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Courts and Conflict in Twelfth-Century Tuscany

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Courts and Conflict in Twelfth-Century Tuscany is the first English version, slightly revised, of a study that was previously published in an Italian translation (*Legge, Practiche e Conflitti* [Rome: Viella libreria editrice, 2000]). In it, Chris Wickham brings his incomparable knowledge of the Tuscan archives to bear on the question of how Italians conducted their disputes, both in court and out. At the core of the book are Wickham?s account of numerous conflicts, often enduring for years, which vividly convey the strategies by which individuals and groups could assert and defend their claims to property and status. What results is a remarkably fine-grained picture of daily life in a society where legal and quasi-legal procedures were in the process of displacing direct resort to violence.

That such work was possible at all reflects documentary and court procedures that were new in the period under study. Whereas early medieval *placita* had become largely formulaic by the tenth century, twelfth-century courts and arbitrations generated a variety of documents, including sworn testimony of witnesses, the claims and counter-claims of the litigants, and the judgment of the arbitrators. Some of the original documentation has been lost over time, to be sure, but enough remains for Wickham to recreate for the reader the history of 26 conflicts, tracing the background of each dispute, how they played out over time, and ? because the documents sometimes provide enough direct speech to reveal how these often humble Tuscans saw the issues between them ? the arguments offered by the opposing parties in support of their claims. For

Wickham, who appreciates sources that permit him to hear his subjects speak, the opportunity to immerse himself in these documents must have been part of the attraction of doing the book.

This new abundance of documentation reflects, in part, the emergence of communal courts as a venue for settling disputes. Chapter 2 of the book traces this process for Lucca, in one of the most lucid treatments of the relevant historical issues that I have read in any language. Wickham situates this development in the crisis of Italian government that began in the later eleventh century as the investiture contest heated up. In Lucca, this process began with the expulsion in 1080 of bishop Anselmo, an ally of Matilda of Canossa, after which the city received imperial privileges from Henry IV, which compensated for the loss of its previously central role in the march of Tuscany.

The actual development of judicial institutions took much longer, however, and tended to follow the model of informal arbitrations that had grown up outside the *placitum* tradition. These arbitrations were, in effect, private courts. Having chosen one or more arbiters, the parties presented their claims and the witnesses they believed could support them, with the arbiters then arriving at a judgment on the basis of what they heard. When the communal courts took root, their judges followed much the same procedures. There was not even necessarily much difference between the personnel involved, for the same individuals might appear in Lucchese communal courts and in the arbitrations that continued to be used, especially in the countryside. The documentary remains from settling disputes are thus rather similar regardless of whether arbitrations or courts are used.

Using this documentation, the rest of book studies how disputes were pursued and ultimately settled in a variety of different jurisdictions within Tuscany: Lucca, Pisa, the Florentine countryside, and religious courts. Each of these venues provides a different take on how Tuscans disputed. Pisa, a neighbour and traditional rival of Lucca, was quicker to develop urban institutions (starting in the 1080s) and to adopt Roman law, which appears rather suddenly in 1159. Florence was smaller than either Lucca or Pisa in the twelfth century and its institutions were less developed, leaving disputes in the *contado* largely outside the control of the city's courts. Ecclesiastical institutions, finally, had the option of recourse to church courts, including the papal courts, even for cases whose legal substance was no different from those that secular courts routinely dealt with.

Despite these differences in the character of societies, institutions, and even the law applied, Wickham found significant uniformities, both in the way twelfth-century Tuscans conducted their disputes and in the proofs that they recognized as decisive. Documents could be used a proof, but in societies where land was not surveyed or registered and social relations often were undocumented, public behaviors could be almost as important. In a boundary dispute between neighbouring landowners Passavante di Sesto and Chianne di Ghiandoro (pp. 81-5), it mattered a great deal whether Passavante's wife had cut down a certain tree secretly or openly: ?Open, i.e., public, direct action was a claim to rights; people could see you doing it, and would conclude that, if you were not challenged, you had right on your side.?(p. 83)

The corollary, of course, is that it was legitimate and even obligatory to defend one's claims by public protest and, if one was strong enough, with a controlled violence ? driving the intruder off one's property or breaking up the canals feeding a mill-pond. Whatever their personal temperament, medieval Tuscans could not simply let infringements attempted by their neighbours slide by unchallenged, without risking loss of their own rights: helping a neighbor carry wood away could later be cited as evidence that they had the right to that wood. Such logic was not, of course, confined to Italy. As Wickham knows, the kind of evidence he encountered in Tuscany shows up equally in the earliest cases of *novel disseisin*, which could hinge on who was seen ploughing land or performing other acts demonstrating control of a property. By the mid-thirteenth century, English courts even tolerated the forcible, public dispossession of intruders by rightful owners. Put another way, and without wishing to speculate too wildly about comparative law, it would seem that what the English courts did, at least at the beginning, was to build a legal system that could take advantage of the attitudes typical of rural life.

In Italy, however, this reasoning went well beyond cases involving land. It appears equally in cases

involving legal status, or patronage of a church, or the operation of a mill. Whatever the dispute, its seems, evidence could be entered about the words spoken in public, meals eaten or not eaten, or any of a number of tiny details that shaped what everyone said and knew (*publica fama*) and could be offered as evidence of how matters stood. The individual cases summarised in the book leave no doubt that such events were carefully observed and remembered, and could even be brought to bear on behalf of competing narratives in the same dispute. The reader is reminded constantly that legal disputes often provide the best and sometimes the only sources for reconstructing the daily details of social behaviours.

Yet Wickham is not interested only in the social dimension of disputes. Part of his purpose was also to examine the role of legal structures ? courts and arbitrations ? in shaping how disputes played out. Making this aspect of his study particularly significant is the fact that this was the period when formal legal studies proliferated at Bologna and also elsewhere: did the advances in legal learning have any effect on actual legal practice? The consequences of the revival of Roman law can be seen most clearly in Pisa. Some fragments of Roman law start appearing in the 1150s, and then, rather suddenly, one encounters the use in 1159 of specifically Roman actions. This innovation was quickly followed, in 1160, by a (considerably exaggerated) declaration in the *constituta* that Roman law was long traditional in Pisa.

The introduction of Roman law in Pisa was essentially ?an ideological choice? (p. 120), stemming from the desire to invoke Roman political parallels; in practice, it took a long time before Roman rules, such as marriage property arrangements, actually pushed aside previously prevailing custom. But while Roman rules were slow to take hold in Pisa, Roman law did alter what happened in court. Wickham's finely nuanced analysis shows that the key result of using Roman actions was to highlight the key legal issues so they emerged more quickly from the thicket of extraneous details. Traditional litigation, as seen at Lucca and at Pisa before the reform, had consisted of a flurry of charges and counter-charges, some of which were often quite marginal to the underlying legal issue, which judges or arbiters then had to sort out in arriving at a judgment. Roman-style actions, in contrast, stated the key legal issue explicitly and at the outset, with consequent efficiency in management of the dispute. At least this is how it worked until, after a few decades' experience, notaries learned to claim multiple actions when they initiated cases.

The procedural clarity of Roman law differs not only from Lombard law, as seen in Lucca, but also from learned canon law. Canon law had the practical effect of directing a great deal of litigation to the papal court, even if responsibility for making the final decision was often delegated back to people on the spot. But although a few documents cite Gratian's *Decretum*, which was certainly available by the 1150s, explicit references to it are rare. This is so despite the presence in two cases of Bazianus, a noted glossator of Gratian who, however, never felt the need to cite the *Decretum* in his cases. In considering this apparent paradox, Wickham suggests that the *Decretum* simply may not have been entirely suitable for resolving real disputes, which often needed more compromise than provided for by the letter of the law (p. 237); even the proofs offered often had more to do with local custom than bookish rules.

This particular point might eventually repay further attention. A study focused specifically on the practical effect of learned law, as this book is not, might find it worth considering whether, especially for Lombard law, the lack of explicitness reflects the survival of an older style of argument that did not explicitly mention specific laws or principles, even when they were being implicitly invoked. The *placita* are too stereotyped to reveal this, but one can glimpse this principle in action in the eleventh-century commentaries to the Lombard law ? learned law, perhaps, but written by practising jurists whose names appear in the documentary record. One of the standard methods of these commentaries was to illustrate the application of individual laws by model pleas written in direct speech; but these model pleas, often quite complex, almost never name the law under which they were proceeding, other laws that might bear on the case, nor even broader legal principles even when the authors of the glosses had them in mind. For example, a commentary to Roth. 227, which deals with leases, offers multiple model pleas in which the language given to the litigants speaks only about the facts of the case. We know that the jurists had a theoretical framework in mind only because of a comment inserted between two of the pleas: ?Thus it is done for an *actio in rem*; but if it is to be pursued as an *actio locati* let it be done this way.?(1) If these commentaries are at all accurate about eleventh-century pleading, it seems at least possible that enough of this pleading style survived to have influenced how cases

were argued in Wickham's documents from a century later. Certainly the technical skill of traditional (Lombard) judges, even in the later period, is apparent in their ability to arrive at the real issue between the parties, as they generally seem to have done, despite the smoke screens of extraneous argument laid down by both sides: my years of listening to professors discuss university policies suggest that true amateurs, or those who know rules only from books, rarely do so well.

A final point of interest is Wickham's effort, implicit throughout the book but explicit in both the introduction and conclusion, to connect twelfth-century materials with legal anthropology. His meticulous concern with process, with narratives, and with the interaction between rules and power was informed by an extensive theoretical reading ranging from Max Gluckman to Pierre Bourdieu. Here, too, the institutional fluidity of this particular period has its payoffs, as the rules themselves were, perhaps, more subject to negotiation than they would be when the courts were better established or ? to put the matter another way ? when they could dispose of more coercive power to enforce their judgments. These broader theoretical concerns add a further layer of interest to a book that is entirely satisfying even when read only for its rich local detail and social description.

Notes

1. *Monumenta Germaniae Historica*, Leges, vol. 4 (1868), p. 355.Back to (1)

Professor Wickham is happy to accept this very generous review and does not wish to comment further.

Other reviews:
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