUTE SETTLEMENT IN ELEVENTH-CENTURY ARAGÓN AND NAVARRA: KING'S TRIBUNAL AND COMPROMISE

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ABSTRACT

Whether it could keep the social order or not, making private agreements is thought to be a clear sign that the *placitum* as public justice was absent or lost its authority and organization around the year 1000 and afterwards. In Aragón and Navarra, however, king's tribunal usually intended to pass a clear-cut judgment throughout the eleventh century. If the king decided to have the litigant parties make an agreement, he personally or the lower branches of his *barones* referred a case to arbitration. Even if the level of organization of where agreements were actually made seems to be far removed from the *placitum*, it was a strategy of the Navarro-Aragonese judicial system in order to keep the authority of king's tribunal while meeting the needs of the society.*

KEY WORDS

Aragón, High Middle Ages, Feudalism, Nature, Institutions, Politics.

CAPITALIA VERBA

Aragonia, Primum Medium Aeuum, Feudi, Natura, Institutiones, Politica.

In his pioneering study of the judicial system in the Mâcon region, Georges Duby described as follows the process in which the authority of *placitum* counts presided over declined rapidly around the year 1000. Bishops, abbots and lay lords, who had been regular attendants at the count's tribunal, disappeared from there around 1030, and even strengthened their own jurisdictional power by taking over the lower branches of the public judicial system. In this process, the *placitum*, which lost its authority and essential function, could not pass a clear-cut judgment in conformity with law, and finally changed to become a tribunal of arbitration in which the disputants were at most merely encouraged to reach private agreements[1].

Pierre Bonnassie, also, in his synthesis on Catalonia at the millennium, offered a more radical argument that follows in part that given by Duby. The Catalan judicial system, in which judges, experts in the Visigothic Law, originally could pass a judgment based on the written law, stopped functioning properly around 1020 and afterwards. Magnates took justice into their own hands rather than turning to the *placitum*, no longer respecting judges or the written law, and often resorted to violence or private agreements. Bonnassie argued that the fact that documents in a new style called *convenientia* increased rapidly in this period was a sign that *placitum* had been replaced by *convenientia*, private or feudal compromise[2].

On the other hand, some Anglo-American scholars tend to suggest that there was not such social crisis as the 'feudal anarchy', by regarding compromise as effective way of settling disputes and keeping peace. Patrick Geary insisted that the social order was kept by private agreements on the basis of custom or morals like *amor* and *amicitia*, if the judicial system was entirely lost. Moreover, he said, while coercive judgment based on law cut the social relation between disputants by defeating one side, compromise could control everlasting and structuralized conflicts by readjusting

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* Abbrebiations: CSJP: Ubieto, Antonio. *Cartulario de San Juan de la Peña*, 2 volumes. Valencia: Anúbar, 1962-1963; CS: Ubieto, Antonio. *Cartulario de Siresa*. Zaragoza: Anubar, 1986; CDSAF: Canellas, Ángel. *Colección diplomática de San Andrés de Fanlo (958-1270)*. Zaragoza: Institución "Fernando el Católico", 1964; DML: Martín, Ángel J. *Documentación medieval de Leire (siglos IX a XII)*. Pamplona: Diputación Foral de Navarra, 1983; CDCH: Durán, Antonio. *Colección diplomática de la catedral de Huesca*, 2 volumes. Zaragoza: Escuela de Estudios Medievales-Instituto de Estudios Pirenaicos, 1965-1969; DSRI: Salarrullana, José. *Documentos correspondientes al reinado de Sancho Ramírez, desde 1063 hasta 1094. I: documentos reales*. Zaragoza: Pedro Larra, 1907; DSRII: Ibarra, Eduardo. *Documentos correspondientes al reinado de Sancho Ramírez, desde 1063 hasta 1094. II: documentos particulares*. Zaragoza: Pedro Larra, 1913; CDSR: Canellas, Ángel. *La colección diplomática de Sancho Ramírez*. Zaragoza: Real Sociedad Económica Aragonesa de Amigos del País, 1993; CDPI: Ubieto, Antonio. *Colección diplomática de Pedro I de Aragón y Navarra*. Zaragoza: Escuela de Estudios Medievales, 1951.

1. Duby, Georges. "Recherches sur l'évolution des institutions judiciaires pendant le X^{e} et le XI^{e} siècles dans le sud de la Bourgogne", *Seigneurs et paysans. Hommes et structures du Moyen Âge II*. Paris: Flammarion, 1988: 190-278; Duby, Georges. *La société aux XI^{e} et XII^{e} siècles dans la régions mâconnaises*. Paris: S.E.V.P.E.N., 1988: 89-108.

2. Bonnassie, Pierre. *La Catalogne de milieu du X^{e} à la fin du XI^{e} siècle. Croissance et mutations d'une société*, 2 volumes. Toulouse: Publications de l'Université de Toulouse-Le Mirail, 1975-1976: I, 183-202; Bonnassie, Pierre. "Du Rhône à la Galice: Genèse et modalités du régime féodal", *Structures féodales et féodalisme dans l'Occident méditerranéen (X^{e}-XIII^{e} siècles): Bilan et perspectives de recherches*. Rome: École française de Rome, 1980: 17-44; Bonnassie, Pierre. "Les conventions féodales dans la Catalogne du XI^{e} siècle". *Annales du Midi*, 80, (1968): 529-559.

and renovating former relationship[3]. Stephen D. White also argued that the parties attained to compromise of their own accord in order to restore amicable relationship, though he appreciated the function of State and law more than Geary[4].

Nevertheless, as Dominique Barthélemy has already pointed out[5], we should not pass over an insolvable problem concerning the relation between the public order and private agreements. If they played an important role in keeping peace, the concept 'feudal anarchy', in fact, does not make sense. However, if it did not take place actually, we cannot easily explain the reason why the public justice happened to be lost or not to have practical effect. This contradiction seems to arise from the assumption that compromise is legal and institutional deviation from the right practice of the public justice which could pass a clear-cut judgment based on law, and the tribunal in which it is practiced can be no longer called the public[6].

In Aragón and Navarra, the public tribunal often forced the parties to reach a compromise (*convenientia, conventio, concordia, pactum*), while imposing a penalty for breaking agreed promises[7]. The practice that the public tribunal mediates a compromise no doubt derived from the Visigothic justice, as stipulated in a provision promulgated by King Egica, in which the king or the judges permit the parties to conclude *convenientia* unless it is regarded as being legally harmful; though its primary purpose is to prohibit them to make extra-judicial agreements[8]. However, though recognizing the significance of this clause, Roger Collins considers it as the sign of the lack of law and the weakness of the public authority which could not pass a clear-cut judgment[9]. Thus, in this article, I would like to think of compromise as not the sign of the collapse of public judicial system but its strategy selected ac-

3. Geary, Patrick J. "Vivre en conflict dans une France sans Etat: typologie des mannismes des conflits (1050-1200)". *Annales ESC*, 41-5 (1986): 1107-1133.

4. White, Stephen D. "'Pactum...Legem Vincit et Amor Judicium'. The Settlement of Disputes by Compromise in Eleventh-Century West-France". *The American Journal of Legal History*, 22, (1978): 281-308.

5. Barthélemy, Dominique. "La mutation féodale a-t-elle eu lieu?" *Annales ESC*, 47-3 (1992): 772-774.

6. Wickham, Chris. "Land disputes and Their Social Framework in Lombard-Carolingian Italy, 700-900", *Land and Power. Studies in Italian and European Social History, 400-1200*. London: British School at Rome, 1994: 252-255.

7. Contrary to the traditional ways of understanding, Carlos Laliena Corbera supposes that such a practice represents the transcendent power of the Navarro-Aragonese Kings. Laliena Corbera, Carlos. *La Formación del Estado Feudal. Aragón y Navarra en la época de Pedro I*. Huesca: Instituto de Estudios Altoaragoneses, 1996: 272-277; Laliena Corbera, Carlos. *Pedro I de Aragón y Navarra (1094-1104)*. Burgos: La Olmeda, 2000: 197-208.

8. *Monumenta Germaniae Historica, Leges, Legum Sectio I, Leges nationum Germanicarum*, t. 1, *Leges Visigothorum*, II. 2. 10. The term *"convenientia"* has many meanings besides compromise. Adam J. Kosto listed various examples meaning oral or written agreement, penalty clause on a violator and judicial or extra-judicial compromise to settle disputes; Kosto, Adam J. "The *Convenientia* in the Early Middle Ages", *Medieval Studies*, 60 (1998): 25-26; Kosto, Adam J. *Making Agreements in Medieval Catalonia. Power, Order, and the Written Word, 1000-1200*. Cambridge: Cambridge University, 2001: 43-52. Paul Ourliac, enumerating many examples in Languedoc as well, considered all of them as peculiar custom in the period without law; Ourliac, Paul. "La 'convenientia'", *Etudes d'histoire du droit medieval*. Paris: Picard, D.L, 1979: 243-252.

9. Collins, Roger. "Visigothic Law and Regional Custom in Disputes in Early Medieval Spain", *The Settlement of Disputes in Early Medieval Europe*, Wendy Davies, Paul Fouracre, eds. Cambridge: Cambridge University Press, 1986: 104.

cording to circumstances in order to keep the social order, by studying the system of the kingdom of Aragón-Navarra in the eleventh century. This essay shall in part shed light on the relation between State and society in this period that has hardly ever been received much attention.

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The Navarro-Aragonese documents of dispute settlements are replete with free-formed descriptions, almost like narratives, involving all the process from the causes to the results of disputes. If it took several trials to settle a suit, scribes minutely recorded the whole sequence of events in a single document. This feature is quite different from Visigothic judicial documents that survive in *Formulae Visigothicae* or *Liber Iudicum*: *sententiae* (letters of judgment), *conditiones sacramentorum* (written oaths), *mandata iudicis* (court order of execution), *libelli acusatorii* (letters of complaint), etc[10]. However, these Visigothic documents have not survived in the Navarro-Aragonese archives.

Both Roger Collins and Juan José Larrea suggest that the Navarro-Aragonese scribes, who inherited more or less the Visigothic legal tradition, but were of lower cultural level in both writing and using documents, did not issue documents for each trial, but wrote all the circumstances together in a single document after the end of the whole process[11]. The fact that beneficiaries' scribes often wrote judicial documents at this time might in part justify such an understanding. In Collins' argument, this way of writing and preserving the account assured the beneficiary's rights when the loser went to tribunal once again[12]. Nevertheless, we should remember that only those documents that monasteries needed to preserve have survived today, because most of them have only survived in a cartulary form.

Before the year 1000, the form of judicial documents is quite different from land donation or sale charters, which retained the Visigothic formulae more firmly[13]. It begins with the invocation and a peculiar opening formula, originally used in the Navarrese court[14]: *hec est carta/carta rememorationis/memoria quam X feci* or *hec est carta/memoria de X*[15]. A free-formed description of disputes, usually written in the third person and the past tense, follows, with 'curse clauses' increasing in private charters

10. Canellas López, Ángel. *Diplomática hispano-visigoda*. Zaragoza: Institución "Fernando el Católico", 1979: doc. no. 24 (s. VI), 38 (560-590), 93b (603, VIII), 104 (630, XI, 30), 111 (638, I, 9), 120 (642-653), 143 (672, IX, 1), 145 (673), 146 (circa 673), 147 (673, X?), 154 (673-680), 155 (680, X, 14), 221, 222, 223 (s. VIIex), 230 (752-731); *Monumenta Germaniae Historica, Legum Sectio V, Formulae, Formulae Visigothicae*, doc. no. 32, 35, 39, 40, 41, 42, 43.

11. Collins, Roger. "Visigothic Law"...: 97-104; Larrea, Juan J. *La Navarre du IV^e au XII^e siècle. Peuplement et société*. Bruxelles: De Boeck Université, 1998: 270-278.

12. Collins, Roger. "'Sicut lex Gothorum continet': Law and Charters in Ninth and Tenth-Century León and Catalonia". *English Historical Review*, 100 (1985): 494-495.

13. CS, doc. no. 2 (828-833), 3 (h. 850), 4 (840-867), 8 (933), 9 (941). Also see *Formulae Visigothicae*...: doc. no. 1, 7, 24, 36, 41, 44, 45; Canellas López, Ángel. *Diplomática*...: doc. no. 62, 63 (588-601), 217, 219, 220 (s.VII).

14. DML, doc. no. 1 (842), 8 (970-972), 9, 11, 12 (991): Larrea, Juan J. *La Navarre*...: 278.

15. CSJP, doc. no. 7 (893), 18 (948).

also after 950[16]. This is followed by the list of the witnesses' names and the dating clauses.

However, in the eleventh century, scribes changed the opening formula as follows: if the recipient of the donated property finished by winning his case, they wrote a formula such as: *hec est carta donationis* or *hec est carta donationis vel corroborationis/confirmationis*[17]. We sometimes find an opening phrase such as *hec est carta difinitionis, evacuationis vel recognitionis*[18]. Such a document is the loser's renunciation of claim on the donated property. When the disputants finally reached a peaceful agreement, scribes often changed the opening title to *carta conventionis/ convenientiae/ concordiae*[19].

I wish at this point to offer by way of illustration some documents that consist of two clearly separate sections. The document of the Aragonese monastery of San Juan de la Peña, dating from 1049, contains a description of dispute concerning the possession of the monastery of Santa Eufemia de Biniés, and a *post-obitum* donation charter which the loser's daughter and her husband addressed to the monastery of San Juan[20]:

> De Sancta Eufimia de Biniesse et eius scedula. (=Rubric in San Juan's cartulary)
> Fuit quidam monacus in cenobio Sancti Iohannis nomine Sanctius, ex vico qui apellatur Biniesse, in cuius termino edificavit ipse ecclesia in honore sancta Eufimie, quem secum subdidit sub dicione abbatis domno Paterno predicti cenovii.
>
> Postea vero domna Galga, ex regione Ipuzkoa, rogavit abbatem eius ut eum dirigeret ad suam regionem, ubi erat ipsa. Et posuit eum domno Sancio in monasterio Sancti Salbarotis de Ippuzka. At ille, ubi venit, oblitus professionis sue, imposuit sibi nomen abbatis sine iussione sui abbatis; et abstulit prefatum monasterium suum Sancta Eufemia de Sancti Iohannis, et possuit eum in Sancti Salbatoris, prevaricatus ordinem regularem, quia inlicitum est monaco sine sui abbatis iussum aliquid dare vel accipere. Tamen postea, penitentiam ductus, reconciliabit se suo abbati, et ad oram obitus sui, qui illi evenit in iam dicta Sancta Eufemia, iussit defunctum portare ad Sancti Iohannis; et reduxit illuc Sancta Eufemia quod ita factum est.
>
> Mortua est et suprafata domina Galga, et succesit in loco eius filia illius domna Blasquita et senior Sancio Fertungonis suus vir; volueruntque educere Sancti Iohannis. Et non prevalerunt, quia resistitit eis abba domno Blasco de Sancti Ihoannis. Set quia erant et ipsi traditi de Sancti Iohannis, dedit eis de sua volumtate supradictus Blasco abba Sancta Eufimia monasterium, ut tenerent tamtum in vita sua, et amplificarent illum in suvstantia, tam in terris quam in vineis, pascuis, aquis

16. CSJP, doc. no. 18 (948); del Arco, Ricardo. "El Archivo de la Catedral de Jaca". *Boletín de la Real Academia de la Historia*, 65 (1914): 49-51.

17. CDSAF, doc. no. 18 (1035, X, 27); CSJP, doc. no. 72 (1038), 79 (1042), 119 (1055); CDSR, doc. no. 80 (1085); CDCH, doc. no. 24 (1062).

18. DML, doc. no. 157 (1097); CDPI, doc. no. 60 (1099, III).

19. DSRII, doc. no. 85 (1076-1085, III, 1), 77 (1092); DML, doc. no. 127 (1088, II, 5), 142 (1094, I-V); CDCH, doc. no. 56 (1093, VIII, 25); CDPI, doc. no. 43 (1098, I, 5).

20. CSJP, doc. no. 98 (1049).

et pecoribus et iumentis. Et post obitum eorum reverteretur ad Sancti Ihoannis, ut ipsi teneantque eum iure perpetuo.

Facta kartula era .T. LXXX. VII., regnante in Aragone rex Ranimiro, et in supradicto monasterio abba domno Blasco, episcopo domno Garsea in Aragone.

In Dei nomine. Hec est carta quam facio ego domina domina Blasquita de Sancta Eufemia, quam tenui pro manu de abbate don Blasco et de illos seniores de Sancti Iohannis cum sua hereditate de terris et vineis. Pro anima mea et de meo seniore Sancio Fertungonis et de meos parentes, redo illam ad Sanctum Iohannem, ut neque ego, nec ullus de mea tribu, requirat illam, ut abstrahat illam de Sancti Iohannis. Et illu malquelo de saso et illut aliut malquelo de Sancta Cruce de Tolosana, de post meos dies, pono illos ad Sancti Iohannis, ut non ex parentella nostra, neque ullus abstrahat illos de Sancti Iohannis; et sunt fermes Mango Garcianes de Vinies et Garsea Fertungones.

In this document, the section of the *post-obitum* donation charter is shown in italics, and is the outcome of the agreement made after the dispute.

We also have a document in which the scribe only added a description of dispute dating from 1050 to an adoption charter written three years earlier[21]:

In Dei nomine. Hec est carta quod ego Garcia Tiliz facio ad vos domo meo regi domno Ranimiro Sancioni regis filio, propter que veni ad pauperitate vel ad necessitate et non inveni nec filios nec alia generatione qui mici adiuvasset aut bonum fecisset, nisi fuit pietas Dei; et venit in corde omni mei regi domni Ranimiri, et prendibit eum pietate de me, et non pro me facto, sed pro Dei amore fecit mici bonum et dedit mici kaballos et victum sibe vestitum et omnia que fuit mici necesse. Et dimisi filios et toto alios, et volebam eum profilgare in omnia que abevit et illo dimisit mici que me abuisse illo alio. Et dono adque profilgo iam nominato rege domno Ranimiro in meos usque nos in villa que dicitur Ibarduesse vel in omnia que ibi abeo ex mea pertinentia [...] cum illo alode profilgo eum in villa que nuncupant Savinenianeco et in Sancti Vincenti, sic in mesquinos quam in tota mea pertinentia que habeo et possideo, ut abeat totum hoc supra nominato inienuo et aveat et posideat illo iure perpetuo, tam ille quam filii sui et omnis generatio illius cui ille eam dimiserit. Et ego predictus Garcia Atiliç, qui hanc cartam profilgationis rogabi facere et de manu mea confirmabi et posui firmes ut firma permaneat hanc scribturam sicut superius est scriptum.

Facta carta in era T. LXXX. V.

Et hec sunt nomina corum de ipsos firmes id sunt senior Sancio Galindç firme, senior Ato Galindiç firme, senior Sancio Garceiç de Spondelas firme, senior Scemeno Garceiç dominator Sos id est teste, episcopo domno Garsea teste, abbate domno Velasco teste, senior Enneco Sangez de Arruesta teste, senior Lope Garceiç in Aguero teste, senior Fortunio Acenariç de Luar teste, Garcia Lopeç de Berne firme, Fortunio Garcianes de Biniessi teste.

Post facta hanc cartam venit filio de Garsia Tiliç, Acenar Garceiç, alio die de Sancta Maria, in Sirasia, et demandabat suas villas iam dictas ad iam dicto rege pro dotem matris sue currente era T. LXXX. VIII.; et levabit se Garcia Atiliç otore (?) super rege, et posuit fidiatore de lege ad suo filio Açenar Garceiç; et ipse filius posuit ad rege fidiatores senior Enneco Lopez et senior Lope Garceiç pro se et suos germanos et sua matre, quod amplius non rancurent ipsas villas ad predicto rege, nec ad filios suos.

21. CSJP, doc. no. 95 (1047).

In this case, the section of *carta profilgationis*, adoption charter, shown in italics, with which García Tiliz commended himself and his properties to the king, Ramiro of Aragón, in 1047, is chronologically the cause of a claim which Aznar Garcés, García's son, in fact made against him three years later.

The scribes in Navarra, who from the first made themselves more familiar with the opening formula than those in Aragón, invented such titles as *carta rememorationis sive recognitionis/definitionis* or *carta rememorationis vel convenientiae/concordiae*. Several judicial documents, which have survived in San Salvador de Leire's monastic cartulary, consist of the *rememoratio* section (description of dispute), and then the *recognitio/definitio* or *convenientia/concordia* section, respectively[22]. Did they try to convert a judicial record into a charter form, or only insert a description of dispute into a charter? Whichever is the more probable, they gave writing a charter priority; if various public documents were issued for each trial, they would not feel the need for keeping all of them.

Most of our judicial documents related to disputes over land property classified into 'civil' cases in the modern judicial system. The 'criminal' cases leave few traces in documents except for indirect mentions. For example, a document, dating from 1062, was only preserved because it is a donation charter in which García Aznárez, who killed a horse in the possession of the magnate, Sancho Galíndez, *aitan* of King Sancho Ramírez, donated him a piece of vineyard in place of paying 100 *solidi* as compensation[23]. The reason why few records of 'criminal' cases are handed down must be explained as follows: as Collins says, judicial documents were generally written and preserved by beneficiaries' scribes in this period. However, if the king merely punished a criminal with a fine or whipping and he did not donate an accuser something as compensation, beneficiary who needed preserve his documents would not in theory exist though scribes of tribunal issued some documents. Many recent scholars tend not to make a distinction between the 'civil' and the 'criminal' because the parties generally intended to make an agreement even in case of crime such as murder or theft in this period[24]. However, if they cannot be distinguished strictly, it may be because documents which related to the 'criminal' were not preserved except for the cases settled by agreement.

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Two thirds of eleventh-century judicial records contain the descriptions of disputes settled in king's tribunal. The frequency and the regularity with which it was held are not ascertained. As for places where it was usually held, for example, we

22. DML, doc. no. 127 (1088, II, 5), 142 (1094, I-V); CDPI, doc. no. 60 (1099, III), 108 (1102, I, 27), 118 (1102), 119 (1102), 146 (1094-1104).

23. CDCH, doc. no. 24 (1064). In another donation charter dating from August 3 of 1061, a woman, whose husband was killed, donated land property to King Ramiro I. Her motive of donation was for judicial meeting (*pro uno plecto*) held in the presence of the king. This donation reminds us of *iudicatum* stipulated in the Visigothic law, though it is, of course, doubtful that such an institutionalized judicial fee was still retained in this period. CSJP, doc. no. 165 (1061, VIII, 3). As to *iudicatum*, see *Leges Visigothorum...*: II, 1. 26.

24. Davies, Wendy; Fouracre, Paul, eds. *The Settlement of Disputes in Early Medieval Europe*. Cambridge: Cambridge University Press, 1986: 4.

can cite the villages where disputed property were situated or churches or monasteries around there, *castri* where the king lodged and principal monasteries such as San Juan de la Peña where they regularly visited and accepted their complaints, etc. Wherever it was taken place, a regular attendance was convoked there throughout the eleventh century.

The litigants were usually summoned in the presence of the king and his *barones*, magnates of the kingdom (*coram rege domno...et de suos barones*), and also judged by law and their judgment (*pro lege et iudicio de rege domno...et de suos barones*, to which the phrase *et de suos iudices* was sometimes added)[25]. It is unclear how prelates such as bishops or abbots participated in judicial administration because they did not appear in these formulae and were rarely listed in regular attendants.

Barones, called as *seniores* more generally, began to appear in king's tribunal of Navarra and be mentioned in the dating formula of documents from the second half of the tenth century[26]. However, it is from the 1020s, under the reign of Sancho III, the king of Navarra, that we are able to grasp their social status concretely. Carlos Laliena Corbera explains that a group of *barones* who possessed several castles granted as *honores* by the king came to gain power in the process of the expansion of the kingdom and the reorganization of the frontier defenses against al-Andalus, while referring to this phenomenon as the 'revolución silenciosa'[27].

It is unquestionable that Laliena expresses like that with the concept of the 'révolution féodale' accompanying the collapse of the public power and the formation of feudal order in his mind. In the 1020s, however, we only count six *barones* belonging to four families related to the king's own and eight castles which they possessed in the frontier[28]. It hardly changed after the independence of the kingdom of Aragón in 1035. Moreover, while castles *barones* possessed increased drastically after the Aragonese conquest began in 1080s, most of them were controlled by descendants of the initial families almost exclusively[29]. The first thing we should not

25. CSJP, doc. no. 73 (1039), 79 (1042), 95 (1047), 113 (1054), 174 (1035-1064); DSRII, doc. no. 85 (1076-1077).

26. Ubieto, Antonio. *Documentos reales navarro-aragoneses hasta el año 1004*. Zaragoza: Anubar, 1986: doc. no. 50 (971), 51 (972), 54 (978), 59 (985), 64, 65 (988-989), 67 (991), 71 (992), 74 (996), 75 (997).

27. Laliena, Carlos. "Una revolución silenciosa. Trasformaciones de la aristocracia navarro-aragonesa bajo Sancho el Mayor". *Aragón en la Edad Media*, 10-11 (1993): 481-502; Laliena, Carlos. *La formación del Estado feudal...*: 72-75.

28. Six *barones* of the 1020s were as follows: Jimeno Garcés whose grandfather was Ramiro Garcés *regulus de Viguera*, younger brother of King Sancho Garcés II, and who became titled *aitan* of Ramiro I, the king of Aragón, later; besides him, brothers Fortún, Ariol and Lope Sánchez, Lope Iñíguez and Jimeno Iñíguez. Eight castles they possessed were Atarés, Uncastillo, Ruesta, Sos, Boltaña, Cacabiello, Loarre and Agüero.

29. In the second half of the eleventh century, a few new families appeared in the group of *barones* besides the early families: for example, in the 1080s, brothers Sancho and Pepino Aznárez, of which the former possessed Senegüé and Perrarúa, the latter Alquezar and Aragüés del Puerto each other in a short period. As to those families, adding the toponyms of both their native place and castles they possessed, scribes used to write their names such as: *senior Sancio Acenarez de Viescasa in Senebue*. CDSAF, doc. no. 72 (1083, I, 11). However, it is only for several years that they could possess *honores* and their sons could

overlook is the fact that they continued to participate in king's tribunal throughout the eleventh century.

Judges, *iudices* in Latin or *alcaldes* which derived from *al-qādī*, Islamic judges, constantly appeared in our judicial documents. The above-mentioned formula testifies that they participated in judgment passed by the king and his *barones*. *Alcalde* himself rarely inquired into a case transferred from king's tribunal under the name of the king[30]. However, it is unclear that they were experts in the Visigothic Law who could preside over the tribunal and give decision independent of the royal authority. For example, when a dispute over San Juan's *pardina* near Javierre happened in 948 two *iudicantes Aragone* who ordered witnesses to swear an oath with the King of Navarra were his *barones*[31]. In the eleventh century, also, we can merely find out *alcalde in Aragone* belonging to the group of *barones*[32] or *merino iudex* who must concurrently hold *merinus*[33], except for examples of *monacus et iudex* who seemed to be more familiar with law than lay judges[34].

How decision was given by king's tribunal composed of the king, his *barones* and judges titled *seniores* or *merini*? When all the attendants unanimously decided to dismiss plaintiff's claim in the tribunal of King Sancho Ramírez in 1085[35], we never know what kind of law was applied on that occasion. The term *lex* included in the above-mentioned formula often had the same meaning as *iudicium*. Moreover, unlike scribes of Catalonia or León who explicitly cited provisions of the Visigothic Law with the formula *sicut lex Gothorum continet*, the Aragonese scribes merely used the phrase *sicut est lege de terra* and it is not ascertained what the details of *lex de terra* were[36].

Nevertheless, king's tribunal faithfully followed Visigothic procedures throughout the eleventh century. A series of procedures, opened with summons on plaintiff

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never inherit them. See Ubieto, Agustín. *Los "tenentes" en Aragón y Navarra en los siglos XI y XII*. Valencia: Anubar, 1973.

30. CSJP, doc. no. 73 (1039). In this judicial meeting, *alcalde* Sancho Alarico had three witnesses take an oath and dismissed defendant's claim.

31. CSJP, doc. no. 18 (948). As to *pardina* see: Ubieto, Antonio. "Las pardinas". *Aragón en la Edad Media*, 7 (1987) : 27-37; Larrea, Juan José. "Moines et paysans: aux origines de la première croissance agraire dans les Haut Aragon (IX^{e}-X^{e} siècles)". *Cahiers de civilisation médiévale*, 33 (1990): 219-239.

32. CDCH, doc. no. 22 (1062).

33. CDPI, doc. no. 14 (1094, X-XI).

34. CDPI, doc. no. 14 (1094, X-XI).

35. CDSR, doc. no. 80 (1085).

36. Serrano, Manuel. "Notas a un documento aragonés del año 958". *Anuario de Historia del Derecho Español*, VI (1928): 255 (958). Collins supposes that the citation of the Visigothic Law in Catalonia and León does not mean that the cited law was practically applied but that the right procedures were followed according to the law. Collins, Roger. "'Sicut lex Gothorum continet'...: 494. As to the Catalan texts, see Zimmermann, Michel. "L'usage du droit wisigothique en Catalogne du IX^{e} au XII^{e} siècle: approches d'une signification culturelle". *Mélanges de la Casa de Velazquez*, IX (1973): 233-281. Recently, Jeffrey A. Bowman insists that Churches, resorting to count's power and the expertise of judges-clerics, selectively and strategically used rules culled from the Visigothic Law, the Frankish Law and the Canons. Bowman, Jeffrey Alan. *Shifting Landmarks. Property, Proof, and Dispute in Catalonia around the Year 1000*. Ithaca: Cornell University Press, 2004: 35-55.

and defendant, which the inquiry on the parties, the examination of witnesses, the procedure of proof and the pronounce of sentence succeeded in turn, are hardly different from what were described in sixth-century formula of sentence, except for the citation of the Visigothic Law[37]. It is documentary evidence that was seen as what was the most trustworthy[38]. Oath was also imposed if no one could bring forward documentary evidence or its genuineness was doubted[39]. Judging from the fact that the forgery of charter was found out in king's tribunal of 1088[40], documentary evidence and oral one must have been complementary to each other. Moreover, in 1076 and 1085, having inhabitants give testimony, the king and all other attendants of the tribunal surveyed each boundary disputed on the spot; this procedure derives from several provisions of the Visigothic Law, too[41]. Finally, no example of the ordeal of hot iron, boiling water or duel adopted practically was known in the eleventh century[42].

Once they are adopted, one party inevitably loses his suit. Thus, when the tribunal intended to have the parties make an agreement, the procedure of proof sometimes dared not to be followed[43]. However, King's tribunal usually passed a clear-cut judgment except for disputes over tithe between the bishops of Jaca-Huesca and monasteries, as we shall see later. In fact, monasteries often gained their own cases, which must be due to not their political and social power but the nature of transmitted documents most of which they wrote and preserved.

On the other hand, it seems that the 'criminal' cases were usually settled in the way of punishment on the accused by king rather than agreement between the parties on their own initiative. When king granted his own lands to nobles or Churches, his scribes sometimes specified in donation charters that they were what he had confiscated for some crimes ex-proprietors had committed: murder,

37. *Formulae Visigothicae*...: no. 40.

38. CSJP, doc. no. 14 (928); CDSAF, doc. no. 18 (1035, X, 7); CDCH, doc. no. 56 (1093); DML, doc. no. 142 (1094, I-V); CDPI, doc. no. 14 (1094, VIII-XI), 60 (1099, III).

39. CSJP, doc. no. 14 (928), 73 (1039), 85 (1044), 106 (c. 1053), 174 (1035-1064); CDSAF, doc. no. 25 (1038-1049); Serrano, Manuel. "Notas a un documento"...: 255 (958). The law of King Chindasvint prohibits swearing an oath except when the criminal prove his innocence. *Leges Visigothorum*...: II, 1. 25. However, in both the Visigothic period and ninth and tenth-century León and Catalonia, it was often adopted as the way of proof in the 'civil' case. Collins, Roger. "'Sicut lex Gothorum continet'"...: 494-496.

40. DML, doc. no. 127 (1088, II, 5).

41. DSRI, doc. no. 154 (1075-1076); CDSR, doc. no. 80 (1085). Before the year 1000: CSJP, doc. no. 7 (893), 12 (921, X, 1), 14 (928), 18 (948); Serrano, Manuel. "Notas a un documento...": 255 (958). On the settlement of boundary disputes in the Visigothic Law, see *Leges Visigothorum*...: X. 3. 1- 3. 5.

42. In the privileges King Sancho Ramírez granted to Cathedral of Jaca in March of 1079, trial by the ordeal of hot iron was permitted to adopt against usurpers of its lands. CDCH, doc. no. 41 (1079, III). However, all the same judicial privileges included in eleventh-century documents like San Juan's own are thought to have been falsified in the twelfth century. Ramos, José María. "La formación del dominio y los privilegios del monasterio de San Juan entre 1035 y 1094". *Anuario de Historia del Derecho Español*, 6 (1929): 33-39.

43. Serrano, Manuel. "Notas a un documento"...: 255 (958); CDCH, doc. nº. 56 (1093, VIII, 25).

theft, adultery and the conversion to Islam[44], as to which, except for the last, the Visigothic Law stipulates that who commits shall deserve capital punishment or whipping[45]. In his study of the judicial system in tenth-century Asturias-León, José María Mínguez explains that the phenomenon that these severe punishments gave way to the confiscation of land was due to a kind of agreement between kings or counts who were eager to acquire lands of which the value increased in the economic growth and the criminals who wished to avoid the execution, which is no longer distinguished from the 'civil' case, and, far from that, cannot be regarded as the public justice because it was based on private agreement between them[46]. However, taking the fact that only the king could do like that into consideration, it does not mean the collapse of the public judicial system but mere modification of the form of punishment.

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As mentioned above, king's tribunal basically intended to pass a clear-cut judgment except for disputes over tithe between the bishops of Jaca-Huesca and monasteries, of which the cause had gone back to the ninth century. It was not until the foundation of the bishopric at Jaca in 1076 and the unification of both bishoprics of Jaca and Huesca conquered in 1096 that the bishops' power established. Although the bishops of Aragón constantly appeared in ninth —and tenth— century sources, they were bishops in name only and most of parish churches and their tithes were possessed by monasteries. In the tribunal King Sancho Ramírez presided over in 1093, exhibiting a donation charter dating from 922 by which the bishop Ferriolo had donated all parish churches and their tithes in Echo valley, the monastery of San Pedro de Siresa claimed its rights over them against Pedro, the bishop of Jaca. The king, however, thought that this case would not be *bonum contentionem* and did not accept that charter as proof; he had them make an agreement (*conuenientia, concordia*), and then both parties divided up the revenue of tithes[47].

Disputes of this kind getting more serious in the twelfth century were, if anything, particular ones due to the king's 'Europeanization' policy. In the second half of the eleventh century, while establishing the bishopric at Jaca and reorganizing its diocese, the king who became feudatory to the Pope introduced Cluniac monastic reform and had to protect monasteries' vested rights[48]. The king, on the other hand,

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44. Murder: CSJP, doc. no. 81 (1043); DSRI, doc. no. 7 (1073). Plunder of twelve cows by a shepherd: Archivo Municipal de Huesca, R-1, letra visigótica (1048); adultery: CDPI, doc. no. 8 (1090); the conversion to Islam: CDCH, doc. no. 40 (1077).

45. As to punishments against murderer, see *Leges Visigothorum...*: VI. 5. 1- 5. 21; thief: III. 4. 3 et 4. 9; adultery: VII. 2. 13 et 2. 14.

46. Mínguez, José María. "Justicia y poder en el marco de la feudalización de la sociedad leonesa", *La giustizia nell'alto medioevo (secoli IX-XI). Settimane 44*. Spoleto: Centro Italiano di studi sull' Alto Medievo, 1997: I, 530-546.

47. CDCH, doc. no. 56 (1093, VIII, 25). The donation charter dating from 922 which San Pedro monastery tried to present is copied in its own cartulary: CS, doc. no. 7 (922).

48. King Sancho Ramírez appointed his brother García the first bishop of Jaca for the purpose of keeping his influence over the bishopric, which undoubtedly went against the then movement of Gregrian reform. However, expanding his episcopal power drastically, García was dismissed by the king around

founded the monastery of Montearagón, *capella regis* under his direct control, near Huesca and reorganized old monasteries into its priories, which beared *hostes* and supplied war expenditure in expanding warfare against Islam, while granting many parish churches and their tithes to them[49]. Because the king's policy would be denied whichever had precedence, there was no other way of settling such disputes than dividing up their rights by agreements anyway.

In Aragón and Navarra, dispute settlements by compromise are grouped into two types as follows: first, the king personally referred a dispute into arbitration after his tribunal tried it and passed a clear-cut judgment; second, after king's tribunal did alike, the king decided to transfer the case to the lower branches of judicial system and it was arbitrated there.

In the former, the dispute around 1080 between Sancho, the abbot of San Juan de la Peña, and Galindo Dacones, his *maioral*, is very interesting. Galindo got married with the former abbot's *excusata* and then was appointed his *maioral* in Lecueita. However, he suddenly began to claim that nothing could be charged but *cauallaria* after Sancho was installed as new abbot. Although accused in king's tribunal and ordered to be San Juan's *mezquinus*, serf, he did not accept this judgment and forfeited all his tenures as a result. When Galindo begged the abbot for mercy later, they reached a compromise in the presence of the king, and he was permitted to possess his confiscated tenures again as long as he could fulfill *cauallaria* or a substitute charge as he claimed first[50]. Similarly, in dispute over *terminus* between inhabitants

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1083. The successor, Pedro, appointed to be new bishop by the cardinal and Frotard, the abbot of Saint-Pons de Thomières, caused many disputes because of trying to take churches belonging to monasteries and lay lords into his own hands. Laliena, Carlos; Sénac, Philippe. *Musulmans et chrétiens dans le Haut Moyen Age: aux origines de la reconquête aragonaise*. Paris: Minerve, 1991: 100-105. On the other hand, the leader of Cluniac monastic reform in Aragón was the monastery of San Juan de la Peña whose cartulary contained a lot of Papal and royal privileges. Nevertheless, most of judicial privileges are thought to be falsified in the twelfth century when the monastery disputed with the bishop of Jaca-Huesca many times. Ramos, José María. "La formación del dominio"...: 33-39. King Pedro, in his letter addressed to Pope Urban II around 1095, reported that not only monasteries but also lay lords and knights who had to throw themselves into the warfare against Islam were obliged to lose their own properties in disputes with the bishop of Jaca-Huesca. CDPI, doc. no. 21 (1095).

49. In 1074, King Sancho Ramírez founded the monasteries of San Pedro and Santa María as *capella regis* inside of the castles of Loarre and Alquézar respectively, and annexed the monastery of San Andrés de Fanlo to the former. CDSAF, doc. no. 61 (1074, VI, 27). San Pedro de Siresa was reformed into *capella regis* in 1082. CS, doc. no. 13 (1082, IX, 4). When the monastery was founded inside of the castle of Montearagón near Huesca in 1093, three monasteries, Loarre, Fanlo and Siresa, were annexed to it. Utrilla, Juan F. "La Zuda de Huesca y el monasterio de Montearagón", *Homenaje a don José María Lacarra de Miguel en su jubilación del profesorado*. Zaragoza: Anubar, 1977: I, 285-288; Esco, Carlos. *El monasterio de Montearagón en el siglo XIII*. Huesca: Ayuntamiento de Huesca, 1987: 17-21. The royal privileges granted to Montearagón in 1099 ordered that all its villains bear *hostes* by order of royal officers and the monastery itself supply two mules for conveyance in kings' expedition, while all its own vested rights was confirmed except for judicial privileges such as *calumpina*. CDPI, doc. no. 62 (1099, II).

50. DSRII, doc. no. 85 (1076-1085): "mortuo autem abbate domino Belasio et ceteris abbatibus qui post eum fuerunt, fecit se contrario de Sancto Joanne, et dixit quod nullo servitio non debebat facere Sancti Johanni pro illa sua radice de Lecueyta, nisi solumodo cauallaria, et proclamauit ad judicium abbas dominus Sancius et prior dominus Galindo, simul cum illo, denante rege domino Sancio et suos barones ad Sanctam Crucem; et pro iudicio de rege et de suos barones achalzauerunt illum pro suo mesuquino;

of Equíroz and the monastery of San Salvador de Leire in 1099, the former side begged the king for arbitration after losing the suit in king's tribunal, and then they agreed to divide up the rights to use it in the presence of the king[51].

The second type of dispute settlements testifies to the function of lower tribunals. Before the year 1000, we find out descriptions of tribunals the count of Aragón and the bishop of Pamplona presided over respectively by order of the king[52]. Moreover, dispute settlements at judge's tribunal and *barones'* one, where the transferred cases from king's tribunal were settled alike, were also recorded in eleventh-century documents[53]. Above all, *barones'* tribunal was often held when the king decided to make the disputants reach compromise again after king's tribunal delivered clear-cut judgment.

For instance, the dispute over tithe between the monastery of San Andrés de Fanlo and two inhabitants of Avellada started at King Ramiro's tribunal around 1046. These latter tried to prove their own right by oath, but were accused of perjury and lost the suit consequently. After that, however, in the tribunal which composed of *senior* Fortún Garcés who possessed Nocito, Jimeno, the abbot of San Urbez de Nocito and several land lords of Grasa, the parties made *convenientia* and divided tithe in half[54]. Moreover, in 1098, the inhabitants of Garde disputed over the right to elect a priest of the village church with the monastery of San Salvador de Leire and its priory, San Martín de Roncal. When the predecessor of King Pedro I granted San Martín monastery to Leire, the inhabitants suddenly refused to accept a priest elected by San Martín. Being inquired in King Pedro's tribunal at Huesca, they stated that it was because San Martín substituted the familiar Vishigothic liturgy for the Roman as soon as it became Leire's priory. They were sentenced to accept a priest elected by San Martín adopting the Roman liturgy and pay a fine of 1000 *solidi* to Leire. The King, however, ordered them to make *bonam concordiam* in the tribunal of *senior* Lope López possessing Ruesta and Roncal valley. As a result, the parties reach

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et quia neguerat quod Sancto Johanni seruire non debebat, iudicauit rex vt tollerent ei quidquid habebat in Lecueyta... et sic fecerunt et abstulerunt illi totum... Postea, uero, videns Galindo Dacones se malum deuenisse, penitens venit ad pedes de illo abbate cum multis deprecatoribus, rogas vt sui misereretur et reddere sibi quidquid abstulerat, et seruiret ei sicut seriuire debebat. Tandem abbas flexus precibus restituit ei omnia quae ei abstulerat sub hac conditione, vt possideret in vita sua et faceret suo seruitio Sancto Johanni sicut debebat facere. Post obitum, vero, eius, filiis eius si voluerint seruire Sancto Johanne secundum quod abbati vel senioribus placuerit, habeant illas casas vel illas terras et... Si autem noluerint filii eius seruire Sancto Joanni, haec haereditates ab integro sit Sancto Jaonnis. Facta est autem haec conuentio in atrio Sancti Joannis, in praesentia domini reges Sancii".

51. CDPI, doc. no. 60 (1099).

52. CSJP, doc. no. 14 (928), 18 (948); Serrano, Manuel. "Notas a un documento"...: 255 (958).

53. See note 29.

54. CDSAF, doc. no. 25 (1038-1049): "Et habuit pletum illo abbate domno Bancio pro illa decima denante rege Ranimiro in Nocitu, et dederunt iurare ii vicinos de Avellana pro illa decima, unus Garcia Arioli et alius Daccu Date, et non potuerunt iurare pro mentira; et venerunt ad convenientia in sancti Martini devante senior Fortunio Garcez qui tenebat Nocitu, et illo abbate domno Eximino de sancti Urbicii et senior Lope Enneconis de Grassa et de suos filios et senior Garcia Lope de Grassa, et de devante totos vicinos de Portiella et de Bentue et de Avellana: dederunt firmes illos Avellana pro illa decima... ad illo abbate. Et dedit illo abbate dompno Bancio firmes ad illos de Avellana pro illa medietate de decima...".

an agreement on various rights of tithe, the election of priest and the mill, and so on, and *omnes meliores homines* of the village swore to keep *fraternitates et amorem et confirmationem* with the monasteries[55].

King's tribunal usually intended to give a clear-cut decision as above. However, when the king preferred to submit disputes to arbitration after that, he personally had the parties compromise without calling his tribunal or *barones'* tribunal arbitrated disputes on behalf of the king's own; which was indeed a strategy Navarro-Aragonese judical system elaborated in order to readjust the relation between the disputants, while flaunting the authority of king's tribunal that could pass a coercive judgement at any time.

Nevertheless, although compromise was the very way of reproducing friendly relation between the litigants without defeating one side, there also must have been winner and loser in dispute settled by compromise. In the above-mentioned case of 1098, San Salvador de Leire and the inhabitants of Garde made a deal behind the flowery words emphasizing their friendship excessively. The fine of 1000 *solidi* king's tribunal imposed on the inhabitants was demanded to pay again when they made compromise in *barones'* tribunal. Although having petitioned the abbot to exempt a half of fine successfully, they had to guarantee him of payment of another half by nominating their warrantors[56]. Thus compromise had to be paid for in this case.

If victory or defeat was merely concealed, the problem is how agreement could be kept so that dispute would not recur. The following two cases tell us the complicated way of having the parties keep agreements:

Firstly, in aforesaid dispute settled around 1046, two inhabitants of Avellada, who lost the suit in king's tribunal, made an agreement with San Andrés monastery in *barones'* tribunal held at the church of San Martín de Nocito. The parties designated warrantors each other so that nobody would break their agreement. Nevertheless, *senior* Fortún Garcés, the president of tribunal, ordered that violators pay a fine of 60 *solidi* to San Martín church, and wine, meat and wheat to all the inhabitants of Portiella, Bentué and Avellada attending there as witnesses[57]. Remarkably, *barones'* tribunal supported by the royal authority imposed a penalty relying on witnesses' 'consensus'.

Secondly, we cite an example of extra-judicial agreement between San Salvador de Leire and Aznar Garcés in 1094. The origin of an affaire is that in compensation of his horse which died in Leire's estate, Aznar Garcés, who possessed its *villa* Villatuerta, demanded another one and the exemption of *angarias* for four years

55. CDPI, doc. no. 43 (1098, I, 5). King's tribunal also imposed a fine of 1000 *solidi* on inhabitants of Sieso who unjustly elect a priest of the village church belonging to the monastery of Montearagón. CDPI, doc. no. 62 (1099, III).

56. CDPI, doc. no. 43 (1098, I, 5): "Prefatus autem abbas Regimundus habebat super illos homines de Garde calumniam mille solidorum per iudicium regis et rogaverunt eum propter quingentos solidos et propter alios quingentos dederunt ei fideussores et fermes de vanetta".

57. CDSAF, doc. no. 25 (1038-1049): "pro tali conveniencia: ut qui istum pletum voluerit disrumpere pariet lx solidos ad sancti Martini et ad illos de Portiella, et de Avellana et de Bentue, nietro de vino et carnero et formata de pane"; see note 54.

which was to be discharged with his dead one. He claimed again and again sheltering behind a land-possessing contract, and furthermore, it is after the fourth negotiation and agreement that this dispute was settled as a result. Interestingly, in the third agreement, the monastery 'released him from a fine of 60 *solidi* which he had to pay to the king', that is, exempted him from a fine which was to be imposed if they disputed in king's tribunal, by not accusing him[58]. This testifies that not only could king's tribunal pass a foreseeable judgment but its authority was strategically used even in extra-judicial agreement.

As above, a penalty depending on witnesses' 'consensus' was imposed in *barones'* tribunal held by order of the king, while the 'authority' of king's tribunal was used as the way of producing the legal force of private agreement. This odd reversal of roles was caused by a strategy elaborated by king's tribunal. King's tribunal indirectly participated in arbitration because it decided to transfer a case to the lower tribunals. However, the fact was thoroughly concealed as the first case tells us. Therefore, the purpose of its strategy was to show off the authority of king's tribunal which could always pass a coercive judgment by concealing the fact that it participated even in arbitration while meeting the needs of the Navarro-Aragonese society.

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In conclusion, it is worthy of note that: 1) few judicial documents, which beneficiaires' scribes tended to write in this period, were preserved except for the cases settled by agreement with which some land properties were transferred; 2) agreement itself was actually made in much less organized tribunal than king's one, which indirectly participated in arbitration. It is, therefore, natural that both the authority and the level of organization of where the litigant parties reached an agreement should seem to be far removed from those of the *placitum* as public justice. However, it does not necessarily mean its absence but the diversification of justice, only a part of which eleventh-century judicial documents let us see.

58. DML, doc. no. 142 (1094, I-V): "Postea fecit eos concordare senior Acenar Lupiz de Uillatorta, in tali modo ut reddidisset ipsum triticum abbati, et amplius non requisisset supradictum cavallum nec angalias suas neque supradictum uinum, nec aliquid de supradictus querelis, nec ipse nec uxor sua supradicta nec aliquis in eternum... Similiter ipse abbas definiuit supradictas querelas, et absoluit eum prefatum Acenarium de. LX. solidos quos debebat dare regi".