

Erste europäische Internetzeitschrift für Rechtsgeschichte
<https://www.forhistiur.net>

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26. 08. 2022

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Erstveröffentlichung

Zitiervorschlag

<https://forhistiur.net/2022-08-cerrito/>

ISSN 1860-5605

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Boundaries between law and religion.

Considerations regarding the use of curses in the documents of Norman Sicily

Abstract

The word 'boundary' does not only indicate a physical division between different worlds. The border often represents a point of contact. This concept of a 'boundary' is particularly critical in the field of legal history because often the plurality of iura contributes not only to the fusion of different cultures but also to the creation of new ones. The purpose of this paper is to investigate the relevance and the meaning of expressions of Anathema and curse it's possible to find in some Latin documents that date back to the Norman period of Sicily. This period is pivotal for the consolidation of the secular and spiritual power of the Church and the use of curses by the lay power highlights a blurred line between the ecclesiastical and the temporal power. This idea of power makes the very strong ecclesiastical character of early political thought understandable. Going through some documents, this paper aims at understanding, from a legal point of view, the meaning of these curses: are they simple notary formulas, without legal significance or, as penalty clauses, a fundamental part of legal documents?

Eleventh-century documents often made use of a curse or, more precisely, of an anathema as a penalty clause that must affect one of the parties in case of violation of the legal content of the act¹. Sicily, under Norman domination (1060-1198), was not an exception and, additionally, it represents a particularly important historical and legal context allowing to identify a very thin border between secular power and spiritual one and, consequently, between law and religion. The purpose of this paper is to investigate the relevance and the meaning of different anathema and curse formulas that can be found in some Latin documents dating back to the Norman period of Sicily. The symbol of

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¹ From the 10th century onwards, the use of spiritual sanctions became very frequent in the documentation of a large part of Christian Europe. The inventory of the different variants of curses, that can be read in the texts of this period, has been done for a long time. The most common structure includes the evocation of the wrath of God, of the Trinity, of some Saints, the definition of the exclusion field and the mention of the term *maranatha* and often of the Nicæan Fathers (the 318 Fathers). On this point, see: EMILY ZACK TABUTEAU, *Transfers of Property in Eleventh-Century Norman Law*, (Hill-London, 1988); JEFFREY A. BOWMAN, 'Do neo-Romans curse? Law, land and ritual in the Midi (900-1100)', *Viator*, 28 (1997), pp. 1-32; MICHEL PARISSÉ, 'Excommunier: exclure de la communauté et de l'eucharistie. Recherche dans les actes diplomatiques des XIe-XIIIe siècles', *Pratiques de l'eucharistie dans les églises d'Orient et d'Occident (Antiquité et Moyen Âge)*, edd. NICOLE BÉRIOU, BÉATRICE CASEAU, DOMINIQUE RIGAU, (Paris, 2009), pp. 573-600; BRUCE C. BRASINGTON, 'Differentia est. A Twelfth-Century Summula on Anathema and Excommunication', *Canon Law, Religion & Politics. Liber Amicorum Robert Somerville*, edd. UTA-RENATE BLUMENTHAL, ANDERS WINROTH, PEER LANDAU, (Washington D.C., 2012), pp. 107-117; SARAH HAMILTON, 'Remedies for "Great Transgressions": Penance and Excommunication in Late Anglo-Saxon England', *Pastoral Care in Late Anglo-Saxon England*, ed. FRANCESCA TINTI, *Anglo-Saxon Studies*, 6, (Woodbridge, 2005), pp. 83-105; LUCIANA MOSIICI, *Le formule di sanzione spirituale nei documenti privati italiani dei secoli VIII-XII*, (Florence, 1979); Eadem, 'Una formula di sanzione spirituale (secoli X-XII)', *Bullettino storico pistoiese*, 16 (1981), pp. 29-44; AMEDEO FENIELLO – JEAN-MARIE MARTIN, 'Clausole di anatema e di maledizione nei documenti (Italia meridionale e Sicilia, Sardegna, X-XII secolo)', *Mélanges de l'École française de Rome. Moyen Âge*, 123, (2011), pp. 105-127; FRANÇOIS BOUGARD, 'Jugement divin, excommunication. Anathème et malédiction: la sanction spirituelle dans les sources diplomatiques', *Exclure de la communauté chrétienne. Sens et pratiques sociales de l'anathème et de l'excommunication (IVe-XIIIe siècle)*, edd. GENEVIÈVE BÜHRER-THIERRY – STÉPHANE GIOANNI, (Turnhout, 2015), pp. 215-238. On the relationship between warranty clause and anathema, see: MATTHEW MCHAFFIE, 'Sources of Legal Language: The development of Warranty Clauses in Western France, ca. 1030 – ca. 1240'. *Law and Language in the Middle Ages*, edd. JENNY BENHAM - MATTHEW MCHAFFIE – HELLE VOGT, (Leiden – Boston, 2018), pp. 218-226.

pyramid is a *topos* that conveys the idea of medieval sovereignty, thus explaining the complexity of the political and legal context at that time. In Medieval times the concept of descending² power (especially secular power) was expressed in very different ways. The use of anathema clauses is one of these. In the kingdom of Sicily, Latin Christian élites ruled over a heterogeneous population, made up of Greek Christians, Arabic-speaking Jews and Muslims. At that time, Latin, Greek, and Arabic were administrative languages that rulers used in documents, coinage and inscriptions. Under the Normans, every aspect of life, from art to law, represented the fusion of forms, motives, and styles deriving from Byzantium, Islam, and many other influences in Latin Europe. It is, above all, this highly conspicuous, visual evidence that conveys the enduring and powerful image of Sicilian multiculturalism.

In terms of the use of curses in documents itself, some characteristics of the kingdom of Sicily make this case different from others that have been already studied and are well known to historians. These anathema formulas can be found in Latin documents³ only during the Norman age, a very important time for the secular and spiritual power strengthening of the Church, and the use of curses by the lay-power highlights a blurred line dividing ecclesiastical power from the temporal one. Going through some documents, this paper aims at understanding, from a legal point of view, the meaning of these curses: are they simple notary formulas, without legal significance or, as penalty clauses, a fundamental part of legal documents?

The use of curses in other political-institutional contexts has already been studied, but scholars often didn't focus on their juridical value. A pivotal article by Helen Saradi⁴ about curses in Greek documents (mainly those in the archives of Athos) examines the origins and the evolution of this practice. Approximately in the same years, Michel Zimmermann⁵ published a study on the Latin lexicon of curses in Catalan documents in the period from 9th to 12th century, referring in particular to the works by Lester K. Little⁶ concerning the French experience. As regards the historical legal studies, it should be emphasized that they have mainly focused on the search for the origin of this practice, especially in relation to the Byzantine influence in southern Italy. It must be said that the search for origins is a great *topos* of legal historiography that often stretches historical and legal interpretation. With respect to Norman Sicily, it is widely believed that the use of curses in Latin

² On this point, see: WALTER ULLMANN, *Principles of Government and Politics in the Middle Ages*, (London, 1978); Idem, *Die Machstellung des Papsttums im Mittelalter. Idee und Geschichte*, (Granz-Köln, 1960). On the topic of theocratic monarchy, see also: JOSEPH CANNING, *A History of Medieval Political Thought 300-1450*, (London, 1996), pp. 47 ss.

³ In the following pages, the reference to Latin documents is to be considered limited to the experience of the kingdom of Sicily.

⁴ See: HELEN SARADI, 'Cursing in the Byzantine notarial acts: A form of warranty', *Byzantina*, 17, (1994), pp. 441-533.

⁵ See: MICHEL ZIMMERMANN, 'Le vocabulaire latin de la malédiction du IXe au XIIe siècle. Construction d'un discours eschatologique', *Atalaya. Revue Française d'études médiévales hispaniques*, 5 (1994) (Actes du Colloque L'invective au Moyen Âge, Paris, 1993), pp. 37-55; Idem, 'Protocoles et préambules dans les documents catalans du Xe au XIIe siècle: évolution diplomatique et signification spirituelle', *Mélanges de la Casa de Velázquez*, vol. 10 (1974), pp. 41-76; vol. 11 (1975), pp. 51-79.

⁶ LESTER K. LITTLE, 'Formules monastiques de malédiction aux IXe et Xe siècles', *Revue Mabillon*, 58 (1975), pp. 377-399; Idem., *Benedictine maledictions: liturgical cursing in romanesque France*, (Ithaca-London, 1993).

documents is due to the influence of Byzantine culture that has a consolidated and much longer tradition in this field⁷. Certainly, the coexistence of Greeks and Latins in Sicily has determined a considerable cultural influence, but it is necessary to remember that, as for anathemas, the use and form of curses in Greek documents, in comparison with the Latin ones, is completely different. In support of this, the Greek documents making use of cursing clauses have almost exclusively their origin beyond the sphere of courts, the church or secular rulers and contain much more complex formulas in reference to the cited biblical sources (as it also happens in nearby Sardinia). Weighed against this, the curses in Latin documents are simpler, preferring a generic expression of curse, and are almost exclusively found in public documents that are related to donations, ecclesiastical gifts and, in general, to issues concerning the *res sacrae*.

Three different examples of curses in Norman Sicily

The first document, taken into consideration to analyse this practice, is the foundation deed of the royal palace chapel (*Cappella Palatina*) by King Roger II in 1140. In this document the king founds the *Cappella Palatina*, and, at the same time, he attributes a series of properties and rights to it as a dowry. At the end of the privilege, the sovereign places two different penalty clauses, depending on the type of the offender, to safeguard his decision. If the offender is a subject of the kingdom (*persona de regno nostro*), they will suffer a secular punishment, related to the gravity of the committed crime. If the transgressor is not a subject of the kingdom (*si persona de regno non fuerit*), they will suffer a double curse: they will be punished with the penalty of excommunication⁸ (*anathematis gladio*

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⁷ On this point, see in particular: ANNICK PETERS-CUSTOT, 'Les donations pieuses dans l'Italie méridionale normande: *quid* du don/contre-don dans une terre influencée par l'héritage culturel e juridique byzantine?', *Ius commune graeco-romanum: essays in honour of Prof. Dr. Laurent Waalkens*, edd. WOUTER DRUWÉ – WIM DECOCK – PAOLO ANGELINI – MATHIAS CASTELEIN, (Leuven, 2019), pp. 109-128; AMEDEO FENIELLO – JEAN-MARIE MARTIN, 'Clausole di anatema e di maledizione nei documenti (Italia meridionale e Sicilia, Sardegna, X-XII secolo)', *Mélanges de l'École française de Rome. Moyen Âge*, 123, (2011), pp. 105-127. According to Helen Saradi, the origin of the use of curses in a legal field must be sought in ancient Greece. The *arae* are credited with a magical power and are considered compatible with the law. See: HELEN SARADI, 'Cursing in the Byzantine notarial acts: A form of warranty', *Byzantina*, 17, (1994), pp. 441-533.

⁸ See: C.11, q.3, c. 41: "(...) *sub anathemate autem sine conscientia archiepiscopi, aut coepiscoporum nullum presumat ponere, nisi unde canonica docet auctoritas, quia anathema eterna est mortis dampnatio, et non nisi pro mortali debet imponi crimine, et illis qui aliter non poterint corrigi.*" There are two kinds or degrees of excommunication that are contemplated by canonists: the *excommunicatio* (later it will be also named simple excommunication) that forbids both the reception of the Eucharist, and the access to the church; and the anathema (or also said solemn excommunication), in consequence of which the condemned is excluded from the communion with the faithful. Anathema is not understood only as the separation from the "fraternal society", but also from the Body of Christ, which is the Church. The official notion of excommunication derives from Pope Innocent III, while the most ancient sources do not clarify the relationship between anathema and excommunication. For an historiographical overview of the excommunication, see: GIUSEPPE DALLA TORRE, 'Scomunica', *Enciclopedia del diritto*, (Milano, 1989), vol. 41, pp. 759-771. See also: RUFINUS VON BOLOGNA, *Summa Decretorum*, ed. HEINRICH SINGER, (Paderborn, 1902; reprint Aalen, 1963), C. 11, q. 3, 314: "*Est itaque excommunicatio a communione ecclesie separatio. Excommunicatio duobus modis dicitur: dicitur enim excommunicatio ab ecclesia vel sacramentis ecclesie facta separatio, dicitur enim excommunicatio ipsa anathematizatio*". For a biography of Rufinus, see: ANTONIA FIORI, 'Rufino', *Dizionario Biografico dei giuristi italiani (XII-XX secolo)*, edd. ITALO BIROCCHI, ENNIO CORTESE, ANTONELLO MATTONE, MARCO NICOLA MILETTI, (Bologna, 2013), vol. II, pp. 1756-1757; Eadem, 'Vecchie e nuove ipotesi sul magister Rufinus', *Bulletin of Medieval Canon Law*, 36 (2019), pp. 243-274.

fodiatur) for the rest of their life and they will suffer eternal damnation (*omnipotentis Dei Patris Filii et Spiritus Sancti iram sentiat sempiternam*) after their death.

(...) If anyone, who is a subject of the kingdom, tries to contravene our privilege, he will be punished with the penalty that is provided for the crime of sacrilege and lese-majesty. If anyone, who is not a subject of the kingdom, attempts to violate what has been established, they will be pierced by the sword of anathema and they will be condemned to the eternal wrath of God Almighty Father, Son and Holy Spirit, unless he repents and he remedies by paying an adequate penalty. Amen, Amen, Amen⁹ (...).

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The second document¹⁰ is older than the previous one. In 1093, Count Roger appointed Gerlandus as bishop of the church of Agrigento and, at the same time, he also donated some goods to the church. The anathema in this act has a much simpler structure not being differences between subjects and foreigners with reference to the punishment. Moreover, the curse is only to be intended for a synonym of excommunication.

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(...) If anyone steals something from the above-mentioned church or from its bishop or if anyone unjustly holds something (that belongs to the church), he will be condemned to the penalty of anathema¹¹.

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In conclusion, the third document¹², playing an important role in the historical juridical research on curses, concerns the construction of the church of *Santa Margherita* in Agrigento by Robert of Malcovent and the concurrent donation of some lands and five peasants to the church. This document was drawn up by the abbot of the church in 1108, confirming the donations that were

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⁹ “(...) *Si qua vero persona de regno nostro huic [nostro] privilegio contra ire temptaverit pro qualitate commissi tanquam sacrilegus et regie maiestatis reus pene condigne subiaceat. Quod si persona de regno non fuerit, que nostra sancita violare presumpserit, anathematis gladio fodiatur, et omnipotentis Dei Patris Filii et Spiritus Sancti iram sentiat sempiternam, nisi resipuerit et congrua satisfactione correxerit. Amen Amen Amen (...)*”. The original document can be found in: PALERMO, *Tabulario della Cappella Palatina*, n. 6. See also the transcription that is published in: LUIGI GAROFALO, ed., *Tabularium regiae ac imperialis capellae collegiatae divi Petri in regio Panormitano palatio Ferdinandi II regni utriusque Siciliae regis inssu editum ac notis illustratum*, (Palermo, 1835), pp. 11-13.

¹⁰ This document is probably an incomplete copy from the late 12th century. The authenticity of this text, like others in the same archive of Agrigento, is controversial. Scholars who take the view that this document is a forgery base their opinion on the lack of a series of fundamental parts of the diploma and with regard to the sentence *anathemate dampnetur*, they reckon that it derives from a Greek text manipulated by the churches of Agrigento, Siracusa and Mazara. Instead, there are scholars who deem that the anomalies of the diploma are not sufficient to take exception to its authenticity, on the contrary, the palaeographic analysis of the writing would confirm its originality. In this sense, the lack of the divine invocation, eschatocol, seal and signature would be attributed to the fact that the written in Greek diplomas follow the form of the long-established Byzantine chancellery, while the style of the written in Latin documents is still in progress. On this point, see: KARL ANDREAS KEHR, *Die Urkunden der normannisch-sizilischen Könige: eine diplomatische Untersuchung mit Urkundenanhang und Kartenskizze*, (Innsbruck, 1902), pp. 12-13; RAFFAELE STARRABBA, ‘Contributo allo studio della diplomatica siciliana dei tempi normanni. Diplomi di fondazione delle chiese episcopali di Sicilia (1082-1093)’, *Archivio storico siciliano pubblicazione periodica della Società siciliana della storia patria*, (Palermo, 1893), pp. 36-40, pp. 66-79; CARLO ALBERTO GARUFI, ‘L’archivio capitolare di Girgenti. I documenti del tempo normanno-svevo e il cartularium del sec. XIII’, *Archivio storico siciliano*, XXVIII (1903), pp. 124-125.

¹¹ “*Horum vero omnium si aliquis aliqua predictae ecclesie et episcopo suo abstulerit, vel iniuste retinuerit, qualiscumque persona fuerit, anathemate dampnetur*”. The original document can be found in: Agrigento, Archivio Storico del Capitolo Cattedrale, n. 2. See also the transcription published in: PAOLO COLLURA, ed., *Le più antiche carte dell’archivio capitolare di Agrigento (1092-1282)* (Palermo, 1961), pp. 7-18.

¹² This document is a copy of the 12th century but, unlike the previous text, its authenticity has never been contested by scholars.

previously made by Robert. The main characteristic of the penalty clause, used in this act, is the following. It consists of two parts: the first part contains a curse, the second one a blessing. In the first part, two words stand out: anathema and *maranatha*¹³. The term *maranatha*, combined with the word anathema in sanction clauses, suggests that offenders will be damned on the Judgment Day. On the contrary, in the second part of the clause, the abbot blesses those who will donate in the future other goods to the church (*gaudia eterne vite cum sanctis peremmiter percipiat*).

(...) if anyone steals something that belongs to the church of Sancta Margarita, that is under the control of the church of Agrigento, he will be punished with anathema Maranatha. On the contrary, if anyone increases the property of the church through the donation of movable or immovable things, he will be rewarded with the joy of eternal life with the saints forever¹⁴.

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What the first two texts have in common is that curses are elements of documents whose legal authors are public entities: King Roger II and Count Roger. From a lexical point of view, the curses that the two rulers place at the end of their acts seem to be a disposition and, consequently, from a legal point of view, they apparently have the value of a penalty clause. In this sense, secular authority seems to have the power to excommunicate, to inflict a spiritual sanction, that is a prerogative belonging to the holder of spiritual power. On the other hand, the third investigated document is very different: the deed is drawn up by a private subject who does not have the power to impose neither a temporal sanction nor a spiritual one, even if they belong to the clergy. The curse formula, used in this passage, is not immediately enforceable but it is presented as a prayer, a wish¹⁵. In this case, the anathema should not be interpreted as a *latae sententiae* excommunication, because it can only have *ferendae sententiae*¹⁶ effect. The same curse formula is used in two different ways,

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¹³ The term *maranatha* is very common in the anathema formulas of this period and it is an Aramaic word that is used in Corinthians and Revelation and loosely translated into "our Lord is coming", referring to the second coming of Christ. The strangeness of this term and its musical quality lend the curse an appropriate mystery.

¹⁴ "(...) *Si quis vero ecclesiam Sancte Margarite Agrigentine Ecclesie omnino subditam circa possessiones eius in aliquo desrudaverit, anathema maranatha sit. Qui vero eam aut de rebus mobilibus aut immobilibus augmentaverit, gaudia eterne vite cum sanctis peremmiter percipiat.*" The original document can be found in: AGRIGENTO, Archivio Storico del Capitolo Cattedrale, n. 4. See also the transcription that is published in: PAOLO COLLURA, ed., *Le più antiche carte dell'archivio capitolare di Agrigento (1092-1282)*, (Palermo, 1961), pp. 25-28.

¹⁵ An example of this use of curses is reported by: FRANÇOIS BOUGARD, 'Jugement divin, excommunication. Anathème et malédiction : la sanction spirituelle dans les sources diplomatiques', *Exclure de la communauté chrétienne. Sens et pratiques sociales de l'anathème et de l'excommunication (IVe-XIIe siècle)*, ed. GENEVIÈVE BÜHRER-THIERRY – STÉPHANE GIOANNI, (Turnhout, 2015), p. 228. As a matter of fact, Bougard points out that: "(...) En indiquant de qui émane la sanction, les actes se montrent ainsi attentifs à l'autorité. Dans les donations des personnes privées, le cas le plus banal est le plus fréquent est d'exprimer un souhait (*sit anathematizatus*), manière de dire que le donateur n'a pas la capacité canonique de condamner directement (...)".

¹⁶ Excommunication can have two ways of imposition. The *ferendae sententiae* excommunication takes place after a formal trial. On the contrary, in case of *latae sententiae* excommunication, the guilty is automatically excommunicated, even if ecclesiastical authorities are not aware of their crime. The excommunication by means of a sentence that is pronounced by the authority constituted the ordinary way to impose sanctions from the first years of the canon law. For the canonists, the excommunication was the most serious sanction of canon law; it had to be a medicinal remedy, not punitive, it had to be reversible and they considered it belonging to the external jurisdiction. On the contrary, the *latae sententiae* excommunication has a later origin and in the period in which these documents were written, it was not yet theorized by the canonists. In the case of a *latae sententiae* excommunication, the intervention of the authority does not have a constitutive function but has only a declaratory value. On this topic, see: JUAN ARIAS GOMEZ, *La pena canonica en la Iglesia primitiva*, (Pamplona 1975); ALPHONSE BORRAS, *L'excommunication dans le nouveau code de droit canonique*, (Paris 1987),

depending on the legal author of the document. When the king disciplines, grants or authorizes something that is related to the world of the *res sacrae*, he assumes the authority to impose a spiritual sanction in case of violation of his will; the same thing does not occur when the content of the act is referred to a secular context. On the contrary, if it is a private entity that uses the same penalty clause, the curse does not act *ipso facto* but appears to be a prayer, that is addressed to the subjects who are entitled to legally protect the content of the act such as God, the pope, the secular ruler.

Historiographical questions concerning the validity and the *raison d'être* of anathemas

As for the use of spiritual sanctions in these documents, the most controversial aspects concern two fields: the reason why curses are not only used in ecclesiastical context but also in secular one, and their legal function. Referring to the first field, scholars agree upon considering spirituality, in Medieval times, a very powerful cultural element, a shared value generating social cohesion thus justifying the use of anathema clauses by sovereigns in terms of generating impacts and consequences. This sociological explanation analyses the social value of the curse, thus justifying its use as deterrent, but it is unable to explain what the legal nature of the curse is. Historiography emphasizes the medieval mindset, reflecting the strong spiritual connotation of this time. This consideration describes a matter of fact, but it is not answering the question of the legal function of these clauses. Referring to this, some historians¹⁷ have interpreted the curses as authentication elements of the acts: the anathemas are formally compared with the seal or with the witnesses list. From a legal point of view, this theory is not convincing, implying the use of curses in every act, as it happens for the seal and the witnesses list.

The thesis that the use of curses in southern Italy is due to the strong Byzantine presence between the 10th and the 11th centuries only partially explains this phenomenon. Written in Greek documents, having a Byzantine tradition, are characterized by a strong presence of spiritual sanctions, not only in donation documents and wills but also in sale and concession deeds, and the spiritual sanction is frequently combined with a pecuniary penalty. In particular, it must be pointed out that curses in Sicily, where the Normans have a powerful and organized administration, have almost exclusively an official nature. Some historians¹⁸ deem that their use would be marginal and would derive from Greek Calabria. This argument is mainly based on the analysis of the acts that

p. 7; RICHARD H. HELMHOLZ, 'Excommunication as a Legal Sanction: The Attitudes of the Medieval Canonists', *Canon law and the Law of England* (London - Ronceverte, 1987), pp. 101-117; GIUSEPPE DALLA TORRE, 'Scomunica', *Enciclopedia del diritto*, (Milano, 1989), vol. XLI, pp. 759-771; ÉMILE JOMBART, 'Excommunication', *Dictionnaire de Droit canonique*, ed. RAOUL NAZ, (Paris 1953), vol. V, pp. 615-628.

¹⁷ For this interpretation see: MICHEL PETTITJEAN, 'Pour une sanction de l'acte juridique médiéval: malédiction et anathèmes dans les chartes de Cluny (Xe-XIII siècles)', *Méditerranée s*, 18-19 (1999), pp. 123-132.

¹⁸ To deeply examine this interpretation, see: AMEDEO FENIELLO – JEAN-MARIE MARTIN, 'Clause di anatema e di maledizione nei documenti (Italia meridionale e Sicilia, Sardegna, X-XII secolo)', *Mélanges de l'École française de Rome. Moyen Âge*, 123 (2011), pp. 121-122.

were written by Robert Guiscard and his wife Sikelgaita (published by Ménager¹⁹). Indeed, the spiritual punishment only appears in a quarter of the documents, furthermore resorting to a not homogeneous formulation. This lack of uniformity is considered to be due to the fact that Robert neither repeated the diplomatic forms that were used by his predecessors, nor created a completely new one. Referring to the experience of southern Italy, historiography has not taken exception to the common Greek origin of the practice and it affirms that the peculiarities of the different geographical areas (Calabria, Campania, Apulia, Sicily and Sardinia) depend on many cultural, social and ethnic reasons²⁰. Moreover, the steadiness of the administrative apparatus and central power is a cause of historians' reflections: if the king's power is strong, he does not need to use curses or other spiritual acts; on the contrary, a large use of excommunications and anathemas stands out if the central power is weak and not legally effective. This idea originates from a partially true assumption: the anathema is certainly a spiritual sanction but, from a juridical point of view, it cannot be equated with the canon law regulated excommunication²¹. The use of spiritual punishments can be interpreted as the spreading of secular power across the spiritual field, and not as a sign of weakness of the lay-power.

The use of anathema clauses in the Anglo-Saxon charters: border or point of contact?

On the question of the origin issue, the comparison with the Anglo-Saxon²² experience could be appropriate. From a conceptual and formal point of view curses are, by Normans, similar to those contained in the Anglo-Saxon charters²³ (that are prior to the year one thousand, the oldest ones dating back to the 7th century). One argument in favour of this is that the largest number

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¹⁹ See: LÉON-ROBERT MÉNAGER, ed., 'Recueil des actes des ducs normands d'Italie (1046-1127)', *Les premiers ducs (1046-1087)*, vol. 1, (Bari, 1981).

²⁰ Amedeo Feniello and Jean-Marie Martin, concluding their study, affirm that the Greek origin proves to be stronger in the territories belonging to the Byzantine *koinè* which are characterized by a marked Christocentric matrix. In the areas of Lombard culture and in Sardinia, Western influence is more marked and it shows a transformation of the Byzantine anathema (which has a strong spiritual connotation) into a very earthly instrument. In Sicily, however, the centrality of the royal power facilitates the use of coercive instruments that have a more juridical than religious nature and, consequently, the documentary evidence of curses is to be interpreted as a cultural legacy.

²¹ In this sense, Helmholz's words on the question of differences between canonists' ideal and reality are very striking: "(...) the kind of excommunication one encounters most often in the sources from the first and indeed well into the second half of the twelfth century was not at all the careful sanction of the classical canon law (...). This sort of excommunication was more like the anathema that appears at the end of many Anglo-Saxon charters. It was like the terrible curses of the early Irish saints, or the fearsome monastic maledictions familiar in the ninth and tenth centuries. This sort of excommunication was the 'sword of the Holy Spirit, more piercing than any two-edged blade'. It was a weapon to be unsheathed and wielded against one's enemies". See: RICHARD H. HELMHOLZ, 'Oxford History of the Laws of England: Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s', *The Oxford History of the Laws of England*, vol. 1, (Oxford, 2004), p. 129.

²² The issue of similarities between Anglo-Saxon and Norman documents has not been deeply investigated but it can't be neglected. Particularly, these existing links reveal a very deep connection between Sicily, in the period from 1066 onwards, and the Anglo-Saxon roots of Norman chancellery.

²³ The transcription of Anglo-Saxon charters refers to the online database "The Revised Catalogue of Anglo-Saxon Charters: The Electronic Sawyer" <http://www.esawyer.org.uk>.

of surviving charters are diplomas or royal charters, granting privileges and rights, usually over land, and the typical diploma has three sections: *protocol*, *corpus*, and *eschatocol*. In the *corpus*, usually in Latin, the legal author mentions the beneficiary, records the grant or the transfer (dispositive clause), reserves common burdens (reservation clause) and invokes the wrath of God on anyone who failed to observe it (anathema or sanction)²⁴. A key aspect is that the diplomas language is explicitly religious: grants are generally written to obtain the salvation of the grantor's soul and, as a consequence, whoever contravenes the charter will be damned. It is undeniable that the example of Anglo-Saxon curses shows a close cultural and temporal relation with the experience of Norman Sicily: there are common elements that can explain the *raison d'être* of anathemas that were used by the secular power.

The Anglo-Saxon charters have been at the centre of numerous historical researches and, in particular, Charles Insley²⁵ suggested interpreting the spiritual and infernal imagery of the tenth-century royal degrees proems as manifestations of the ideology of royalty²⁶. Indeed, the conversion of the Anglo-Saxons to Catholicism begins, approximately, at the end of the 6th century and the use of anathemas, in this period, could be explained as the result of a variety of beliefs, often of pagan origin²⁷. Examining Anglo-Saxon curses, starting from the 8th century, a variety of spiritual sanctions is evident. At the beginning, common punishment themes in these clauses include the threat of the Judgment Day, the need to account for one's transgressions to God (S. 56, 65, 89, 96, 106, 248, 264, 266, 1184) and various forms of separation (S. 24, 31, 88, 123, 266). On the contrary, excommunication stands out only once (S. 31)²⁹:

(...) Anyone who (...) tries to intentionally violate or cancel our donation, has to know that, during their life, they will be excommunicated from the body and blood of Christ

²⁴ Regarding the formulaic structure of curses of the Anglo-Saxon charters, see: BRENDA DANET - BRYNA BOGOCH, 'Whosoever Alters This, May God Turn his Face from Him at the Day of Judgment: Curses in Anglo-Saxon Legal Documents', *The Journal of American Folklore*, vol. 105, n. 416, (1992), pp. 140-142.

²⁵ See: CHARLES INSLEY, 'Where did all the charters go? Anglo-Saxon charters and the new politics of the eleventh century', *Anglo-Norman Studies*, 24, (2002), pp. 109-127.

²⁶ On this point, see: ROBERT DESHMAN, 'Benedictus monarcha et monachus: Early Medieval Ruler Theology and the Anglo-Saxon Reform', *Frühmittelalterliche Studien*, 22 (1988), pp. 204-240; Idem, 'Christus rex et magi reges: Kingship and Christology in Ottonian and Anglo-Saxon Art', *Frühmittelalterliche Studien*, 10 (1976), pp. 367-405; CHARLES INSLEY, 'Politics, Conflict and Kinship in Early Eleventh-Century Mercia', *Midland History*, 25 (2000), pp. 28-42; WILLIAM A. CHANEY, *The Cult of Kingship in Anglo-Saxon England: the Transition from Paganism to Christianity*, (Manchester, 1970); CATHERINE E. KARKOV, 'The Ruler Portraits of Anglo-Saxon England', *Anglo-Saxon Studies*, 3, (Woodbridge, 2004), pp. 79-117.

²⁷ From a cultural point of view, religion and magic are very similar elements that are not always discernible. At the beginning, the use of curses in the Anglo-Saxon charters is, on the one hand, the consequence of the combination of Greco-Roman magical practices and the culture of the medieval Germanic and Celtic peoples and, on the other, the result of the growing influence of the Catholic Church. For the history of magic during the Middle Age, see: RICHARD KIECKHEFER, *Magic in the Middle Ages*, (Cambridge, 1990).

²⁸ The letter S. stands for Sawyer. As already mentioned, the Anglo-Saxon charters are catalogued in the Annotated List of Peter Sawyer now revised and expanded online. For this reason, these charters are usually referred to by their Sawyer number. See: PETER H. SAWYER, *Anglo-Saxon charters: an annotated list and bibliography*, London, 1968.

²⁹ S. 31, A.D. 748 x 762: "(...) *Quisquis (...) inuido maliuoloue animo contraire praesumpserit aut in aliqua re praefatam donationem nostram inritam facere temptaverit, sciat se sine dubio et in praesenti ob meritum malitiae suae iuste excommunicatum fieri a corpore et sanguine Christi et in futuro procul segregatum ab his qui dextris Christi propter opera pietatis adstarere et illam beatam uocem audire meruerit 'Venite benedicti patris mei percipite regnum quod uobis paratum est ab origine mundi' (...)*".

because of their wickedness, and, after death, they will be separated from those who will have earned, on account of their works of piety, to stand on the right side of Christ and to hear the blessed voice ‘Come, ye blessed of my Father, inherit the kingdom prepared for you from the foundation of the world’ (...).

Ninth-century curses do not provide for excommunication threats, while damnation (S. 177, 187, 1266, 1431a) as well as anathematization (S. 169, 177, 188, 214, 282, 293, 1204) is often invoked. During this century the chancellery style continues changing and, for this reason, it is common to read particularly suggestive variations of the classic anathema formulas such as the one in the charter S. 338³⁰:

(...) if anyone (...) tries to modify or to decrease the value of my gift, (...) they will be considered guilty before the terrible tribunal (God's judgment) like those who sold and crucified the son of God, unless they first wish to make amends (to God and men) with (worthy) satisfaction (...).

This clause doesn't limit itself to threatening the transgressor with damnation penalty, but it also condemns them to the same destiny that was reserved to those who sold and crucified Christ.

In a large part of tenth-century documents, penance clauses follow the pattern of the previous centuries ones because they allow offenders to make amends (*satisfactio*) for their transgressions. In particular, in S. 470 and S. 795, containing royal concessions from King Edmund and King Edgar, the required penance is secular. S. 795 states, unless they have first made amends with legal satisfaction³¹. S. 470, the first of the two concessions, also requires that a worthy penance has to be done to God: unless they first make amends to God through worthy penance to obtain divine pardon through legal satisfaction.³² Three further charters (S. 786; 876 and 880) contain another clause (after the sanction clause) emphasizing that neither forgiveness nor rest will be granted to offenders: let him, apostate, obtain neither pardon in this practical life nor rest in the theoretical life³³. These innovations highlight a process of legalization of the anathema clauses that preserves their strong religious value and, at the same time, underlines the secular effects they begin to have.

The large use of the hellish punishment in the 10th century can be noticed in the 11th century too. The lexicon of the curse remains obscure and the differences between anathemas and curses begin to blur: one term is equally replaced by another. Anathema, as a spiritual sanction, is getting closer and closer to the secular sphere as in the case of charter S. 1027³⁴.

(...) We want the donation of this estate to be perpetual and secure from all contradiction, and anyone who attempts to infringe the donation should not define himself a Christian.

³⁰ S. 338, A.D. 867: “(...) *si quis vero (...) hanc meam munificentiam mutare aut minuere temptet, (...) reus ante tribunal terribili particeps existat illorum qui filium Dei et uendiderunt et crucifixerunt nisi ante digno satisfactione Deo et omnibus emundare uoluerit (...)*”

³¹ S. 795, A.D. 974: “(...) *nisi prius legali satisfactione emendauerint (...)*”.

³² S. 470, A.D. 940: “(...) *nisi prius digna Deo poenitentia ueniam legali satisfactione emendent (...)*”.

³³ “(...) *nec in uita hac practica ueniam nec in theorica requiem apostata obtineat ullam.*”

³⁴ S. 1027, A.D. 1059: “(...) *Huius uero predii donationem optamus et uolumus esse perpetuam et omni contradictione securam, neque christianum se fateatur qui eam infringere conatur. Et si quis in hoc consenserit, quod absit, penarum ultionibus sit ab istis testibus tamdiu addictus quoadusque per ignem urentem debiti huius persoluat nouissimum quadrantem.*”

Moreover, if anyone conspired against it, may it not happen, let them be sentenced to avenging punishments by these witnesses, until they pay the last farthing of this debt burning hellfire.

Although the clause is far from resembling a fine, the presence of pecuniary references is noteworthy. Within the punitive clause, a scene of a judicial dispute is described, perhaps foreseeing counterclaims to the concession of the land, and the importance of paying the debt is emphasised. 22

This digression, referring to Anglo Saxon charters, is useful to underline the differences between pre-conquest English charters and Norman ones. However, documents belonging to these traditions were equally likely to include sanction clauses, and even if Norman diplomacy soon begins to use temporal punishment, it continues to include spiritual sanctions as well³⁵. Certainly, it is not possible to say that there is a total continuity between pre-conquest England and Norman England, but, as already pointed out, the use (not only formal) of spiritual sanctions does not disappear in the Norman age: it is adapted³⁶ to new and different social and legal needs. It is safe to say that radical changes in the diplomatic form did not immediately follow the transition from an English ruling élite to a Norman one³⁷. In this sense, an illustrative English charter, containing a spiritual sanction, is the number 138³⁸. In this document³⁹, dating back to 1069, William I consents to a grant from Bishop Leofric of Exeter to the church of St Peter of Exeter. 23

If anyone, instigated by the devil, dares to overturn my royal concession – may it not happen – with intent either to revoke the canons and the privileges I granted the aforementioned church or to decrease it in any way, let them be damned by the divine voice on Judgement Day and be part of demons' community, unless they converted and made amends by restoring and giving back ill-gotten gains twofold to the Holy Church of God⁴⁰. 24

The elements that are present in this clause are the ones that have been pointed out in this chapter: the use of the curse by the secular authority, the fear of divine judgment and the religious factor 25

³⁵ On this point, it may be useful to read: REGINALD ALLEN BROWN, 'Some Observations on Norman and Anglo-Norman Charters', *Tradition and Change: Essays in Honour of Marjorie Chibnall Presented by her Friends on the Occasion of her Seventieth Birthday*, edd. DIANA GREENWAY, CHRISTOPHER HOLDSWORTH, JANE SAYERS, (Cambridge, 2002), p. 148.

³⁶ In this sense, Tabuteau, examining the transfer of ownership in 11th-century Normandy, demonstrates a correlation between the use of spiritual sanctions and the foundation of monastic orders. See: EMILY ZACK TABUTEAU, *Transfers of Property in Eleventh-Century Norman Law. Studies in Legal History*, (Chapel Hill, 1988), p. 205.

³⁷ For example, large part of the diplomas that were awarded by William I in the post-conquest period adopted Anglo-Saxon diplomatic characteristics, it is probably due to the fact that a lot of William I's *acta* were written by their beneficiaries.

³⁸ As for the Norman England charters, the numbering is the one used by: DAVID BATES, ed., *Regesta Regum Anglo-Normannorum: The Acta of William I (1066-1087)*, (Oxford, 1998).

³⁹ For a comparative analysis of this document, see: PIERRE CHAPLAIS, 'The Authenticity of the Royal Anglo-Saxon Diplomas for Exeter', *Bulletin of the Institute of Historical Research*, 39 (1966), pp. 31-33.

⁴⁰ DAVID BATES, ed., *Regesta Regum Anglo-Normannorum: The Acta of William I (1066-1087)*, (Oxford, 1998), pp. 463-465. "(...) *Siquis autem quod absit diabolo instigante meum regalem concessum presumat evertere et beneficia predictę ecclesię et canonicis data detrabere, vel in aliquo minnere, nisi conversus reddendo et dupliciter restiueno sanctę Dei ecclesię satisfaciatur, in resurrectione beatorum divina voce damnatus fiat socius omnium demoniorum.*"

as a social bonding. However, with the inclusion of a secular punishment, William's post-conquest charter clearly shows its entire Anglo-Saxon diplomatic legacy.

The king as Christ on earth and *pastor pastorum*

According to the Byzantine model, the author of the document, both a layman and a clergyman, can strengthen its validity by applying an anathema clause, used in terms of penalty clause. Indeed, *firmitas ac stabilitas* of juridical acts are extremely difficult to achieve, thus justifying the reference to the fear of God. This consideration is valid for private subject but is questionable regarding the royal power *legibus solutus*, as the one developing in Sicily in Norman age. 26

Medieval culture, by virtue of its high consideration of hierarchy, sets great store by power. Indeed, the society is organized as a network of relationships that are based on submission, having at its apex the sovereign and following the model *par excellence*: Christocentric model⁴¹. The use of curses by the secular rulers in the documents of Norman Sicily is part of a much wider phenomenon that concerns, on the one hand, the border between law and theology and, on the other hand, the concept of political power in the Middle Ages. According to the Christian model, the king is the vicar of Christ, the *pastor pastorum*. This symbiosis can be clarified if related with the context of late Anglo-Saxon England and of early Norman age. Indeed, that time a clear distinction between the ecclesiastical and secular spheres would have been anachronistic. The idea of a sovereign power having divine origin is common in several forms of government in medieval Europe: monarchical and papal power. 27

In this sense, the use of spiritual sanctions in the previously analysed documents is ideologically justified because it promotes the *status* of the king as Christ on earth. At the same time, spiritual sanctions were themselves ideological tools: they showed the divinely ordered authority of the kings and, by means of them, kings fulfilled their pastoral duties⁴². 28

The relationship between the religious and the secular sphere can be understood by reading another example⁴³ of a spiritual sanction, dating back to the end of the 11th century, used by Count Roger in Sicily. 29

⁴¹ On this point, see: ERNST H. KANTOROWICZ, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957). Along these lines, see also the classic analysis of the model of theocratic kingship has been given by Walter Ullmann. On this point, see: WALTER ULLMANN, *Principles of Government and Politics in the Middle Ages*, (London, 1978); Idem, *Die Machstellung des Papsttums im Mittelalter. Idee und Geschichte*, (Granz-Köln, 1960). On the topic of theocratic monarchy, see also: JOSEPH CANNING, *A History of Medieval Political Thought 300-1450*, (London, 1996), pp. 47 ss.

⁴² Regarding the role of the King as *pastor pastorum* in the Middle Ages, it should be emphasized that fear has always been an important characteristic of Christianity and has also played an important role in Christian eschatology and in the concept of salvation. Accepting Søren Kierkegaard's distinction between *Realangst* (objective fear) and *Binnenangst* (subjective fear), a part of the historiography has determined a third category of fear that is typical of the Middle Ages: religious fear. On this point, see: PETER DINZELBACHER, *Angst im Mittelalter: Teufels-, Todes- und Gotteserfahrung: Mentalitätsgeschichte und Ikonographie*, (Paderborn, 1996); SØREN KIERKEGAARD, *Der Begriff Angst*, in *Gesammelte Werke*, vol. 11, (Gütersloh, 1991).

⁴³ The original document can be found in: Catania, Tabulario del Capitolo della Cattedrale - Pergamene latine, n. 3. See also the transcription that is published in: JULIA BECKER, ed., *Documenti latini e greci del conte Ruggero I di Calabria e Sicilia. Edizione critica*, (Roma, 2013), pp. 104-106.

With reference to my decision, I, Count Roger, grant Giraldus, bishop of Mileto, and Ansgarius, bishop of Catania, the right to excommunicate and curse anyone who, after my death, will violate this donation or will steal something from the monastery, unless they have first made amends with legal satisfaction⁴⁴

30

The formula has a double purpose: the threat of a curse protects the donation, and the Count grants the bishops of Miletus and Catania the power to excommunicate and to curse. Roger's attitude towards the high members of the clergy, clearly shows the concept of sovereignty according to the Norman ruler and, above all, his idea of the relationship between secular and spiritual power. Count Roger acts like a pope⁴⁵, he puts himself above the bishops of his territory and he delegates them to *excommunicare et maledicere*. All these considerations emphasize the idea of sovereignty characterizing the Norman kingdom of Sicily. The curses and anathema clauses, used by sovereign power, acquire a different meaning: they are not only the result of a cultural influence⁴⁶, but they also represent one of the various ways through which the theocratic monarchy shows itself in the Christian Middle Ages.

31

44 “*His datis feci ego Rogerius comes excommunicare et maledicere per os duorum episcoporum, videlicet Giraldi Miletensis et eiusdem Ansgerii Catheniensis, omnes homines, qui post mortem meam istam nostram elemosinam violarent vel dissiparent vel omnino monasterio auferrent, nisi ad satisfactionem et ad congruam emendationem inde venerint?*”

45 As regards the relationship between Norman king and the papacy and in particular concerning the *Legatio apostolica*, see: FRANZ JACOB SENTIS, *Die Monarchia Sicula. Eine historisch-canonistische Untersuchung* (Freiburg im Brisgau, 1869); FRANCESCO SCADUTO, *Stato e Chiesa nelle Due Sicilie* (Palermo, 1887); ERICH CASPAR, ‘Die Legatengewalt der normannisch-sicilischen Herrscher im 12. Jahrhundert’, in *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, VII, 2, (1904), pp. 189-219; FERDINAND CHALANDON, *Histoire de la domination normande en Italie et en Sicile* (Paris, 1907); JOSEF DÉER, ‘Der Anspruch der Herrscher des 12. Jahrhundert auf die Apostolische Legation’, in *Archivum historiae pontificiae*, II, (1964), pp. 117-186; SALVATORE FODALE, ‘Polemica e storiografia sulla Legazia Apostolica dei Normanni in Sicilia’, *Archivio storico per la Sicilia orientale*, LXII, (1966), pp. 15-50; Idem, *Comes et legatus Siciliae. Sul privilegio di Urbano II e la pretesa Apostolica Legazia dei Normanni di Sicilia* (Palermo, 1970); JOSEF DÉER, *Papsttum und Normannen. Untersuchungen zu ihren lebensrechtlichen und kirchenpolitischen Beziehungen* (Köln-Wien), 1972; SALVATORE FODALE, ‘Stato e Chiesa in Sicilia: tra Stato della Chiesa et Chiesa di Stato’, in *Genèse de l’État moderne en Méditerranée. Approches historique et anthropologique des pratiques et des représentations. Actes des tables rondes internationales tenues à Paris (24-26 septembre 1987 et 18-19 mars 1988)*, Rome, 1993, pp. 229-242.

46 As previously pointed out, some scholars believe that there is a close relation between the strength of power and the use of anathema clauses. They are absent if political authorities are charismatic and powerful; on the contrary, their use is more relevant in areas where there is a situation of political and administrative uncertainty. However, it appears methodologically insufficient to resort only to a quantitative assessment to understand the *ratio* and meaning of the anathema clauses that are used in the analysed documents. Furthermore, the consideration referring to the strength of central power is misleading considering the high value that is set on the idea of royalty in the Christian Middle Ages. See: AMEDEO FENIELLO – JEAN-MARIE MARTIN, ‘Clausole di anatema e di maledizione nei documenti (Italia meridionale e Sicilia, Sardegna, X-XII secolo)’, *Mélanges de l’École française de Rome. Moyen Âge*, 123, (2011), p. 125; FRANÇOIS BOUGARD, ‘Jugement divin, excommunication. Anathème et malédiction: la sanction spirituelle dans les sources diplomatiques’, *Exclure de la communauté chrétienne. Sens et pratiques sociales de l’excommunication (IV^e-XII^e siècle)*, edd. GENEVIÈVE BÜHRER-THIERRY – STÈPHANE GIOANNI, (Turnhout, 2015), pp. 235-236.