CUM LAMPULO MANTELLI. THE RITUAL OF NOTARIAL INVESTITURE: EXAMPLE FROM ISTRIA

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ABSTRACT

Based on the study of several documented testimonials concerning the dispute between the inhabitants of Piran and the Capodistrian bishop in 1201, that also include statements describing the investiture of the notary, this article uses the comparative and (re)interpretative method to study the ritual of notarial investiture as it was exercised from the 12th century onwards in the area of the upper Adriatic and in the neighbouring Italian territories.

The study is not only focused on the question of the notarial investiture but also ventures comparatively into other secular social spheres of the European medieval investiture rituals and states, showing that the rituals were conducted in accordance with the unified, three-part inner structure as described by Galbert of Brugge (1127): homage, fides, investiture. *Although the investiture ceremonies for special social spheres differed one from another with regard to symbolic gestures, objects and words (phrases) and were transformed in accordance to social needs, the inner structure of the ritual was invariable whether it concerned the investitures of emperors, kings, vassals, knights, notaries or functionaries of the other social institutions that were rapidly beginning to take shape especially from the 13th century onwards; furthermore, the structure is also present in the judicial sphere. The origins of the medieval ritual are manifested in the ubiquitous divine transcendence whose door was flung wide open during the Carolingian-Ottonian period (8th-11th centuries) whereas the cultural roots of the ritual extend backwards into archaic communities.*

*The study also indicates the role and the significance of notaries in the administration of governmental organs and especially in the formation of the governmental structures of autonomous cities, characteristically reflected in the investiture ritual. It was the mere investiture ritual, as it was developed from 12th century onwards, based on knights and notarial rituals, that opened the pathway towards the investitures in other social fields, especially in free vocations (*artes liberales*). The right to be invested was later also to be spread amongst the "common" subjects.*

Keywords: investiture, notary, ritual, Middle Ages, Istria, Italy, Europe

CUM LAMPULO MANTELLI. IL RITO DELL'INVESTITURA NOTARILE: L'ESEMPIO DELL'ISTRIA

SINTESI

Sulla base dell'analisi di numerose testimonianze in merito alle diatribe, accesesi nel 1201, tra piranesi e il vescovo di Capodistria – si tratta di documenti che contengono anche riferimenti all'investitura dei notai – l'articolo esamina con metodo comparativo e (re)interpretativo il rito dell'investitura dei notai, così come si svolgeva dal XII sino a tutto il XVI secolo almeno, nell'area dell'Adriatico settentrionale e nelle regioni italiane limitrofe.

Lo studio non si concentra esclusivamente sulla questione dell'investitura dei notai ma analizza, in modo comparativo, anche altri ambiti secolari della società, concernenti i riti dell'investitura medievale in Europa, e rileva come i riti si svolgessero in conformità alla struttura interna unitaria composta da tre fasi, come descritto già dal Galbert di Bruges (1127): homagium, fides, investitura. *Benché le cerimonie dell'investitura nei singoli settori della società si distinguessero fra di loro nei gesti simbolici, negli oggetti e nelle parole e si modificassero a seconda delle esigenze sociali, la struttura interna del rituale rimaneva invariata tanto nel caso dell'investitura di imperatori, quanto nell'investitura di re, di vassalli, di cavalieri, di notai e di altre figure istituzionali della società, in rapido sviluppo soprattutto dal XIII secolo. Una struttura interna che si rinviene, del resto, anche in ambito giuridico. L'originalità del rituale medievale si può notare nell'onnipresente trascendenza divina che è un portato dell'epoca carolingia-ottoniana (dall'VIII all'XI secolo), mentre le radici culturali risalgono alle comunità arcaiche.*

Ma lo studio rivela anche il ruolo e l'importanza dei notai nell'amministrazione degli organi di potere e in particolare nella creazione di strutture governative locali autonome, circostanza che si manifesta in modo specifico nel rituale dell'investitura. Ed è proprio quest'ultimo, così come sviluppatosi dal XII secolo in poi, prendendo a modello il rituale dei cavalieri e dei notai, a spianare la strada all'investitura anche in altri settori della società, in particolare in quello delle libere professioni (artes liberales). *Il diritto d'investitura si diffuse così anche fra i sudditi »comuni«.*

Parole chiave: investitura, notariato, rito, Medioevo, Istria, Italia, Europa

INTRODUCTION

The Piranian document detailing the dispute between Capodistrian bishop and the inhabitants of Piran in 1201[1] concerning the olive oil tithe has already experienced several interpretations, also regarding the investiture of the notaries, but so far this question has not been addressed from the point of view of the symbolic ritual ceremony of the investiture of the notaries.[2] Therefore, the focus of this discussion will be to study several documented testimonials from 1201 concerning the investiture of the Piranian notary Dominic and the comparative (re)interpretation of the ritual ceremony of the notarial investiture over a longer period of time, from the end of the 12th century to at least the end of the 16th century in Istria and neighboring Italian regions.

The study demonstrates the role and the significance that the notaries had in administration of governmental organs and especially in designing autonomous urban governmental structures, which is also authentically reflected throughout the investiture ceremony. The investiture ritual that started to develop in the 12th century, based precisely on knightly and notarial ceremonies, opened a doorway to the investitures for other social classes, especially for the independent vocations (*artes liberales*).

Investiture thus descended among the "common" subjects. Its phenomenon initiated a process that could be described as the development of the state administration and the legal possibility for founding of enterprises. The study offers a hypothesis that the ceremony of the medieval investiture in its fundamental structure demonstrates a unified form for all types of investitures, and that the form itself is based on the marital ceremony, according to Roman law, which still appears to be enrooted in many social spheres nowadays.

RITUAL AS MEDIA AND LAW

Firstly, it is necessary to point out that the rituals do not only mark religious ceremonies, but that the ritual itself and the ritual ceremony appear also as a part of a normative act or as the normative act itself. This act represents a social agreement, an action that is apprehended and acknowledged in all its aspects; a recognition and an affirmation of a particular social role, whether that be religious or secular (comp. classical work by Durkheim, 1995; Gluckman, 1962). After all, let us bear in mind the numerous rituals that today's society invokes (Grimes, 2006); therefore, when discussing these rituals, we can only agree with the findings of the edited book *Rites of Power* that "all societies are ordered and governed by 'master fictions' (divine right, equality for all) which make political hierarchy appear natural; that political rhetoric includes nonverbal communication

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1   These are the documents from number 11 to 65, published in »Chartularium Piranense«. Racolta dei documenti medievali di Pirano, ed. by C. De Franceschi, vol. I, 1062–1300, Parenzo 1924 (further: CHART. PIR./I). Comp. Rožac, Pucer, 2010.

2   Morteani, 1896–1897, 249–265; Mihelič, 2001; Darovec, 2007; Zabbia, 2013. Acta Histriae has also published some discussions on the topic of the notary in the Adriatic area (Grbavac, 2008, 2011, 2013; Faggion, 2008, 2013; Darovec, 2010; Marković, 2010; Mihelič, 2011a; Boarin, 2013; Borgna, 2013), but the question of the notarial investiture ritual has not been addressed thus far.

(royal portraits, statistics on crop yields); and that common rhetoric can mean different things to various segments of a culture" (Wilentz, 1999).

Despite this fact, the majority of the investigators of Medieval and Modern Age rituals almost unanimously confirm[3] that rituals cannot be easily defined. Even Althoff firmly states that "Any attempt to define ritual by bringing together the various opinions of scholars in behavioral, ethnic, religious, social-psychological, or other studies on the constitutive elements of ritual is bound to fail." (Althoff, 2002, 71). However, this excellent investigator of medieval rituals continues almost in the same sentence: "We talk about rituals when actions, or rather chains of actions, of a complex nature are repeated by actors in certain circumstances in the same or similar ways, and, if this happens deliberately, with the conscious goal of familiarity. In the minds of both actors and spectators, an ideal type of ritual exists that takes on a material form that is easily recognized in its various concrete manifestations. Actors and spectators act in the consciousness of being bound to a given scheme, which does not, however, prevent the ritual from having the desired effect. Many other supposed characteristics of ritual must be qualified with the restriction 'most of the time' or 'often.' For example, rituals are usually arranged ceremoniously; they frequently serve to acknowledge the social order, and often they serve the purpose of commemoration or confirmation — or both." (Althoff, 2002, 72).

Furthermore, he states that the rituals "constantly reconstitute themselves anew, and even groups or movements that have set out under the banner of antiritualism soon create their own forms of ritual communication." (Althoff, 2002, 73). Although "Religion is usually dominated by ritual, there is a multitude of rituals in the secular sphere, for example, in public communication". Rituals occur in politics, law, and the everyday intercourse of people and groups. Escalations of conflict were ritualized. Changes and innovations in the social order also were announced by such actions, for example, by the ritual of investiture[4] or by rituals for ending conflict and making peace. The new situation was expressed in a very demonstrative way through actions such as taking a common meal, doing homage, or presenting gifts (comp. Althoff, 2002, 73–74). Ritual is public communication, is media; but it is also law. The study of rituals is therefore precisely of fundamental significance for creating an awareness about different historical and social processes as they reflect values, norms, mentalities and social imaginations.

Unfortunately, medieval documents record only a few scattered interpretations of symbolic rituals containing only a few detailed descriptions of the investiture ceremony. This implies that a study of the notarial investiture ritual will require a comparative approach; by composing the fragments of the mosaic that will enable us to understand the

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3   In last few years in the field of study of medieval rituals some cogent works were made in circle of Gerd Althoff (2003), who in several edited books managed to collect the leading German and American investigators of this field, which makes these publications exceptional bibliographical sources. I would also like to note a work of Edward Muir (2005), who also serves us with an exceptional enlistment of mainly American bibliography about studies of the rituals, for our discussion I would also like to expose a book, edited by Wilents (1999).

4   Probably the most important referential work about the ritual of medieval investiture, along with Le Goff's (1985), is Keller's article (1993).

process, we will need to place these fragments into a general social context with reference to the operating methods of the medieval institutions. In examining the case of notarial investiture, it will be necessary to refer to knowledge about the time period, customs, mentalities and, in this particular case, also concerning the leading events of the time – the advancement of the (particularly Italian) cities, especially following the victory of the Lombard League against Frederick Barbarossa (1176). At that time, the structure of the three social orders of feudalism (comp. Duby, 1985) received a new important cast member: cities. To comprehend the social processes and the strategies that the new actor used to fight for his place in the social formation of that time, we also need to consider the general social, cultural and environmental circumstances and to make short retrospective into the time period, when the social imagination of the Christian World was formed.

Representation of the tripartite social order of the Middle Ages – oratores «those who pray» (cleric), bellatores «those who fight» (knight), and laboratories «those who work» (workman: peasant, worker, member of the lower middle class); book illustration France XIII century. Wikimedia Commons. File: Cleric-Knight-Workman.jpg

Regardless of the relatively long period of establishment of the ecclesiastical institutions, Christianity was a break point in the development of mankind; it was an invention which established a consciousness of the one and only and the perfect God, the Creation; as a consequence, the attitude towards Nature and human beings changed: we are all equal before God, which forms a foundation for equality of rights. Only Otherworldly and Earthly pair determined the earthly missions that were divided amongst the called (clergy) and the laics; meanwhile, asceticism and redemption for past sins and devout life for salvation in the afterlife became religious ideals.

Unusually, after centuries of turmoil, civil and religious wars, everyday risks of being attacked by plundering and general social uncertainty? At a time when the law of the mighty, but quarrelsome, envious and especially fallible gods prevailed and began to reflect itself in the society?

These too were the social foundations for the enforcement of Christianity, a movement that initially had no governmental tendencies, but was rather based on local self-government. The Church had only started to form its "governmental" ideological mindset from antiquity onwards, which enabled a gradual consolidation of power and a decisive influence that its hierarchy would increasingly have over the secular government. It was precisely the priests who had the mission to invent the social order. The spread of Christianity throughout the Roman Empire in the 4th century is not merely a political or spiritual question, a consequence of Constantine's conversion and the missionary enthusiasm of Christians who were since then supported by the public authorities. At the beginning of the 4th century, Christianity was spread especially amongst the middle and the lower social classes in the cities and had hardly yet touched the peasant crowds and the aristocracy. Nevertheless, the economic decline and the development of bureaucracy led to the strengthening of these *middle and lower urban classes,* where Christianity had already had a strong influence. The enforcement of Christianity enabled the Christian breakthrough (comp. Le Goff, 1985, 247).

Since nothing existed between God and the Earth, the priests (first Jesus, then the disciples, bishops and ministers) became the link between God and earthly life, they were God's representatives amongst the people. This connection was established with a blessing. [5]

On the other hand, new forms of secular authority began to emerge whose ceremonies were still mostly structured around the antique ceremony tradition of the adventus ritual (comp. Warner, 2001), characteristic of the Christian rulers of late empire and also of the

5   Thomas Aquinas in the 13th century was still able to state that: *Quod vero quinto proponitur, quod solemniter instituitur archidiaconus vel plebanus, quia investitur per anulum vel aliquid huiusmodi, omnino ridiculosum est. Ista enim est solemnitas magis similis civilibus solemnitatibus (secundum quas aliqui investiuntur de feudo per baculum vel per anulum) quam solemnitatibus Ecclesiae, quae in quadam consecratione vel benedictione consistunt.* (Liber de perfectione spiritualis vitae: "The fifth argument, viz., that an archdeacon or parish priest, is solemnly appointed, because he is invested with a ring, or some other symbol of the sort, is absolutely ridiculous. This investiture resembles certain civil ceremonies, whereby men when invested with a fief are presented with a scepter or ring, rather than the rites of the Church, which consist in a solemn blessing or consecration."). (http://dhspriory.org/thomas/PerfectVitaeSpir.htm#5). In this way, Aquinas, by precisely separating the two types of investiture and their respective rituals, opens the ideological path for secular investitures.

early Christianity within the ritual of consecration of the ecclesiastical dignitaries. When Saint Augustine merged the antique Latin culture with Christianity, he laid the foundations of an authentic Christian culture, which stands on two pillars, on the antique *artes liberales* and on the Holy Bible; his special attention was directed towards the question of the language. This is not surprising. In its primary meaning, Christianity is the faith of the Word. Its teachings concern the incarnation of God's Word. However, Christian loquacity has a completely different meaning than the pagan: its mission is to announce the Truth of the Christ. Additionally, every Christian must first become a prayer and then a preacher. Saint Augustine also indicates the fundamental difference between the signs (*signa*) and objects (*res*), which became the basis for all medieval symbolic theories. Christ multiplied all types of signs; however, God too often sends signs to the people; the miracles are signs and all of Creation must to testify concerning a sign of God's greatness to all men.

The Anointing of David, from the Paris Psalter, 10th century (Bibliothèque Nationale, Paris). Wikimedia Commons, the free media repository. File: Paris psaulter gr139 fol3v.jpg
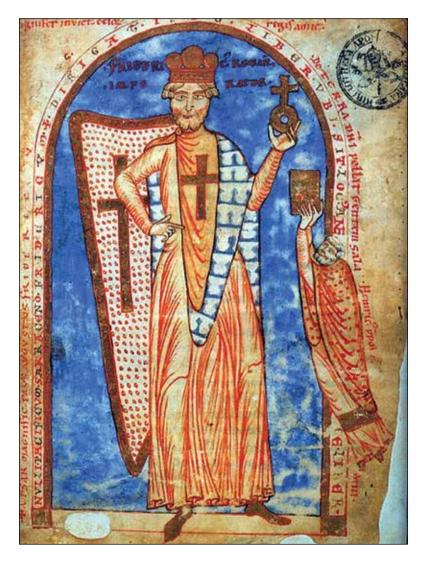
The medieval sacramental theology was based on the sacrament as "the sign of the sacred object": if the Christian sacrament is a sign, the entire classical interpretation of the sign is thus demolished or surpassed. Hoverer, no sacramentary act consists only of gestures, but is accompanied by words, and objects that "signify" the mediation of God's mercy (comp. Schmitt, 2000, 85–89).

The antique tradition regarding gestures in the liturgic texts and also in all ecclesiastical literature of the early middle ages reached an impasse for some centuries; however, at the end of the 8th century the antique language and cultural patterns were revived to be used by a very different ideology and perception of the role of government. (comp. Schmitt, 2000, 74–101). This is most visible in the rituals of consecration and coronation of the kings and emperors, which were given special attention by the Carolingian and later the Ottonian codifications. The new ritual gesture of anointing of King Pipin, executed in 751 by St. Boniface, which was repeated in 754 by Pope Stephen II, had extremely important consequences. With introduction of the chrismation to the consecration of kings and later emperors, their unique and sacred characters were accentuated and equated with the chrismation that St. Remy of Reims used to christen Clovis when he converted to Christianity in 496.

The chrismation was executed with heavenly oil, supposedly brought from heaven by a dove of the Holy Spirit. The same magical oil, kept in a sacred ampule, was supposedly used for the consecration of French kings (Schmitt, 2000, 127). Following this act, the Church succeeded in infiltrating into the sphere of the coronation of the kings and emperors, whereas earlier it was the Church officials, including the Pope, who were confirmed by secular authority. Since the coronation of Charles the Great as the Holy Roman Emperor on Christmas in the year of 800 in Rome by Pope Leon III, the popes began to enthrone the Christian rulers. This also enabled the complete establishment of an important concept in the secular sphere – namely that everything, including secular authority, is given by God, who communicates his will directly through his mediators, using many different signs and objects.

Since the second half of the 11th century, the so-called Gregorian reform established a basic differentiation between the clergy and the laics in the catholic society. The specifics of both parts of the social body and the dignity of their operations were also acknowledged for the laics. The gestures and the ceremonies then became both the means and the sign of social differentiation: the contrasts to the priestly gestures were the knightly gestures that were most representative for the lay nobility that competed with the high ranking clergy for the leading role in the medieval society. But, as we shall see, it was precisely the ritual gestures and the ceremonies of the investiture of the notaries, the knights of *the pen and inkwell* (*penna et calamario*), that enabled notaries (and judges) together with all associated notarial institutions to rise above and to establish themselves as the "Third Estate" between the nobility and the clergy in the time of the advancement of the cities in the 11th and the 12th centuries, and to become the foundation of urban administrative and economic life.

Being aware of the fundamental contaminations of the ecclesiastical ceremonies and the ceremonies of the nobility, it is precisely through the institution of the notary that we

are able to demonstrate how and by what means the rituality of the ceremony influenced the establishment of the city government, as the Third Estate, between the sacred and the secular of that time. The cities not only followed this process but also helped to co-create it, especially if we consider the important influence of schools and universities on the formation of the scholastic moral theology; that probably emerged in the cities and

Frederick I, Holy Roman Emperor as crusader. Miniature from a manuscript from 1188, Vatican Library. Wikimedia Commons, the free media repository. File: Barbarossa.jpg

in many ways moulded social imagination over the following centuries (comp. Flasch, 1988; Southern, 1995–2001). The fact that the first urban schools were established primarily to educate notaries and judges, schools that resulted in the "renaissance" of Roman law in the 12th century and fundamentally influenced the rediscovery of the classical works of the antiquity.

In Italy, where there was no local ruling dynasty, Roman law, despite the invasion of the Langobards and spiritual collapse, never entirely died out. Pavia, the capital of Lombardian kingdom, was also the centre of jurisdiction and, since the 8th century, attracted students from all parts of the Western Europe. In Ravenna too, the old capital of Romagna, the study of Roman law never ceased. Towards the end of the 11th century, however, the great teacher Irnerius founded a school in Bologna, that overshone all the others. According to Gracian, its interpreters (glostatores) of the civil and the canon law were much sought-after. This formed a professional basis for the leading role of Bologna in the development of education (first university in 1150) and the development of the institution of the notary. Since 1214, a written collection of rules for the education of the notaries (Rainerius da Perugia: *Liber formularius*) already existed in Bologna; this is even before the collecting and codification of city statutes had begun. After only five years, a special book (*Matricola*) came in use, to record the notaries, who had already been given imperial notarial privilege and were obligated to undergo courses at the city's authorities, otherwise they were not permitted to operate in their vocation, neither within the specific city nor on its territory. Along with the education of the notaries, Rainero also emphasises the significance of the investiture. student, but he did not provide us with any detailed description. However, one of his students, Bencivenne, already mentions in the middle of the 13th century the sceptre that was used by Bolognian podestà to appoint the notary Johannes – a typical characteristic for feudal investiture ceremonies (Ferrara, 1977, 79). But notaries would not have been notaries if they had not written their rules down, in which a Bolognese notary Rolandino de Passageri was the most successful (comp. Tamba, 2002), as he wrote an extensive work *Summa Totius Artis Notariae* between 1255 and 1273 in which he gives detail instructions for the investiture ceremony (Rolandino, 1546, 144–146)[6], which was apparently established in praxis, although the documents in the first instance provide us with meagre information. Since the middle of the 14th century and throughout the 15th century we record more detailed descriptions of the notarial investitures, which evidently followed the secular investitures of the medieval period. It is important to stress that the cities, with their representatives, the podestates, evidently within their common law, first fought for the right to appoint the notaries and did so in the public name.

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6   This work was published in printed form in 1546 in Venice; a reprint with short introduction was published in 1977 with support of the Italian National Council of Notaries (Consiglio Nazionale del Notariato). However, by studying substantially extensive literature, which I also cite in this article, I realized that the authors, who conducted more or less in depth research upon cases of notarial investiture, did not consider the Rolandino's instructions about the notarial investiture ceremony in their discussions, accept for Airaldi, who briefly mentioned it in a footnote: "Le formule per le nomine notarili comitali si rifanno, sostanzialmente, a Rolandino de Passeggeri" (Airaldi, 1974, 320), although we were warned on this already by Du Cange (1733, 3, 1536).

To comprehend this process, or at least its basic characteristics, we will have to take a look at the chronological sequence of the development of the institution of the notary and the ritual ceremonies of the investitures.

THE ORIGINS OF THE NOTARIAL LEGISLATURE

According to Pratesi (1983, 764), the times for the development of a notary practice came not earlier than with the Franconian era. During these times a notary was given, within the framework of prescribed legal stipulations, a relative autonomy, since a notary's signature already assured the necessary public confidence to a document.

With the conquest of the Lombard state (774), the Franconians took over many characteristics of the Lombard law as well and incorporated it, together with the Germanic and Roman law, into their legislation.

The common characteristic of the Franconian law was its striving toward the centralization of the state. This is evident from the structural complexity of the Franconian hierarchic feudal system. This direction was also taken in regulating the office of a notary, which was elevated to one of the central administrative institutions.

The first known Franconian ordinance which refers to the office of a notary goes back to the year 781 when the sovereign ordered his counts that *notaries* had to write down their legal acts (MGH. CRF. I, 190). Charles the Great cemented the role of a notary even further with the ordinance from 803 where he stated that both judges *(skabini)* and lawyers (trustees, probably for lay properties in this case; comp. Costamagna, 1975, 182) had to be nominated. In individual places they were nominated by envoys *(missi)* between a count and the central authority (Amelotti, 1975, 115). In addition to notaries being made equal to *skabini* and lawyers, we can also attribute to this ordinance the beginnings of the legal arrangement of the state of authority, in the name of which notaries eventually made credible appearances at all of the legal acts.

The role of the middlemen between the local notability and the central authority was entrusted in the name of a sovereign to an emperor's or king's envoys *(missi)* and paladin counts *(comes palatinus)*, that is, to court judges of Franconian kings who, on recommendation of a bishop, abbot, count or other notability, nominated a notary.

An important ordinance that also signified a new step toward a more autonomous role of a notary was Lotar's chapter from the year 832 concerning a notary's oath not to falsify documents ("*quod nullum scriptum falsum faciant*"; MGH. CRF, II, 62), which also imposed legal responsibility upon notaries.

A notary's activity was at first limited to a territory which was under his superior's authority. Later on a notary was allowed, with the permission of a master who had jurisdiction, to perform his duties also in other regions but, of course, only under condition he had a notary privilege.

With such measures, the Franconian sovereigns wanted to centralize a service of a notary and subject it exclusively to their own authority. However, in the time when feudal estates began crumbling (after the 10th century) and with the development of commerce and crafts and the raise of townships connected with such a development, the rights of

bestowing notary privileges expanded also to other holders of authority. Paladin counts though, at least formally, preserved this duty for a long period of time as, for instance, in the Venetian Republic until the year 1612 when the Republic itself took over this right (LEGGI, 1683, 139).

Charlemagne, flanked by two popes, Gelasisus I. and Gregory I., is crowned. From the sacramentary of Charles the bald, manuscript of c. 870. Wikimedia Commons, the free media repository. File:Couronnement d'un prince - Sacramentaire de Charles le Chauve Lat1141 f2v.jpg

At first the Church did not give up the privilege of nominating notaries ("*potestas faciendi notarios*"), the privilege that was as early as in Roman times given to its highest hierarchical members; a notary was nominated by the Roman Pope's authority, "*notarii auctoritate sacri Lateranensis palatii*".

The privilege of granting the notary's authority was later given also to other notabilities, as for instance, to the patriarchs of Aquileia (*Gregorii marchionis Istrie Carniole notarius*), to the Venetian Republic (*ducali Venetiarum auctoritate notarius*), to bishops and, finally, to cities (*notarius civitatis*). In towns, a Great Council chose a notary upon the proposal of the Minor Council; the duration of a notary's employment was determined by a special contract (Stipišić, 1985, 162).

In spite of legislation, the stating of authority in whose name a notary wrote a legal act was not consistently enforced. At the beginning of the 9th century in particular, notaries were tied to their master (a count, bishop, etc.) and to his territory. Only later when notaries, with the permission of a certain master, were allowed to perform their duties also in his territory and with a gradual secularization[7] of the institution of the notary office, it became appropriate to state authority who granted notary privilege to a notary. In the 9th century, according to Costamagna's research (1975, 197), notaries "*Domini Imperatoris*", "*Domini Regis*" or "*Sacri Palatii*" were signed on as recording clerks only on about 10% of (preserved) private documents. However, at the end of the 9th century and in the 10th century a new qualification appears among the recording clerks of private deeds. A "*iudex et notarius*" or "*notarius et iudex*" was a title that was used from the second half of the 10th century on and became, in addition to "*notarius publicus*" and "*notarius et iudex ordinaries*", very common in the communal life as well.

Special schools for both existed even in the Franconian era since Lotar's capitular from the year 825 mentions seats of the following schools: Pavia, Ivrea, Turin, Cremona, Florence, Verona, Vicenza, Cividale (Costamagna, 1975, 196). Frequently *index et notarius* appeared together with a recording clerk with the same title, on documents only as witnesses clearly in order to ratify the validity of them. This joining of titles in one person also contributed to a greater assertion of a notary role; at the beginning of the 11th century, there are only about 10% of "common" notaries, with "*notaries and judges*" prevailing to a great extent. [8]

In that period, most notaries signed themselves as notaries of individual "*civitas*" or "*castrum*". This is evident from the signature of deacon and notary Gregorius on the document of a contract between Koper and Venice from the year 932 (*Ego Georgius dyacono et notarius per consensu populorum scripsi atque firmaui)*, when specifically with "I" (*Ego*)[9] a role of a notary is pronounced, and also from the fact, which we learn from

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7   In Istria, the first lay notary, Iohannes, appears in Porec in 1030, while in Koper the lay notary Basilius operates in 1072 (De Vergottini, 1924, 77).

8   This question concerned mainly Genuardi (1914) and Ebner (1979, 85–140, especially p. 123), an extensive commentary also Costamagna (1975, 187 and 197–201) and Pratesi (1983, 763–765).

9   The form is later on used regularly on all notary documents, but it is present already on the Roman tabelliones (Costamagna, 1975, 212).

a deed from the following year (933), that it was drawn up by the city notary of Koper ("*Ego Georgius diaconus et notarius de civitate Justinopolim*").[10]

It is also interesting that none of the known northwestern Istrian notaries up to the end of the 12th century declared himself to be a notary of an emperor, pope or another lower authority – something that became a custom from the middle of the 13th century, although only as a city notary or a notary without an attribute.[11]

It appears, though, that initially a notary authority had no greater value if granted by an emperor or pope. For example, the notary of Piran, Rantulfus, was in the year 1230, "only" a city notary, five years later the emperor's, while in the year 1238 he declared himself a notary of the patriarch of Aquileia, Bertoldo (1218–1251). This indicates both the increased influence of the patriarchs of Aquileia also in the execution of notary activities in Istria and the former unobligatory citing of authority and the equality of the notaries of the towns and emperors. Only from this period on, the Istrian notaries declared themselves most frequently to be patriarch's notaries.

Most of the notaries used their established concluding formula more or less without changes during the time of their activity. Notary Facina, for instance, as a rule signed himself under the written act as "*Ego presbiter Facina auctoritate incliti domini Gregorii Istrie atque Carniole marchionis notarius, hiis omnibus interfui, rogatus scripsi et roboravi*" (CHART. PIR./I, n. 110, 112, 111a,); on three documents he added to his signature: "ecclesie Piranensis" (CHART. PIR./I, 137, 145) or "ecclesie Pirani" (CHART. PIR./I, 111b), on one just "Piranensis" (CHART. PIR./I, 104), and on one with essentially not different "*supradictis omibus interfui…*" (CHART. PIR./I, 103), which is a common sign indicating that he wrote a certain legal act at the request of the persons present. Then in the year 1261, Facina wrote a document at the request of a commune consul, something he made a point of with insertion "… *et de mandatu dominorum consulum scripsi et roboravi*" (CHART. PIR./I, 104).

At the same time, the notaries of Istria also indicate the then diverse ethnic image of the towns discussed, which was not characteristic of notaries only. Prevalent are German names, followed by Latin and Italian names; there are also three Slavic names (Vitalis filius Menesclavi, Sclavionus de Pirano and Sclavono de Bilono) (Comp. Darovec, 1994, 223–228, Supplement 2).

PRIVILEGES OF NOTARIES

After the rights of bestowing notary privileges were passed to lower holders of authority in the empire, some towns attained imperial privileges of nominating notaries as, for instance, Pavia in the year 1191, Genoa in 1210, Lucca in 1369, etc. In other towns,

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10 Comp. CDI ad. annum.

11 In other Istrian towns, as well, notaries did not begin declaring themselves as the emperor's or pope's notaries until the beginning of the 13th century – as, for instance, the Poreč notary Jordanes in 1202 (CDI, ad a.-), while a Poreč notary signed himself in 1191 still as "*Ego Adam Diaconus et Notarius de Civitate Parentine*" (CDI, ad a.). It was similar in Pula, while in Trieste we find the first emperor's notary, a priest Andreas, also in 1202 (CDI, ad a.-).

Otto II, Holy Roman Emperor. Wikimedia Commons, the free media repository. File: Otto II. (HRR).jpg

notaries were nominated by local Palatine Counts, while some, in accordance with the development of the commune autonomy and independent town offices that assured credibility and legal safety, attained this jurisdiction independent of the central authority (Pertile, 1902, 295–297; Ferrara, 1977, 56–57; Pini 2002, 1–20).

Even though emperors granted to northwestern Istrian towns rather broad privileges from the 10th century on, there is no concrete evidence of them granting rights to nominate notaries. However, a frequently vague form of the imperial diplomas with which towns were allowed to govern according to the local law and customs (such was a privilege of the Emperor Oton I from the year 968 that was appointed also by his son Otto II in 974 (CDI, ad a.-); this privilege allows, in addition to the above mentioned, the people of Koper and Piran to defend themselves in their territory with their own army and that they themselves interrogate in legal affairs) may indicate that towns had certain jurisdiction in at least appointing town notaries. This is especially true if we corroborate the Leicht's (1910, 186)[12] argumentation that as far as the Istrian office of a notary is concerned, it is about the Byzantine tradition of city scribes (*scribae civitatis*) or Roman *eksceptorii*. These were described already by Bresslau (1889), who used as an example Ravenna and southern Italic notaries as public servants who had absolute control over documents that originated in the city to the point that even church scribes had to offer their documents for examination and validation by the communal chancellors before publishing them. We can assume from the above mentioned that in these "*ius familiaris*" and "*consuetudines*", two terms that were used for the common law in privileges, notaries had their place as well. This is perhaps best illustrated by two known 10th century notaries from Koper, Georgius and Rotepertus, who declared to be notaries of the city of Koper.[13]

The question of what authority, beside the city authority, granted notary privileges to notaries was obviously addressed by the contemporaries. There are at least three documents that attest to this. Due to a conflict between the bishop of Koper and the abbess of the convent of St. Maria in Aquileia, they interrogated in front of arbiters many witnesses, among them also those who were to confirm that certain notaries had a necessary privilege for practicing this profession, most likely because of documents in the subject of the conflict. The priest Johannes from Koper testified under oath that Likofred and Almerik had been and still were (Koper; author's comment) notaries *(tabelliones)* from many years ago till that very day. When asked how he knew this, he answered that he was present at St. Maria's …when they were granted the office of a notary by the border count Bertoldo (Kos, 1928, V, n. 9).

We hear similar testimonies about a conflict between the inhabitants of Piran and the bishop of Koper, Aldigherius. The conflict was caused by the olive oil tithe when the bishop of Koper apparently wanted to appropriate the Piranese olive oil tithe that was granted to the Piran chapter. With an accusation that the priests of Piran sided with the inhabitants of Piran and instigated them against him, the bishop Aldigherius excommunicated the priests and attempted to gain a profitable olive oil tithe in this manner. The inhabitants of Piran were so badly affected by this act that they fought together with their God's representatives in the name of justice against the bishop of Koper. The conflict lasted a good four years, from March 1201 till October 1205 (comp. CHART. PIR./I n.

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12 Comp. Kos, 1956; Vilfan, Otorepec, 1962.

13 *Ego Georgius diaconus et notarius de civitate Justinopolim…; Ego Rotepertus, dyaconus et notarius huius civitatis Justinopolim…* (CDI, CHART. PIR. and Kos, *ad annum* 933, 977).

11–65), and included several interventions by Pope Inocente III and was unfolding in front of several arbitration courts from Venice, Trieste, Muggia, Padua to Ferrara, where it was resolved on behalf of the people of Piran. While the conflict lasted, both parties clang to all possible means in attempt to prove their rights.

On 14th December 1201 (CHART. PIR./I, n. 22), during one of the first interrogations, the bishop of Koper already questioned the validity of authorization that was issued on 16th July 1201 by notary Dominicus of Piran to Iusto de Bona and Paponi de Ioane; the two were elected by the will of the clergy and the entire population of Piran to be the authorized representatives in the conflict with the bishop of Koper (CHART. PIR./I, n. 14). The bishop further raised objections to the authorization given to deacon Artuicum, who had been selected by the clergy of Piran to be their advocate with the pope's envoys at the respective conflict and whose authorization was also written by the notary Dominicus (CHART. PIR./I, n. 17) on 1st December 1201.

The bishop of Koper objected Artuicum's jurisdiction in performing a notary profession using the argument that Artuicum had not been appointed by a competent authority and, thus, his authorizations were invalid. He claimed the same about the mediation of the representatives of Piran at the pope's envoys (the bishop of Torcelano, Leonardo, and the leader of the Grado Church, Stefano). However, a number of witnesses, with presbyter Venerius among them, asserted that "…Dominicus is considered to be a notary in the castle of Piran. All of his documents about various contracts and other things and all of his testaments have validity in the town of Piran." Additionally, Venerius testified that "he was present when Dominicus took an oath of a notary in presence of Count Bertold, who was given the authority from the bishop of Freising and the bishop from the emperor." (Kos[14], 1928, V, n. 250)

Undoubtedly interesting for our question is a further testimony of Venerius, which refers to the very ritual of bestowing a notary privilege. Venerius claimed that Bertold inaugurated Dominicus as a notary with a brim of his coat[15] in front of *Porta Domus*, in the presence of the people of Piran, the town's head Alberico and other town dignitaries (CHART. PIR./I, n. 22:23/7).

The ritual was similarly described by Odolricus de Ripaldo, except that he mentioned a fur coat[16] instead of a coat, while Petro de Imena saw a glove with which Bertold confirmed Dominicus as a notary.[17] As Iohannes Ostiarius swore, this happened about half a year earlier (CHART. PIR./I, n. 22:25/20).

Even a greater doubt about the regularity of installing a notary rises with a witness of the bishop of Koper, presbyter Peter, who said "…under oath that it is not possible to say whether Dominicus is a notary or not. Bertold, who supposedly appointed him as a notary, has no such rights." (Kos, 1928, V, n. 250; comp. CHART. PIR./I, n. 23: 32/19).

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14 M. Kos, who edited (1928), after his father's notes, the fifth book of *Gradivo za zgodovino Slovencev v srednjem veku* (Material for the history of Slovenes in the Middle Ages), placed the event before the year 1216.

15 *Et dictus comes investivit dictum Dominicum de tabellionatu cum lampulo mantelli*,…(CHART. PIR./I, n. 22, 23/6; comp. Lex. Lat., 639).

16 *Et dicit quod fuit investitus per lampulum pellium Bertoldi.* (CHART. PIR./I, n. 22: 29/3).

17 *Dicit tamen quod investivit eum Bertoldus cum ciroteca.* (CHART. PIR./I, n. 22: 28/20).

Piran, at the end of the 16th century, a detail of Domenico Tintoretto's painting (PMSMP, photo D. Podgornik).

In fact, it is hard to establish which Bertold is being talked about. There was a Bertold of Andechs (comp. Mihelič, 2011b) who as margrave ruled Istria at the time. However, it is most unlikely that this is the same Bertold as the one in the Piran case, for as a margrave he would not have been given the privilege of granting the office of a notary from the Freising bishop and even less so from Meinhard, a count of Gorizia, who is mentioned by some of the witnesses (Walterius candelarius) as a mediator between the bishop of Freising and Count Bertold (of Piran) at bestowing such a privilege (CHART. PIR./I, n. 22).

The other Piranese witnesses also testifies that Bertold was given the privilege of installing notaries from the bishop of Freising, but their statements are not in agreement in defining the title of his function in Piran. For most of them, he is just a count, for others a count of Piran[18], for some a count of the territory and place[19] and Venerius is perhaps

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18 Tiso iudex de Pirano (CHART. PIR./I, n. 22: 26/9).
19 Albinus de Donada:"…*Bertoldo comite terre, et de loco*,…" (CHART. PIR./I, n. 23: 31/28).

again the most exact by stating that the podestà of the place is in the name of the bishop of Freising[20]. Even though the first podestà of Piran is, in the sense of the commune administration, mentioned already in 1192 (CHART. PIR./I., LXV; comp. Benussi, 1924), in this case it is probably still all about "only" a substitute of bishops of Freising who received from the Istrian margrave, Udarlik Weimeier, Piran and Novigrad in 1062 (CDI, ad a.-). In the year 1201 then, the bishops still had the right of bestowing a notary privilege in Piran, which was transferred in the mid-12th century to the counts of Gorizia. Some historians agree with Kandler's opinion that the previously mentioned Bertold was some kind of a town count (*burgravio* in Italian, from the German *Burggraf*) (Morteani, 1886, 11).

The hearings of the arbitrary court concerning the conflict about the olive oil tithe indicate that in the preceding time it was apparently sufficient for notaries to be appointed by the town community.

Public confidence was not questioned as far as documents of two Koper notaries, Almericus and Licofredus, are concerned, because they were confirmed by margrave Bertold. However, the investiture of the Piran notary, Dominicus, remained doubtful since he was installed by count Bertold. The development of events concerning the olive oil tithe, though, indicates that later on the notary's authority was no longer questioned, which means that the "town count" Bertold also validly enjoyed the right of nominating notaries or the solemn fact that the notary was affirmed/acknowledged by city community, was enough that his acts had public confidence (Zabbia 2013, 206–210).

It is evident from this event, which took place in the neighboring Italian lands as well, that the right of granting a notary privilege also gradually spread to lower bearers of authority, first on paladin counts, bishops and eventually even to lower officials. The latter at first received an attestation on notary nomination from the emperor (*imperiali auctoritate*), pope (*auctoritate sacri Lateranensis palatii*) or their emissaries and later on this right became hereditary. With the development of a commune life, however, this right could be transferred to the commune as well (Pertile 1902, 295–297; Ferrara 1977, 56–57; Pini 2002, 1–20).

It appears, though, that until the right of nomination was in Venetian Republic centralized in 1612[21], this function was executed in Venetian Istria by the emperor's or pope's substitutes, i.e. paladin counts (*Sacri Romani Imperii comites palatini, Sacri Lateranensis Palacii comites palatini, Sacri Lateranensis Palacii et aule imperialis comites palatini*; comp. Airaldi, 1974), who were given the authority to appoint notaries. These substitutes were at the same time also town noblemen, which meant that a town gained competent persons who had the right of nominating notaries. Such was the case with the first known Koper paladin counts from the Carli family who received this honor in the mid-14th century. This right was hereditary and was, together with the title of a count, transferred to descendants.

We have a similar case in Pula, where the city codes of law issued in the 14th century and some document from 1292 state that a family from Pula (Castropola) received from

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20 "…*comite Bertoldo, qui est potestas illius loci per episcopum de Freisengo*,…" (CHART. PIR./I, n. 22: 23/3).

21 Comp. for Republic of Venice Pedani Fabris (1996), for Rome Lombardo (2012, 254–259).

the patriarchs of Aquileia (Benussi, 1923, 340) a privilege of nominating notaries (*tabellionatum*) and that no one may practice this profession in town or its surrounding unless he was previously introduced by one of this family's members before the town assembly (*arengo*) and, thus, appointed to perform this duty. No private document was valid, either, unless corroborated (*roborata*) by one of the members (Pertile, 1902, 296).

A similar practice of issuing a notary privilege existed in Koper in the second half of the 16th century. This is evident from a privilege, written in the year 1574 in front of witnesses, a noble *(nobilis)* Johannes Baptista Gavardo and Sir (*dominus*) Vincenzo Metelli (a citizen and inhabitant of Koper) in the Koper city square (*Platea Communis*) by Koper notary Aloysio Grisoni. It was then that Petrus, the son of a Koper *portulano*[22], Sir Antonio Rosano, requested from the nobleman Sir (*nobilis vir dominus*) Aloysio Verzi, a worthy paladin count, to be given a notary privilege. His request was granted, but only after he swore by the holy gospel that he would perform duties of a notary profession loyally and honestly. After the event was announced via the city crier (*praeco*) in the city square, Peter was able to start his employ[23].

After a college of notaries (*Collegio dei Nodari*) was finally founded in Koper in 1598, the college took over the duty of verification and nomination of notaries and, as indicated in a surviving record book from this institution, notaries were verified and nominated there for all of the towns of Venetian Istria[24]. In the college, a special examining body was nominated, which verified candidates for notaries. In addition to a Venetian podestà, the examining body was made up of the head of the college – *prior*[25] – both *vicedomini*[26] (in the college they appear as *assesorii*) and four college members.

Here the question of who verified the abilities of a candidate prior to it presents itself. We know that this person had to be qualified in the skill of writing and grammar above all, but he also needed to be knowledgeable in law, at least the law written in city statutes.

The closest known notary school was founded at the beginning of the 14th century in Cividale. However, most likely only masters, who then taught their future colleagues, came out of it. The shortest way to achieve a notary privilege was most certainly in apprenticing with one of the already active "master" notaries in city and priority was, thus, given to sons and closest relatives of a notary. The people of Piran, however, were not always fortunate in choosing their "imported" notaries, which even cost one of them his right hand. What made this event even more disgraceful was the fact that notary Michael de Parma, an inhabitant of Venice, was also *magister*, that is, a notary master. In 1330 he was convicted of forging some documents and sentenced to having his right hand cut off,

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22 At least from the first half of the 14th century on, the Venetians appointed special officials for controlling imports and exports from the Koper ports at the Gate of St. Michael (approximately where today's civil port is located, which was the most important port at the time), at Izola's Gate and in Bosedraga, *portulani* were located. Comp. SENATO MISTI, 1888, 2. 6. 1342, 18. 12. 1345, 3. 1. m.v. 1348, 15. 9. 1357 etc.

23 AST. AAMC, bob. 108, 41; Majer 1904, 74.

24 AST. AAMC. Libri dei Consigli, Libro Consigli dei Nodari 1598–1737, bob. 709 (Majer, 1904, n. 567).

25 The first known prior of the Koper college of notaries was Francesco del Tacco, who was upon his death in 1614 replaced by Piero Vida (AST. AAMC, bob. 709, f. 206/7; Majer, 1904, n. 567).

26 About vicedomini comp. Darovec, 2010.

which was at the time a punishment for such an offense that was foreseen in almost all of the city statutes in the near and far surroundings (STAT. PIR., II/28). It is not known if the punishment was actually carried out, since we know of this event only from the testament of the convict (CHART. PIR./II, 71), who wished to protect his conscience against consequences, since such a "bloody" punishment frequently led to deadly results.

THE RITUAL OF NOTARIAL INVESTITURE

Especially in comparison to the investiture of knight, the formation of the notary investiture ritual has been given little attention so far in studies. But evidently knight investiture rituals were soon followed by their notarial counterpart: perhaps we could take a risk with a hypothesis that notarial investiture rituals developed in parallel to knights' investiture rituals or even before them. We have to consider that Carl the Great codified oaths for notaries, who at the time were clerics, and by their oath ordinated them into their own order.

We must not overlook juridical function (»*iudex et notarius*« or »*notarius et iudex*«), which was executed by notaries at least from the 9th century onwards, as presented in the chapter *The origins of the notarial legislature*. Primarily, notaries were clerics or, more precisely, monks. Monasteries were then educational institutions, which enabled all social classes to receive an education and to attain to corresponding administrative offices, based on the education level achieved. Only monks were educated in writing, grammar, theology, law and other proficiencies.

Throughout this time it was precisely the notaries who were the faithful recorders and administrators of all ritual activities.[27] Not only did these monastic notaries appropriate to themselves the role of expounders/interpreters and owners of collective memory but also a primal status in directing social relations, moral, values. Among the people of early middle ages, clerics performed the function of leaders and ideological interpreters; therefore, we can justly conclude that they performed readings of rituals (Le Goff 1985, 384), an analysis of which phenomenon is excellently presented in Schmitt's (2000, 33–100) and Duby's (1985) works.

What role and significance was attributed to notaries is evident from the ritual of notarial investiture; just as with the bestowing of honours on a count or a knight, notaries had to accept the investiture by kneeling down before their honour giver, but instead of a sword, they accepted it "with a feather and inkwell" (*cum penna et calamario*). In accepting this investiture, a notary had to take an oath of loyalty, honesty and knowledge. He attained the latter by attending an acknowledged grammar or judicial school for at least one year. The knowledge of notary skill was then appointed by an experienced notary, a prior of a notary corporation (collegiate) or a teacher at one of the notary schools, widespread in the 13th century after the establishment of universities in Italy.

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27   In picture *Immixtio manuum* from 9th century is notary between two actants.

Indeed, the case of the already mentioned investiture of the Piranian notary Dominic in 1201 testifies to one of the oldest summary descriptions of notarial investiture ritual. The seemingly unusual statement that "*dictus comes investivit dictum Dominicum de ta-bellionatu cum lampulo mantelli*", meaning that he was invested with a verge (thread?) of the coat, does not correspond with established ritual of investiture of notaries with pen and inkwell (*cum penna et calamario*), which is frequently mentioned from the end of the 13th century. In point 82 of 99 described investiture rituals, Du Cange in the 18th century still refers to the ritual of notary investiture as "*Cum penna et calamario*" (Du Cange, 1733, 3, 1536). Yet, according to accessible sources, another part of the ceremony was also a slap (*alapa*), given to the notary candidate during the ritual ceremony. [28]

If in the document dated in 1201 the Piranian notary Dominic is invested "*cum lampulo mantelli*" and such a case is not to be found in later periods, this does not necessarily signify that up until then the investiture did not proceed according to customary ritual. However, it testifies to the gradual formation of the ritual of notarial investiture since the end of 12th century, when medieval rituals of so-called investiture bestowal for all crucial areas of social life were formed.

Since the end of the 13th century, there was just one specific act that was frequently mentioned in the documents of the notarial investitures, "… *cum penna et callamario legitime investivit*…" (comp. Airaldi, 1974, 243–249), followed by declarations of duties and competences that followed from the oath, which are a component of the concluding act of investiture, i.e. the legal-normative content of the instrument – notarial privilege. For notarial investitures there are some descriptions from the second half of the 13th century; however, it is from the second half of the 14th century that the more detailed descriptions start to appear. But the notaries had established their investiture ritual a long time before that. The pen and the inkwell are in fact the symbols of investiture for priests, especially for monks and certainly for those who also performed notarial duties.

At this point we will take Bologna as an example once again. Following Rainerius' demand in 1219 for notaries to have a public investiture ritual, along with their instrument, in the middle of 13th century, Bencivenne, most likely a Ranierius' student, reports that "Bolonian podestà formally appointed a notary with scepter (*baculo*), held in his hands."[29] However, the sceptre mentioned (*baculo*) can be in our case understood in a broader sense of a symbolic investiture object or an act, similar to expression of *festuca* (switch, straw), which signified a transmission of authority and property, as explained by Du Cange in his article on investiture.[30]

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28 For comparison of notarial investiture procedures, see studies and documents in: Someda 1956, 42–43; Corbo, 1972; Airaldi, 1974, 178–315; Petti Balbi, 1974, 17–33; Brunettin, 2004, 221; Tilatti, 2006, 135–136; Darovec, 2007; Lombardo, 2012, 241–259; Zabbia, 2013, 210–213.

29 … *dictus potestas de arte ac officio tabellionatus ipsum Iohannem sua auctoritate et communis Firmi cum quodam baculo quem habebat in manu solempniter investivit ... libere hoc officium exercendi* (Ferrara, 1997, 79). Ferrara assumes it was a novelty in process of communal notarial investiture.

30 Du Cange, 1733, 1521: "… Addebatur hisce symbolis, *festuca* quae interdum fustis dicitur, *baculus, virga,* & c. cujus traditione, dominium rei pariter translatum crederetur: cum *baculus ac virga,* domini in suos ac res suas jus & potestatem denotet …" about *festuca* as symbolic element of making a contract, i.e.

A detail of a painting, "A Twelve-Year-Old Jesus Among Teachers" (oil on canvass, 282 x 240 cm). Strunjan (commune of Piran), a parish church of "Mary's Visitation" (16th century). There are clearly discernible: a traditionally hooded notary, books, scroll of parchment, inkwell and feather (photo: D. Podgornik, 1994).

Was the sceptre (*baculo*) even then a pen and inkwell? Most probably: In 1266 Perugia the podestà of that time had already invested notary *cum penna et calamario* (Lombardo, 2012, 241), following Du Cange's statement that even Rolandino (middle of 13th century) in his *Summa Notariae* states that notaries are being appointed "*cum penna et calamario*"[31].

Thus Rolandino serves us with an instructional description of the notarial investiture ceremony in his work: *Summa Totius Artis Notariae* (1255–1273):

Priuilegium creandorum notariorum ab aliquo authoritatem habente concessum. Rubrica.
De imperialis plenitudine potestatis in egregios viro's Comites de Panico: iccirco cre-
andorum tabellionum iurisdictio emanauit, vt eiusdem iurisdictionis gratiam imperij
refunderent in subiectos. Ea propter ex indulto eis super hoc ab imperiali culmine

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investiture, as well as possibilities about withdrawal from personal obligation of contract cancellation, *exfestucatio*, *comp.* Le Goff, 1985, 411–418.

31 Du Cange 1733, 3, 1536: *Cum Penna et Calamario investitos Tabeliones observat Rollandinus in Summa Notariae cap. 5. extremo; quod etiam habetur in Constituzione Ruperti Imp. an. 1401, apud Goldast. tom. 1. pag. 382.* (comp. Rolandino, 1546, 144v.–146v.).

priuilegio speciali, ut in eodem euidentius continetur: Vir nobilis dominus An. Comes de Panico. An. Boetii publicum & auctenticum tabellionem creauit, & fecit, ipsum que flexis genibus deuote suscipientem de arte ac officio tabellionatus publice operando tam in instrumentis & vltimis voluntatibus, & quibuscunque iudiciorum actis autentice conscribendis, quod in omnibus & singu. faciendis, quae ad officium dictum spectant per omnes terras & loca, quae Romanum profitentur imperium, cum penna, & calamario legitime inuestiuit.

Qui An. ipsi domino Comiti uice & nomine Imperij Romani recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia, tam instrumenta publica quod priuata, vltimas voluntates, & quaecunque iudiciorum acta, & omnia & singu. quae ex debito ipsius officij facienda occurrerint conscribenda iuste, pure, ac fideliter omni simulatione, falsitate, & dolo remotis scribet, leget, & faciet, & scripturas illas quas in publicam debuerit formam redigere, in membranis, et non in chartis abrasis legaliter conscribet.

Necnon sententias & dicta testium quousque publicata fuerint & aperta, sub secreto fideliter retinebit.

Et omnia recte faciet. Quae ad idem officium pertinebunt.

Let us briefly sum up the main elements of the investiture.[32] The palatine counts have the jurisdiction to appoint the notaries in the name of the Emperor,[33] but candidates must prior demonstrate adequate knowledge. The ceremony itself is proceeded as follows: the notarial candidate (*scholaro*) kneeling humbly (*flexis genibus deuote suscipientem*) appeals to the palatine count to be appointed in the vocation and into the office of the notary (*de arte ac officio tabellionatus publice*), in order to be able to issue valid documents for all areas of the Roman Empire, using the inkwell and pen to lawfully invested him (*cum penna, & calamario legitime inuestiuit*), after the candidate had sworn his loyalty to the palatine count, with a pressing firmly on the Bible (*recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia*), and had given a verbal oath to faithfully, honestly and lawfully operate in his vocation. After this act, the present notary writes down the investiture document and hands it to the newly invested notary.

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32 Rolandino adds a substantially extensive commentary to this rule, in which he also defines the oath of the notary, given to God, Jesus Christ and the Holy Spirit, to the Virgin Maria (*semper virginem Mariam*), *& per quatuor euangelia quae in manibus meis tene,* to the Archangels Michael and Gabriel; furthermore, it is also interesting that he refers to the Emperor Justinian and even to the Emperess Theodora, obviously as a model of good rule (*seruitium me seruaturum sacratissimis meis dominis Iustiniano & Theodorae eius coniugi occasione traditae mihi ab eorum pietate administrationis*) (Rolandino, 1546, 145).

33 It is explained in the commentary that the notaries, invested by the palatine counts, have to sign their documents in the name of the imperial authority (*Ego P. V. imperiali auctoritate notarius*), whereas if the notary is invested by the pope, their reference is *Ego P. authoritate sedis apostolicae notarius.* When the notary is invested by the city, he is allowed to lawfully operate in his vocation only within that city's territory (Rolandino, 1546, 145).
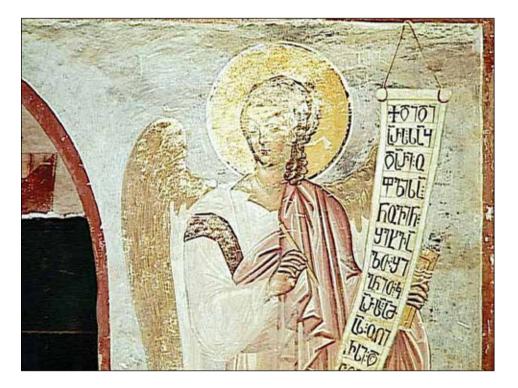
Panel of Saint Michael, detail. Master of Soriguerola, late 13th century. Museu Nacional d'Art de Catalunya. Wikimedia Commons. File: Taula soriguerola-detall.jpg

As the text itself testifies, the written custom of investiture had by then already been established. In this light, the question certainly emerges whether this custom was established and preserved only in Bologna or also elsewhere. It seems that the second assumption has more validity; this will be demonstrated in following examples.

We are familiar with some examples of records of investiture of the Istrian notaries in service of the Patriarchs of Aquileia from 1292, 1293, 1326 and 1337. The source from 1292 already reports that Bonifacio of the late (del fu) Ottone came from Pola to Udine under escort of two fellow townsmen as witnesses, and that after he declared the customary oath, the patriarch of Aquileia Raimondo della Torre invested him as a notary with "inkwell and pen"[34]. The following year in Cividale del Friuli a Capodistrian Michele de Lugnani,

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34 1292 July 10, Udine. *Die X intrante iulio; in castro Utini, in nova sala palacii patriarcalis; presentibus nobili viro domino Musca de la Ture potestate, Albrico filio quondam domini Pencii et Antonio civibus Polensibus, Acino de Oçino et aliis. Reverendus in Christo pater et dominus R(aymundus) patriarcha officium tabelionatus Bonifacio nato quondam domini Ottonis de Pola commisit eumque de illo quodam* calamario

after declaring his oath, was also named a notary and handed a pen and an inkwell (*penna et calamario*). More details are documented in a document from 1326, when Giovanni Stumulo from Muggia came to Udine in escort of the notary of Muggia, probably his teacher, he was invested by the Partiarch's vicar "cum penna et pugilari", but after he had been proven capable of operating in his vocation and having sworn upon the Bible. The ceremony is even more clearly described in a document from 1337. A Capodistrian Cristoforo, in escort of some of his fellow townsmen, knelt in front of the Patriarch of Aquileia and swore to use the parchment, to compose the documents and to keep the confidentiality about their content correctly and without falsification, then the Patriarch "c*um penna et calamario legittime investivit*" him (Brunettin, 2004, 221). At the end of the ceremony the notary Gubertino from Novara, who was present, composed a document for Cristoforo detailing his notarial privilege, which also contained a pressed seal of the Patriarch (comp. Zabbia, 2013, 211–212).

Church of the Holy Saviour, west transept: the archangel Gabriel. Cyr Manuel Evgenikos, 14th century. Wikimedia Commons. File: Glise du Saint-Sauveur, transept ouest l'archange Gabriel. Géorgie, Tsalendjikha.jpg

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et penna manu propria investivit*, recepto ab eo fidelitatis debito iuramenti quod in talibus recipi consuevit, ut illud et ea que ad ipsum officium spectare noscuntur fideliter exequatur.* (Pani, 2009, 223–224)

In continuation we will present a description of a notarial investiture in Friuli from 1396, as recorded in Someda (1956, 42–43).

A person who wished to be nominated for the role of notary presented himself to a Palatine Count and, before witnesses, asked humbly to be invested into this duty. If the request was granted, the count appointed him a notary in the following manner: "He installed him with a tablet and a feather that he held in his hands, and slapped him as a warning."[35]

Then it was explained to him what acts exactly he was entitled to draw up his instruments for to attain a character of being public: contracts, court papers, testaments and other instruments and deeds.

The swearing-in then followed: "I swear by the Holy Gospel that I will perform the duties of a notary justly, clearly, faithfully and lawfully. I will not draw up false papers or false documents; I will not falsify old instruments or exchange individual phrases. I will do no harm to the rights of churches, hospices, orphans, widows and other wretched persons but instead protect and defend them within my power. I swear loyalty to the Holy Empire, to the Palatine Count and to everyone in his entourage. If it comes to my attention that anyone has opposed the Palatine Count or attempted to take away his jurisdiction, I commit myself to defend him with all my power and inform him about this either in writing or orally." (Someda, 1956, 43).

After this procedure, the Palatine Count ordered the notary (usually a master-teacher of the notarial candidate), – they were, apart from the public, always present during the ritual and at this type of ceremony they had a combined role of administrator and legal expert – to write down an act of investiture.

Still more cases of the notarial investitures can be traced in the appended table, where, based on collected preserved inscriptions about the notarial investiture, the main phases of the ritual, as it was developed in the middle ages, are exposed. These cases of the investitures from Istria, Friuli, Bologna, Genova, Perugia and Rome confirm that the ritual, as written down by Rolandino, was in praxis over a wider territory and was in use until the end of the middle ages, regardless of whether the appointer was the trustee of the emperor, the pope or the city. Although the ritual ceremonies indicate that there are some variations to this procedure, the structure of the ritual is invariable.

Although Rolandino does not mention the slap within the investiture ceremony, it was obviously preserved in praxis, since it symbolizes the judicial investiture gesture. On the other hand, these cases also hold reference to investitures of notaries and judges, who are invested "cum penna et calamario", which gives these symbolic gesture and objects the value of investiture symbols for notaries as well as for the judges: perhaps the most illustrative case of this is Tiziano's depiction of the holy and the profane love, amor, in the sense of medieval charity (*caritas*), the deep inner spiritual love, that was also ascribed as a virtue of the secular judicial authority, that is expressed in this picture by holding the investiture objects "*penna et calamario*" in his left hand.

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35 "… *per pugilar:m et penna:m quos in sua mano tenebat eidem alapa : in signum memoriae inferendo investivit*" (Someda, 1956, 42).

Sacred and Profane Love (Italian: Amor Sacro e Amor Profano, also called Venus and the Bride) – detail; oil painting by Titian, circa 1514. Wikimedia Commons. File: Tiziano - Amor Sacro y Amor Profano (Galería Borghese, Roma, 1514).jpg

THE INVESTITURE RITUAL STRUCTURE

Studies of medieval rituals clearly show that these types of investitures were a part of a broader concept of standardised ritual. The latter was formed according to the secular rituals of the ruler's inauguration, which shows an evolutionary mixture of symbolic ritual gestures, rooted in ancient profane and religious rituals, which were, especially from the Carolingian-Ottonian period onwards, imbued with Christian symbolism. Along with the enthronement of rulers and vassals, the ritual ceremony of notary investiture can be compared to the ritual of investiture of knights, as it is accessible in sources from the 12th century onwards and which has so far been given a lot of attention in literature.[36]

Characteristic of medieval investitures is the presence of public or a witness' representative on the public's behalf. The ritual itself was certainly designed for the public, as its key function is bestowing the public services, offices; therefore, the formal ceremony was not only an act of appointment to a position but also an act of formal announcement of the appointment to a certain position or office, of enactment of (godly) missionary, as the process of investiture was ideologically interpreted and successfully established by medieval Christian theocracy.

Le Goff (1985, 387–394) summarises the entire ceremony of investiture as it was illustrated in beginning of 12th century by Galbert of Brugge, a notary, a monk and chronicler, who differentiated three phases of symbolic ceremony of entry into vassal relationship, as it was distinguished and obviously also perceived by the people of the Middle Ages:[37]

1. *Homage* (a bow, acceptance of faith, (god's) gift)
2. *Fides* (faith, loyalty, trust, oath)
3. *Investiture* (concluding act)

It should be stressed that within the ceremony, three categories of symbolic elements were used: words, gestures and objects.

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36 That the methodological basis that the ceremonial forms of medieval institutions followed can only be explained by comparing similar or related rituals was already established by Le Goff (1985, 399). Besides this and Schmitt's (2000) study, it is relevant to mention a thorough analysis of the ritual gesture of the Kiss of Peace of Petkov (2003) and an article about the specifics of homage of Roach (2012), all using numerous referential bibliography. Different interpretations or images of knight investitures are also accessible on the World Wide Web, e.g. *Investitura a cavaliere* (https://www.youtube.com/watch?v=yA8Th-qqgR0; 27.04.2014). About the history of chivalry comp. Flori, 1998.

37 Here we could also compare the excellent work of Duby (1985) on concept of the trinity of that period; specifically p. 353–359. At the same time a comparison with the roots of three-partial Indo-European ideology imposes itself, as it was researched by Dumezil (1958).

Immixtio manuum. Miniature from Archive in Perpignan (France), shows medieval homage, a notary in the middle, who is recording the ritual. Wikimedia Commons. File:Hommage_au_Moyen_Age_-_miniature.jpg.

The first phase: *homage*.[38] Usually this consists of two acts, the first of which is verbal. This usually consists of a statement, an oath that expresses the will of the intercessor, to become man of the Lord, the same way as a new Christian at a christening, either with his own tongue or that of a godfather replies to God, who, with the mediation of the priest, asks the candidate: "Do you wish to become a Christian?", he answer: "I do". In this way, the intercessor makes an oath, which purports to be universal; yet, from the first stage, indicates that refers to his Lord. The second act complements the first phase of entry into vassalage: it is *immixtio manuum* – the vassal sets his clasped hands between the palms of his Lord, who covers the vassal's hands with his own. It is a gesture of meeting, mutual contract. In *immixitio manuum,* it is clear that the surrounding hands belong to a person who has a higher position, it expresses a symbolic gesture of the submission of vassal to the Lord; on the other hand, the lord's gesture holds a promise of help, protection and a higher strength/power that manifests itself in this promise. The oldest documents about the vassalage cer-

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38 Gift, as the elementary gesture, value and norm in establishing social ties as early as in primal and antique societies, was excellently presented by Mauss (1932/24) in his essay The Gift.

Dextera Domini. The hand as an isolated motif. Fresco from Sant Climent de Taüll, Catalonia. Wikimedia Commons. File: Hand gottes.jpg

emony dating from the first half of the 7th century describe this hand ritual (Le Goff, 1985, 389, 403, 453). Considering that the ritual consists of reciprocal gestures, it is important to stress one of the great chapters of medieval and universal symbolism: hand symbolism. In the Roman legal tradition and terminology *manus* is one of the expressions for *potestas*, authority, especially as one of the main attributes of *pater familias*. The symbolism of the hand, especially the hand of God the Father, created by the Carolingian and Ottonian theocracy which followed, has received a lot of attention from Schmitt (2000, 101–146), who states that at that time antique language and cultural patterns re-emerged to serve very different ideologies and perceptions of authority, when the hand of God the Father, firstly through iconography, becomes a symbol of the Otherworldly and Earthly God's presence.

The concluding gesture of homage is at the same time the passage to the second phase: an oath of faith or fidelity. In most cases it is sworn on a religious object, e.g. a Bible or relics. In the oath there is an explicitly expressed personal bond with the appointer, a guarantee for which bond is given by Church authority, which it always succeeded in establishing, at least on a symbolic level through the ritual (comp. Le Goff, 1985, 451).

The oath in the case of the investiture of knights and notaries was expanded during the 12th century. The emphasis was on morality and justice in the performance of service; a morality and justice that can only be thought about given appropriate education.

Vassal's oath: Roland's oath to Charlemagne, who invested him with the sword Durendal (a late medieval manuscript miniature). Wikimedia Commons. File: Rolandfealty.jpg

After the oath, a concluding act follows – the investiture. Depending on the type of investiture, this is also performed in various ways but always using three categories of symbolic elements: words, gestures and objects. In feudal-vassal ritual, the enclosing gesture – the kiss of peace – that seals the contract of the oath is extremely powerful (comp. Petkov, 2003).

Symbolic investiture objects can be canonic, religious or profane. Du Cange lists 99 symbolic objects; Le Goff, on the other hand, classifies them into three categories: social-economical, social-cultural and social-vocational symbols, the latter classification includes also the pen and inkwell (*cum penna et calamario*), which is awarded to spiritual vocations (Le Goff, 1985, 396–397).[39]

Appointment in the notarial investiture ceremony concludes by giving the pen and inkwell and with a slap (*alapa*), a ritual gesture, accepted by the candidate as a perpetual

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39   Worthy of note are the lists of investiture objects and titles in Le Goff, 1985, 455–460, one based on M. Thévenin from Merovingian-Carolian era, the other from Du Cange.

King of France John II, also called the Good (Jean le Bon, 1350 – 1364) appointing his knights, Bibliothèque Nationale de France, Richelieu, Manuscrits Français, Grandes chroniques de France, Paris, XIVe / XVe siècles, GNU Free Documentation License.

reminder of the missionary role of the notarial vocation; in case of the investiture of the Piranian notary, this gesture is equally represented by appointment with a part of the cloth-ing. The gesture is known from the Roman ceremonial tradition, which was used for the liberation of a slave: e.g. a Roman praetorian touched a slave with a blade of grass (*festuca*), switch or with a part of clothing when he gave a slave his freedom; equally, a slap in the face (*alapa*) in the Roman tradition signified a gesture made by the master when freeing a slave, a gesture which also implied a duty of personal responsibility for the former slave's own actions and can be also interpreted as a (re)establishment of free vocations (*artes liberales*).

A slap shows similarities with instalment of knights, who, as ritual gesture, received a blow on the apex (fr. *colée*); whereas vassals were given a kiss (*osculum*), exchanged by the appointer and appointee (Le Goff, 1985, 391–392).[40]

Although a slap thus preserves some antique symbolic messages, the hand symbolism was given a new meaning in medieval Christian ceremonies: it is always a God's hand that expresses the relationship between the appointer and appointee (comp. Schmitt, 2000, 101–146).

Through ritual is shown idealised social imagination, behavioural patterns, norms, values, moral, legality are also formed, because the rite is order, law: in the society of that time, lawfulness was upheld with ritual ceremonials, especially in churches, on city squares and other public places (although only in front of a few witnesses), which always had a characteristic of public proclamation about the authority holders or institutions. Rituals therefore played a role of medium or communication with public (comp. Althoff et al., 2002).

Rituals were also formed in the monasteries; this shows a specific social structure, a specific symbolic cluster, formed between the 7th and 9th centuries (Le Goff 1985, 432), and is traced not only in vassal investitures but also in those of knights and notaries. As explained by (monk and notary) Galbert from Brugge in 1127, there are three phases of ritual: *homage, faith, investiture*. Within these phases of individual investiture, only objects and gestures are different: the ideological framework remains the same. But the objects and gestures also change with time and varying social requirements. When Schmitt explains the story from Ebbon's evangelion (first half of the 9th century, Northern France) about depiction of the evangelist Matthew, patron saint of (administrative) clerks, the writer of the first apostolic gospel. Schmidt explains the interpretation of the scribe's vocation of that time, their missionary function: through the evangelist's body, a communication is being established between objects he holds and lines that are prolonged into scenery. An angel, God's emissary, also a symbol of evangelist Matthew, can transmit a message through an entangled path to a text, written in a book or on a scroll. Unforced communication between God, set between the bent feather (*penna*), soaked into inkwell (*calamario*), and parchment scroll, curved in the opposite direction, is held in angelic hands, who represents a revelation of God's Word and does not submit itself to rules of human authority. The evangelist Matthew writes with his pen in a book, which is still unwritten, the pages are blank. Only when he reaches for the pen in the inkwell, through which an angel communicates, will the pages be written. The angel is a witness, an inspiratory and mediator between God and the evangelist (comp. Schmitt, 2000, 111).

Thereafter a route to consecration into a vocation were opened to the notaries.

The depiction of the evangelist Matthew is parallel to depictions of the investiture of rulers in Carolingian era, when an obvious upgrade of medieval rituals began to take place. However, I would not refer to it as feudal-vassal, as it is commonly addressed, but institutional ritual.

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40   As stated by Galbert from Brugge (1127), "after his hands are clasped in hands of the lord, who holds them in his palm, they unite with a kiss" (Le Goff, 1985, 391).

Evangelist Matthew while writing a Gospel, when communication with an angel is established. From the 9th century Ebbo Gospels in the Municipal Library, Épernay, France, Bibl. mun., ms. 0001, f. 018v-019. Wikimedia Commons. File: Saint_Matthew2.jpg.

The investitures are not transmissions of the lord's property to a vassal but a contract, which establishes a hierarchy of rights and duties (Le Goff, 1985, 409). Namely, with ritu-alisation, institutions were established; from the 11th century onwards those were knights as well as notaries. This is probably the most clearly represented by the monk Adalberon from Laon in 1027, one of the most visible representatives of the establishment or, better yet, an expansion of a tripartite and trifunctional schema of society (comp. Duby, 1985): "*Bellatores* are established along with *oratores* and *laboratores* not only by their military role but also with institutions, with trumps, with symbols" (Le Goff, 1985, 427).

The end of the 10th and the beginning of the 11th century comprises a period of the so-called ecclesiastical peace movement; the legal-administrative structure was transformed due to social changes, again, with the structure provided by monks. It is not hard to hypothesise that the very monks-notaries who selected their investiture symbol – the pen and inkwell – by establishing codified law, which was given its theoretical and practical bases by (especially Bolonian) notaries, were also responsible for ritual in investiture ceremonial of notaries, which expanded as a norm throughout European continent in the centuries that followed.

Important changes in terms of the role of notary were certainly the rise of cities and formation of the first schools and, afterwards, in the 12th century, universities, which enabled the possibility to attain education in the broadest circle of subjects, in case they were gifted with special abilities, chosen for performing a missionary according to God's grace.

The towns were also, as much as or even more than feudal estates, in need of efficient administrative apparatus, which was undoubtedly ensured only by the notaries.

An important novelty in cities, firstly in Bologna, was the obligation of communal supervision in testing the knowledge of notarial candidates (comp. Ferrara, 1977).

Therefore in Bologna in 1220s and 1230s numerous provisions were confirmed to establish education and especially the final exam commission (*officium examinationis*) for notarial candidates, who were primarily communal judges and notaries. Only after having successfully passed the test the candidate was able to request an investiture, whether first communal or, if needed, also imperial or papal. If the notary already had an adequate written privilege (*instrumentum*) or his investment was confirmed by witnesses, he still had to take an exam in front of communal clerks if he wanted to be inscribed into a book of communal notaries (*Matricola*), which was established just in 1219 (Ferrara, 1977, 66, 78). Only after inscription into Matricola were the notaries able to practice their vocation in a city and in its surrounding territory.

For Bologna it is known that the commune invested notaries at least in the 12th century, although no imperial or papal privilege is known to give the commune such right as is known for Pavia and Genoa (comp. Ferrara, 1977, 77). Moreover, Emperor Frederic prohibited the bestowal of notarial privileges in 1225 in a feud with Bolonians. The Bolonians did not respect the prohibition and with their written statutory provisions even more precisely defined notarial service and especially the competences of the commune in investitures.

The legitimacy of rebellion was augmented with written law, based on the work of legal theories, mostly notaries and judges, as still seen in Raineri's and Rolandino's sig-

nature[41], and based on an important novelty: the organisation of education and exam. In similar fashion to the candidate for knightship having to practice his military skills and educate himself for his vocation,[42] the notarial candidate had to be educated in writing, grammar, law etc. and pass the test, before he requested an investiture.

The towns played an important role in issuing instruments because with this the notarial investitures were codified and this custom was consolidated and legalised. This is also shown by the fact that the notarial signatures with titles *imperiali auctoritate notarius, Sacri palatii notarius, marchionis notarius, civitatis notarius*, etc. began to appear as late as in 1220s; before that, the notaries were signed on the instruments as notaries or they were affirmed as such by the community.[43]

Besides confirming the appointer and thereafter also the territorial range of notarial jurisdiction, the signatures of the notary set on instruments testify about the unification of the form of investment because the notaries were signed on each issued instrument with a title given at investiture.

AMENDMENTS OF THE RITUAL IN THE 13ᵀᴴ CENTURY

Based on the above stated, we can hypothesise that the investiture ritual in the 12th century was not entirely the same as that of 13th century although is clear that it followed the same basic investiture ritual structure in both eras: *homage, fides, investiture*. Also under the influence of cities and their (administrative and legislative) needs, the ritual was slightly modified with ritual symbolic gestures or objects.

In any case there are numerous testimonials at the end of 13th century that confirm that the sceptre was established as symbolic object of pen and inkwell in notary investiture procedures.[44]

This symbolic investiture object was located primarily in the domain of monks (in imaginary image of first evangelist, who wrote down the God's word), as is testified in already mentioned depiction of evangelist Matthew in Ebbon's gospel (first half of the 9th century)[45] and symbolises the acceptance of a profane gift, a homage, for the operation of a vocation; therefore, the object is presented in all phases of the ritual and given to the appointee as investiture object only at the end of the ceremony.

But while the pen and inkwell were established as symbolic objects (*baculo*) of the notarial investiture ritual, a slap (*alapa*), given by palatine counts as well as lavretan
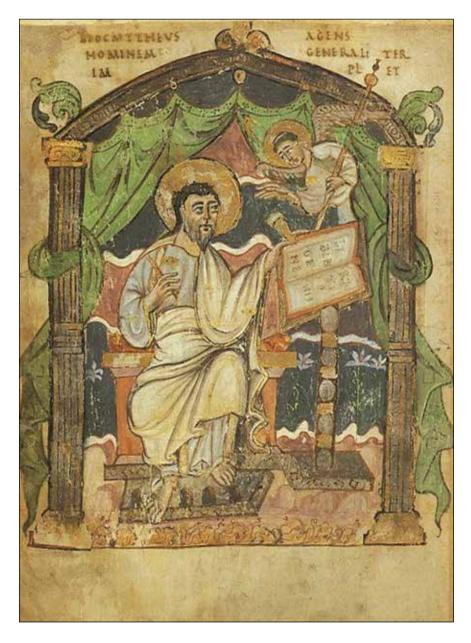
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41 Even at the end of the 15th century, with a single ritual were invested notaries and judges (comp. Airaldi, 1974).

42 For example, Chrétien de Troyes at the beginning of the Story of the Grail (c. 1181) describes the learning of the young knight Perceval (comp. Schmitt, 2000, 227–229).

43 Comp. Darovec, 1994, Supplement 1 and 2. Notary in Istria in this context shows a completely parallel development with Italian regions, while in Dalmatia followed with a delay (comp. Bettarini, 2013, 2014).

44 Comp. Zabbia, 2013, 211; otherwise, the notarial investiture ceremonials mention table and/or scroll of parchment (instrument) or some other socially-vocational symbol (e.g. *pendulo*) as symbolic objects along with pen and inkwell, besides those objects a ring and even a hat (*berretto*) are also mentioned. (comp. Corbo, 1972, 367; Lombardo, 2012, 241–259).

45 Imagery of gospel writer Mathew with an angel was depicted by numerous artists in various periods. comp. http://en.wikipedia.org/wiki/Matthew_the_Apostle.

A miniature of St. Matthew in the Coronation Gospels presented by King Athelstan to Christ Church Priory. The manuscript is Carolingian in origin. British Library MS Cotton Tiberius A ii. Wikimedia Commons. File: Coronation Gospels Athelstan Saint Matthew.jpg

Enthronement of the Dukes of Carinthia. Leopold von Wien (1340–1385). Österreichische Chronik von den 95 Herrschaften. Bern, Burgerbibliothek Cod. A 45, p. 133. Wikimedia Commons. File: Kaernten herzogeinsetzung.jpg

knights and city podestas, remained in use as investiture gesture in case of notaries. This was a symbolic gesture of god's gift and consecration.

The box on the ear or slap that has obviously been preserved in the investiture ritual of the notaries, at least as recently as the 17th century, was previously seen primarily as a symbol of the judicial function that the notaries fulfilled, especially from the 11th century onwards. In addition to the notaries-judges, juridical tasks were also performed by knights. The investiture gesture of the slap on the cheek or on the crown of the head is also characteristic of their function.

Let us examine an interesting case in which a free peasant appoints a Duke. From a fairly precise description of the solemn investiture of the Duke of Carinthia, Meinhard of Tyrol on September 1st of 1286, written by John of Viktring around 1342, who was the abbot (1312–1345) of the Cistercian monastery in Viktring near Klagenfurt, we discover that the investiture ceremony of the Duke of Carinthia was concluded when a free Slavic peasant, as an appointer, gave the duke a light slap on the cheek and thereby appointed him to be a just judge.[46]

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46   There are several versions of the description of the investiture ceremony of the Duke of Carinthia, the first one dates in 1275; this ritual also spiked the interest of a French political theoretic, J. Bodin: Les six livres de la republique (Paris 1576), his book and this ritual are believed to have influenced also T. Jefferson, one
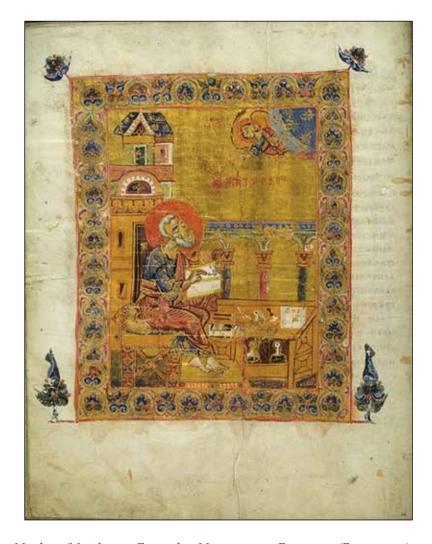
With the establishment of notaries and the solemnisation of notarial praxis from the 13th century onwards, a written document (instrument) was frequently used as part of the concluding act. The instrument was soon thereafter represented merely as one of the symbols at other investitures (comp. Le Goff 1985, 414). Along with an instrument – written privilege – an additional investiture gesture was added in the form of *kiss of peace* (Corbo, 1972, 366–368; Petti Balbi, 1974, 19–21; Lombardo, 2012, 241–259), a gesture that was obviously established in the majority of investiture rituals and used to symbolise acceptance into a family. This gesture has an extremely important role in ritual of institution of *vengeance* (*vindicta, vendetta, feud, fehde, faida, osveta, maščevanje, gjakmarrja*). It signifies the end of hostility and (blood) revenge among feuding parties, acceptance into a family and/or formation of extended family with marriages between descendants of former feuding parties, which should guarantee long-lasting (perpetual) peace.[47]

The example of investiture of the Piranian notary Dominic undoubtedly shows a strong presence of investiture ritual in collective imaginary because all witnesses were able to recognise the ritual and concluding (public) gesture. In this document from 1201, we can decode the ritual procedure, based on written testimonials. To sum up (*see chapter Privileges of notaries*): Presbyter Venerius, the first witness, assures that the notary Dominicus swore in the presence of the people of Piran, in front of *Porta Domus*, and in the presence of gastaldus Albericus and other town magnates, when Bertold inaugurated him to the status of notary, with the verge-thread of a (army) coat: "*cum lampulo mantelli*". Other witness, Odolricus de Ripaldo confirms the stated but mentions the verge-thread of a fur coat – "*per lampulum pellium"* as investiture object, while the third witness, Pietro de Imena, observed a glove "*ciroteca"*, with which Bertold appointed Dominic to the office of notary. (CHART. PIR./I, no. 22:23/7). All three witnesses mention a profane investiture object. Taking into consideration that a glove was used to give a gentle slap on the cheek within the investiture ceremony, we can justly set a hypothesis that in investiture ritual the count-podestà Bertold used the exposed part of clothing with which to give him a gentle slap on the cheek. This provides us with both the investiture object and investiture gesture. Although the testimonials about investiture object differ, we have it all here: public oath, which follows an intercession, and at the end an object and a gesture: *homage, fides* and *investiture*.

We can agree with Le Goff's statement that the sequence of actions and gestures – *homage, fides* and *investiture* – consists of a "compulsory connect and set symbolic ritual. A question emerges whether one of the reasons for descriptions of rituals being summary does not lie in the more or less conscious wish to show, without digressions, that the essential acts took place in all phases?" (Le Goff, 1985, 406). "Investiture along with homage and faith composes a whole, which is legally (and symbolically) impossible to separate" (Le Goff, 1985, 417).

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of the authors of the American Declaration of Independence. The most complex work about this topic is still Grafenauer's (1952).

47   On the role of notaries as mediators in disputes comp. Marcarelli (2014) and Povolo (2014).

Saint Matthew (Mstislavovo Evangelie: Мстиславово Евангелие (Евангелие Апракос). Миниатюра - Евангелист Матфей) (ca. 1110). Wikimedia Commons. File: Saint Matthew (Mstislavovo Evangelie).jpg

In his study on the symbolic rituals of vassalage, Le Goff classifies socio-cultural symbols, which mostly consisted of established symbolic gestures, into two main subgroups: physical gestures, amongst which he places touches or slaps with a hand, and gestures with clothes, in which a physical contact is initiated with a glove, hat, cape etc. (Le Goff, 1985, 397). This signifies that the Piranian notary was, even with the verge-

thread of a (military) cape, assigned in accordance to a valid normative ritual, anchored in the collective imagination of the Piranians of that time.

The public gesture of notarial investiture was recognised by the ancient gesture of *festuca*, which illustrates some of then local and/or chronological specifics of the gradual transformation of the notary investiture ritual.

While the pen and inkwell also emerge as investiture objects towards the end of 13th century in the investiture of Istrian notaries (Zabbia, 2013, 210–213), in 1325, Piran Bertaldo, son of Ioannis Cossa de Pirano, was still invested into his feudal lordship with a verge-thread of a tunic "*cum lanchis suarum tunicarum*" (CHART. PIR. II/b, 306/5); however, in 1328, Savarinus and Meynardus, were invested into a feudal lordship as they knelt with the verge-thread of a cape, "*cum lanco sui epithogii stantes genibus flexis legittime investivit*". (CHART. PIR. II/f, 182/18).[48] It seems, however, that this was the case of local customary symbolic objects and gestures of ritual investiture.
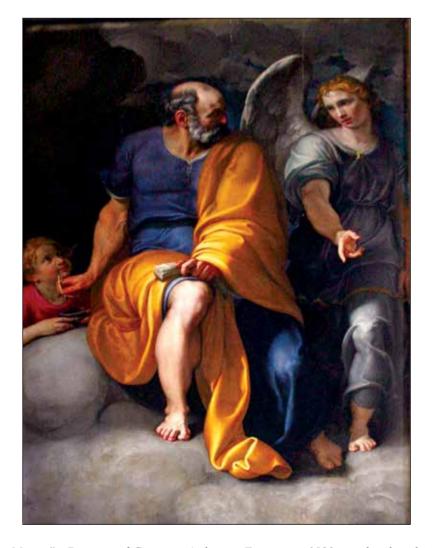
We can conclude that, in 1201, the Piranian notary Dominic was invested according to established symbolic ritual: *homage, fides*, and *investiture*. However, we can only state that the investiture objects and gestures were of a general investiture character, as they were locally formed for feudal investitures. Surely, Dominic was not yet given a instrument, a privilege, with witnesses in the town/community testifying to the legitimacy of his office. Neither is there any indication that the notarial candidate Dominic passed any type of test. However, at that period, the content of an oath assured the knowledge needed. In substantially precise testimonials, we cannot trace any other symbolic ritual object or gesture, except for oath and verge-thread of the cape.

Nonetheless the document testifies about something else as well: about the investiture of podestà in the name of a town/community. Namely, whereas the authority of Count Bertold was questionable in Dominic's investiture, the authority of Bertold as count-podestà, thus town chief, is undoubted. This is evident especially if we precisely follow the testimonial of presbyter Venerius when he says that: "Dominic is known as a notary in Piranian castle. All his instruments about different contracts and other issues and all his testaments have validity in town of Piran" and adds "that he was present, when Dominic swore in front of Count Bertold, who in this town was a podestà in the name of the bishop of Freising, who was given the authority by the Emperor, as well as in front of town gestald and inhabitants of the town."[49]

The document testifies to the meaning of town communities, also smaller ones, with castle statuses, that fought for the right of appointment of notaries, although with jurisdiction only within the town's territory. We can see also that Dominic from Piran in 1201 was not addressed with other titles, which means that he was of profane origin. The core of

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48   Comp. LEX LAT., *epithogium*, 413, *lampulum, lanchus*, 639–640. Language root for *lancus* is *lancea*, a spear, a lance; in any case a pointy object.

49   "… *tabellio est et pro tabellione habetur in Castro Pirano, et omnia instrumenta eius que ipse facit super contractibus et aliis negociis et testamenta autentica habetur in Castro Pirani; et hic testis fuit presens ubi et quando dictus Dominicus fecit iuramentum tabellionatus coram comite Bertoldo, qui est potestatem illius loci per episcopum de Frisengo, qui habuit hanc potestatem ab imperatore, et coram gastaldione et populo terre.*" (CHART. PIR. I, n. 22)

"San Matteo". Painting of Giovanni Ambrogio Figino, ca. 1580, in the chapel of the church of San Raffaele in Milano. Wikimedia Commons. File: Giovanni Ambrogio Figino San Matteo.jpg

medieval investiture ritual, as it was formed from the middle of 12th century, lay precisely in this. The right of investiture was also spread amongst common subjects.

Whereas by the year 1000, besides kings, only bishops and counts could pride themselves in consecration into an order; thus, in an office (*offitio*), in missionary authority, which was imparted by will of Christ, with social changes, with the gradual end of the

process of feudal fragmentation, with the so-called peace movement, with crusades, with the rise of cities and economic development, followed by changes of the value system, the former tasks and duties of kings were suddenly imposed on all who were chosen by Lancelot (around 1220): these were "those who were of greater value. Those who were tall and strong and beautiful and kind and loyal and brave and fearless. Those who had a heart and body full of goodness […]". But this initiative was no longer given by God but rather by the people; chivalry was not formed upon the creator's decision but was rather a consequence of social contract – "perfect desacralisation" (comp. Duby, 1985, 366).

The Church selected its knights, warriors, protectors (of community), clerks, who were grasping for military power, and notaries for legislative clerks, those who were able to "give concrete answers to all, who wanted to protect their interests, to not using arms, but law", as Irnerio stated (about 1050 – about 1130), first amongst glossators (Bellomo, 2011, 71).
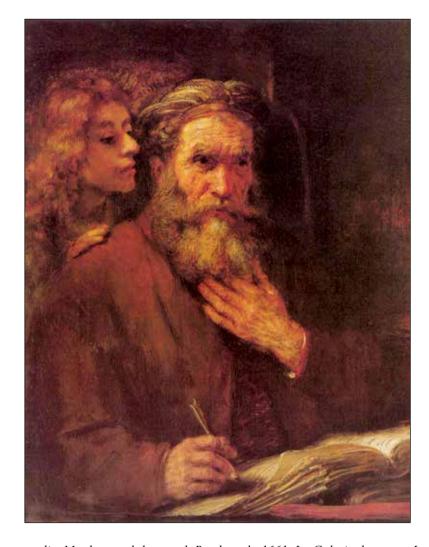
This was followed also by the ritual.

CONCLUSIONS

We have demonstrated how the investitures of rulers, knights and notaries followed a schema of trinity (*homage, fides, investiture*) that was formed at least from the Carolingian-Ottonian renaissance onwards; how within each of these phases, ancient gestures and symbols acquired a new meaning, which was mirrored within ritual structure in communication with God. In *homage*, an exchange of gifts takes place; the selection and acceptance of missionary purpose, God's missionary; in *fides* there is an oath given to the appointer, but is primarily given to God; *investiture* is transmission of jurisdiction – but godly jurisdiction. Even when a slap forms part of the investiture ritual, it was given through a mediator to the appointee by God's hand. Therefore, although the majority of investiture symbolic objects and gestures have a profane character, the ritual structure was Christianised before the 12th century.

Thus the formed rite was a basic structure for 13th century ritual but with an expansion of legitimate institution holders, primarily knights and notaries; later also other vocations, that were organised into different brotherhoods (*confraternite*) and guilds; the selection of specific symbolic objects and gestures widened: no wonder, everyone wanted to (or had to) have their own symbols, their own saints, similar to different symbols and gestures of numerous monastic orders, especially since the end of the 11th century. This satisfied symbolic interpretations of clergy, who wore a mark of canonical ideology (comp. Schmitt, 2000, 161, 230).

Therefore, in Le Goff's opinion (1985, 451), on first glance, the ritual of investiture of knights and notaries became completely Christianized as late as in 13th century; in this view, Le Goff is confirmed by Schmitt (2000, 230). But Schmitt's study shows clear chronological development of the medieval ritual, especially based on different preserved texts and

The evangelist Matthew and the angel. Rembrandt, 1661. La Galerie du temps, Louvre-Lens. Wikimedia Commons. File: The Evangelist Matthew Inspired by an Angel.jpg

iconographic material (mostly from monastic collections).[50] Therefore, based on the stated argument, I disagree with Le Goff's opinion perhaps in only one point, when he states that

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50 It is interesting that especially angloamerican humanities, which has substantially extensive studies on rituality at its disposal, seldomly cites Le Goff's work (1985), Schmitt's work (2000) is, on the other hand, almost entirely overlooked (comp. Bibliography in Muir (2005, 12–14); Roach (2012) in his recent cogent article on homage also cites Le Goff, but not Schmitt.

feudal-vassal investiture has nothing in common with the investiture of knights, which was supposedly already completely Christianized. (Le Goff 1985, 384, 451 et pass.).

The Christianisation of symbolic investiture objects and gestures was more intense than before; more emphasis was given on education and moral demands, which is evident from the oath, but the three-part structure of the investiture ritual has not changed. In case of notaries, the pen and inkwell came to the fore as symbolic objects, the symbol of the evangelist Matthew, through whom God's consecration with all symbolic repertoires was interposed to notaries. A slap was, at least from 9th century onwards, simultaneously a symbol of juridical authority and a Christianised gesture in a sense of God's (earthly) hand. This symbolic gesture usually appears in equivalent meaning to antique *festuca*, a twig, switch, as the custom was obviously preserved as late as in 13th century Piran.

In 13th century two important completions of notary investiture rituals occurred: instrument and symbolic object: *penna et calamario*. The oath, which was written in the instrument, has the flavour of new era, which was only established in the 13th century: education and new social and moral demands. The professional symbolic objects, *penna et calamario,* are also completely of profane nature and yet packed with symbolic interpretation of canonical ideology. New institutions, especially knights and notaries, later new nobility, needed to be ideologically located by religion.

Whereas for feudal investitures, for old nobility, an appointment into feudal estate through a mediator was still in force, their (feudal) lords, the bearers of the new institutions, were appointed with symbolic objects. This was designed to stress God's special mission, which is not transmitted just thorough person but through objects of their vocation. A missionary is therefore a public good, part of a common cultural heritage; it is earthly, profane and based on the success of an individual, yet at the same time a part of Creation. "The ritual, as it is possible to imagine, based on sources, is a compromise between military aristocracy and canonical hierarchy", finds Schmitt (2000, 230), but we cannot forget, however, the crucial socio-economic role of cities. The cities were precisely that which, comprising the institution of the notary, including a rich monastic heritage, enabled a legal framework for their existence and activity. When discussing medieval investiture rituals, we cannot talk about feudal ceremonials or even compare them with other, but rather always bare in mind the appointment into a profession, an office (*officio*), into an institution, which is a holder of a particular administrative and governmental competences; otherwise we could characterize each professional appointment nowadays as a feudal investiture.

Another tendency in rituals and consequentially in medieval society should be pointed out. Symbolic object *penna et calamario*, represents for notaries an entry – acceptance into (professional) family. Chivalrous life is also entirely concentrated around family (comp. Duby, 1985, 363–365). In the notarial investiture ritual we see the gradual implementation of an additional concluding gesture: the *kiss of peace*.[51] This gesture was also

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51   The kiss of peace (*osculum pacis*) is not to be confused with *osculum*, a kiss given in feudal-vassal ritual, which, as late as in 12th century signified a passage from *homage* to *fides*, affirmation of accepted gift, a request to enter a family, and concludes a gesture of *immixtio manuum*.

established in the legislative ritual of the institution of vengeance (*vindicta*), as a concluding ritual gesture that leads to brotherhood, into a family and thereby into perpetual peace. The ceremonialisation of the institution of revenge displays a tripartite structure: a *homage*, *fides* and *investiture* – a concluding act.

In accordance with the ritual, individual members of feuding parties, following the conclusion of peace, entered into an actual relationship of mutual matrimony. The ritual also included a possibility of dissolution of the contract, i.e. *exfestucatio*, which has already been examined by Bloch (1968). A more detailed study of the problem of medieval ritual might offer more answers to questions of dispute settlement in the then society, especially about its organisation, performance, imaginary and mentality (comp. Althoff, 1997; Brown, 2011, 135-163).

In this way, brotherhood and brotherhoods (*confraternite*) became a synonym for peaceful dispute resolution and administrative structural reforms. Brotherhoods followed knights and notaries in becoming new institutions, new means of social organisation and division of labour[52]. With the ritual, they follow a basic structure of medieval ritual, distinguishing themselves from one another with various (characteristic) symbolic objects and gestures (comp. Muir, 2005).

The structure of ritual was therefore present in all profane social structures. If we agree with Le Goff's interesting hypothesis, that the *ritual of marriage*, according to the then valid Roman law[53], was the basis for a symbolic cluster of profane medieval investiture rites (Le Goff, 1985, 432, 449, 451, 455), we can also illuminate how deeply present the medieval investiture ritual is in our everyday life.

The medieval profane Christian ritual is surely original; it was gradually formed with its basic structure traceable from at least the 7th century onwards with *immixtio manuum* and the (probably additionally added) kiss (*osculum*). This originality is shown also in Christian art, its originality being based precisely on the fact "that God's transcendence was introduced in figurative depictions: this characteristic was extremely powerfully expressed between the 8th and 11th centuries" (Schmitt, 2000, 111).

By forming, expanding and complementing a concept, in accordance with social changes, notaries surely also contributed to this since they were present in the majority of ceremonial enactments as scripters, administrators and legal experts. In their oath they also had to swear that they would respect the written as well as the customary law (*de iura et consuetudine*), even if that meant … *cum lampulo mantelli*.

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52 For istrian confraternitas comp. Darovec, Bonin, 2011.
53 About the reception of Roman inheritance law in the medieval Piran comp. Kambič, 2010.

Table of some cases of notarial investitures

	1201	med-dle of 13. cent.	Ro-lan-dino[1]	1266	1292	1293	1326	1337	1350	1366	1383	1396	1416	1455	1458	1473	1479	1525
HOMMAGE	*								*[2]			*	*[3]	*[4]	*[5]		*[6]	*
flexis genibus			*[7]					*[8]	*[9]	*[10]	*[11]			*[12]		*[13]	*[14]	
FIDES	*[15]				*[16]	*[17]									*[18]	*[19]	*[20]	*[21]
evangelia			*[22]				*[23]	*[24]	*[25]	*[26]	*[27]		*[28]				*[29]	
INVESTITURE																		
lampulo mantelli	*[30]																	
baculo		*[31]																
penna et calamario			*[32]	*[33]	*[34]	*[35]	*[36]	*[37]	*[38]	*[39]	*[40]	*[41]	*[42]	*[43]	*[44]	*[45]	*[46]	*[47]
alapa										*[48]		*[49]		*[50]	*[51]		*[52]	
osculum pacis													*[53]		*[54]			
berretto																*[55]		*[56]
instrumentum	*	*	*[57]	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
appointer	pod.	pod.	p. c.	pod.	patr.	patr.	patr.	patr.	pod.	pod.	p. c.[58]	p. c.	p. c.	p. c.	p. c.	lat.c.[59]	lat.c.[60]	p. c.[61]
locality	Piran	Bolo-gna	Bolo-gna	Peru-gia	Udi-ne	Civi-dale	Udi-ne	Aqui-leia	Ge-nova	Ge-nova	Ge-nova	Friuli	Roma	Pe-rugia	Roma	Roma	Geno-va	Roma

Legend: pod. = podestà; p. c. = palatin count; patr. = patriarch; lat. c. = lateranensis count

1 Summa Totius *Artis Notariae* (1255-1273), ed. Venezia 1546, 144v.-146v.
2 cum instantia humiliter suplicantes se per dictum dominum potestatem ad officium tabelionatus seu notarie promoveri (Petti Balbi, 1974, 31).
3 humiliter supplicavit (Lombardo, 2012, 381).
4 et benedixit sibi signo crucis et alia faciendo que in simili actu conveniunt et fieri debent et solent secundum stilum comitum palatinorum (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
5 fuisse et esse licteratum et perhitum in gramaticalibus et ydoneum ad exercitium notariatus exercendum, facta per eum diligenti examinatione, et ipsum bene meritum etc. (Corbo, 1972, 370).
6 humili petitione, requisitione et supplicatione (Airaldi, 1974, 292).

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7 flexis genibus deuote suscipientem de arte ac officio tabellionatus (Rolandino, 1546, 144v.).

8 flexis genibus decote suscipientem (Brunettin, 2004, 221).

9 flexis genibus existens (Petti Balbi, 1974, 31).

10 flexis genibus requirentem, publicum et autenticum notarium et tabelionem creavit et fecit (Petti Balbi, 1974, 32).

11 flexis genibus devote suscipientem (Airaldi, 1974, 245).

12 et dicendum sibi surge: ser Francisce, et sta pedibus tuis (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).

13 flexis genibus (Lombardo, 2012, 394).

14 flexis genibus humiliter requirentem (Airaldi, 1974, 292).

15 dictus Dominicus fecit iuramentum tabellionatus coram comite Bertoldo, ... et coram gastaldione et populo terre.« (CHART./I, n. 22, 23/2).

16 recepto ab eo fidelitatis debito iuramenti quod in talibus recipi consuevit (PANI, 2009, 224).

17 recepto ab eo iuramento quod in talibus recipi consuevit (PANI, 2009, 336).

18 promisit et convenit (Corbo, 1972, 370).

19 quanto fidelis sit sibi et Sancte Matri Ecclesie et de fidelitate exercendo ipsum officii notariatus (Lombardo, 2012, 394).

20 fidelitatis et obedientie debite Sacro Romano Imperio et successive dicto domino comitti et successoribus suis in manibus eiusdem domini comitis prestitit iuramentum (Airaldi, 1974, 293).

21 ut moris est (Lombardo, 2012, 254).

22 recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia (Rolandino, 1546, 145).

23 tactis sacrosantis scripturis, corporale prestitit iuramentum ... solitum et debitum iuramentum notarie (Tilatti, 2006, 135).

24 corporale prestans debitum fidelitatis sacramentum, iuravit ad sancta Dei evangelia (Brunettin, 2004, 221).

25 iuravit ad sancta Dey evangelia, corporaliter tactis Scripturis (Petti Balbi, 1974, 31).

26 prestitit fidelitatis debite sacramentum nec non iuravit ad sancta Dei evangelia (Petti Balbi, 1974, 33).

27 prestitit fidelitatis debite iuramentum, nec non iuravit ad sancta Dei Evangelia, corporaliter tactis Scripturis (Airaldi, 1974, 245).

28 giuramento sulle sacre scritture (Lombardo, 2012, 244).

29 Et sic iuravit ad sancta Dei Evangelia, tactis corporaliter Scripturis (Airaldi, 1974, 293).

30 Et dictus comes investivit dictum Dominicum de tabellionatu cum lampulo mantelli, et hoc fuit in triblo de Porta Domus, presentibus Alberico gastaldione, et pluribus aliis (CHART./I, n. 22, 23/6-10).

31 Bencivenne: cum quodam baculo quem habebat in manu solempniter investivit (Ferrara, 1979, 79).

32 cum penna, & calamario legitime inuestiuit (Rolandino, 1546, 144v.).

33 con il calamaio e la penna (Abbondanza, 1973, doc. 36; Lombardo, 2012, 241).

34 quodam calamario et panna manu propria investivit (PANI, 2009, 224).

35 quodam calamario et penna manu propria investivit (PANI, 2009, 336).

36 cum pena et pugilari, que in sua manu tenebat (Tilatti, 2006, 135).

37 cum pena et calamario legittime investivit (Brunettin, 2004, 221).

38 per pugilaris et calami traditionem (Petti Balbi, 1974, 20).

39 cum penna et callamario ... quos propriis tenebat in manibus (Petti Balbi, 1974, 33).

40 cum pena et calamario legitime investivit (Airaldi, 1974, 245).

41 per pugilar:m et penna:m quos in sua mano tenebat (Someda, 1956, 42).

42   per pennam, penniferum et callamare (Lombardo, 2012, 244).
43   dando sibi insignia tabellionatus, videlicet calamum peniferum (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
44   investiendo eum de calamo, callamare et pendulo (Corbo, 1972, 370).
45   investivit de dicto offitio et exercitio per cartam, calamare et pennam (Lombardo, 2012, 247).
46   per penne et calamarii ad manus eius tradditionem de dicto notariatus et tabellionatus et iudicatus offitio, ut moris est, legiptimi investivit (Airaldi, 1974, 282).
47   cum carta, penna et calamaio (Lombardo, 2012, 253).
48   in signum recordationis perpetue de premissis, super massilam sinistram dedit unam alipam (Petti Balbi, 1974, 20).
49   eidem alapa:in signum memoriae inferendo investivit (Someda, 1956, 42).
50   et deinde alapam (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
51   percutiendo eumdem quadam albata in facie (Corbo, 1972, 370; cfr. Lombardo, 2012, 243).
52   Qui quidem dominus Demetrius, comes antedictus, ad perpetuam rei memoriam premissorum eidem Iacobo super eius massilam sinistram dedit alapam unam (Airaldi, 1974, 293).
53   osculum pacis (Lombardo, 2012, 244).
54   de inde eum ad osculum pacis recipiendo etc. (Corbo, 1972, 370).
55   et per birrectum, quam cartam, calamare et pennam in manibus dicti Petri Antonii consignavit et birrectum in eius capite imposuit dicendo eidem: esto fidelis notarius apostolicus de cetero valeas conficere quecumque instromenta et publbicas scripturas omni meliori modo et cetera. (Lombardo, 2012, 394).
56   l'imposizione del beretto (Lombardo, 2012, 253).
57   vnum alium notarium, & ei mandant quod de praedicta cautione cum iuramenti praestatione publicum conficiat instrumentum … Dicitur … Comes creat & facit talem notarium … de officio tabellionatus inuestit … ponitur promissio & iuramentum notarij ad officium tabellionatus exercendum electi vsque in finem instrumenti (Rolandino, 1546, 144v.).
58   Sacri Romani Imperii comites palatini (Airaldi, 1974, 251).
59   comite pallatino apostolico (Lombardo, 2012, 394).
60   Sacri Lateranensis Palatii comitibus palatinis (Airaldi, 1974, 292). Sacri Lateranensis Palacii et aule imperialis comes palatinus (Airaldi, 1974, 286).
61   Ego creo te, iuxta auctoritatem mihi concessam per sanctissimum dominum nostrum, in notarium apostolicum omni meliori modo (Lombardo, 2012, 254).

CUM LAMPULO MANTELLI. OBRED PODELJEVANJA NOTARSKEGA PRIVILEGIJA: PRIMER IZ ISTRE

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POVZETEK

Na podlagi preučitve več dokumentov pričevanj o sporu med Pirančani in koprskim škofom iz leta 1201, ki vsebujejo tudi navedbe o investituri notarja, je v članku s komparativno in (re)interpretativno metodo preučen obred investiture notarjev, kot se je odvijal od 12. do vsaj 16. stoletja na območju zgornjega Jadrana in v sosednjih italijanskih deželah.

Študija se ne osredotoča zgolj na vprašanje investiture notarjev, temveč primerjalno posega tudi na druga posvetna družbena področja evropskih srednjeveških investiturnih obredov ter ugotavlja, da so se obredi odvijali skladno z enotno notranjo tridelno strukturo, kot jo je opisal že Galbert iz Bruggeja (1127): homagij, fides, investitura. *Čeprav so se investiturne svečanosti za posamezna družbena področja v simbolnih gestah, predmetih in besedah medsebojno razlikovale in se skladno z družbenimi potrebami tudi preoblikovale, pa je enaka notranja struktura obredja veljala tako za investiture cesarjev, kraljev, vazalov, vitezov, notarjev in drugih družbenih institucij, ki so se pospešeno oblikovale zlasti od 13. stoletja, prisotna pa je tudi na področju pravosodja. Izvirnost srednjeveškega obredja se kaže v vseprisotni božji transcendenci, ki ji je vrata na stežaj odprla karolinško-otonska doba (8.–11. stoletje), medtem ko kulturne korenine obredja segajo v arhaične skupnosti. Kaže, da je osnovna struktura srednjeveškega obredja slonela na obredu poroke po rimskem pravu, torej na ideji družine, ki je kot osnova razširjene skupnosti v ospredju ideološke podstati krščanstva.*

*Študija pokaže še vlogo in pomen notarjev pri administriranju oblastnih organov ter še zlasti pri oblikovanju mestnih avtonomnih oblastnih struktur, kar se svojstveno zrcali tudi skozi obredje investiture. Prav obredje investiture, kot se je razvilo od 12. stoletja dalje na podlagi viteškega in notarskega rituala, je odprlo pot investituram tudi na druga družbena področja, zlasti svobodnih poklicev (*artes liberales*). Pravica do investiture se je tako tedaj razširila tudi med »navadne« podložnike.*

Ključne besede: investitura, notariat, obred, srednji vek, Istra, Italija, Evropa

SOURCES & BIBLIOGRAPHY:

Abbondanza, R. (1973): Il notariato a Perugia. Mostra documentaria e iconografica per il XVI congresso nazionale del notariato. Fonti e strumenti per la storia del notariato italiano. Roma, Consiglio Nazionale del Notariato.

Airaldi, G. (1974): Studi e documenti su Genova e l'Oltremare. Genova, Bordighera, Istituto Internazionale di Studi Liguri.

Althoff, G. (1997): Spielregeln in der Politik im Mittelalter. Kommunikation in Frieden und Fehde. Darmstadt, Wissenschaftliche Buchgesellschaft.

Althoff, G. (2002): The Variability of Rituals in the Middle Ages. In: Althoff et al. (2002), 71–87.

Althoff, G., Fried, J., & P. J. Geary (2002): Medieval Concepts of the Past: Ritual, Memory, Historiography. Washington, German Historical Institute, Cambridge University Press.

Amelotti, M. (1975): L'Età Romana. In: Amelotti, M. & G. Costamagna: Alle origini del Notariato italiano. Roma, Consiglio Nazionale del Notariato, 1–144.

AST. AAMC – Archivio di Stato di Trieste. Antico Archivio Municipale di Capodistria / Ancient Koper Municipal Archives, Inventory after Majer (1904).

Bellomo, M. (2011): L'Europa del diritto comune. Roma, Il Cigno G. G. Edizioni, (IX ed.).

Benussi, B. (1923): Pola nelle sue istituzioni municipali sino al 1797. Venezia, Deputazione di Storia Patria.

Benussi, B. (1924): L'Istria nei suoi due millenni di storia. Trieste, G. Caprin.

Bettarini, F. (2013): Il notariato dalmata e la "Santa Intrada". In: Israel U. & O.-J. Schmitt (eds.): Venezia e Dalmazia. Roma, Viella, 111–149.

Bettarini, F. (2014): Per un censimento dei notai dalmati. La Rivista Dalmatica, CXI, 13–26

Bloch, M. (1968): La Société féodale. Paris, Eds. Albin Michel.

Boarin, A. (2013): "Negozio di religione" di Antonello Grotto, notaio vicentino (1606–1609). Acta Histriae, 21, 1–2, 107–116.

Borgna, R. (2013): Contratti agrari, usura ed aspetti del credito nelle fonti notarili di una comunità rurale della Terraferma Veneta (Sarnico, 1694–1695). Acta Histriae, 21, 1–2, 117–132.

Brown, W. C. (2011): Violence in Medieval Europe. Harlow, Pearson Education Limited.

Bresslau, H. (1958): Handbuch der Urkundenlehre für Deutschland und Italien, II. Leipzig, 1889, 1912, 1915, 1931. Berlin, W. de Gruyter.

Brunettin, G. (2004): Gubertino e i suoi registri di cancelleria patriarcale conservati presso la Guarneriana di San Daniele del Friuli (1335, 1337, 1340–1341–1342). Studi sul Trecento in Friuli. San Daniele del Friuli, Biblioteca Guarneriana.

Buc, Ph. (2002): Text and Ritual in Ninth-Century Culture. In: Althoff et al. (2002), 123–138.

CDI - Codice Diplomatico Istriano. Ed. by P. Kandler. Trieste, Lloyd Trieste (reprint), 1986.

CHART. PIR. - Chartularium Piranense. Raccolta dei documenti medievali di Pirano. Ed. by Cam. De Franceschi, Atti e Memorie della Società Istriana di Archeologia e Storia Patria, 36 (1924), 43–47 (1931–35), 50 (1938).

Corbo, A. M. (1972): Ancora di una «datio penne et calamari». Rassegna degli Archivi di Stato, 32, 2, 366–371.

Costamagna, G. (1975): L'Alto Medioevo. In: Amelotti, M. & G. Costamagna: Alle origini del Notariato italiano. Roma, Consiglio Nazionale del Notariato, 151–314.

Darovec, D. (1994): Notarjeva javna vera. Notarji in vicedomini v Kopru, Izoli in Piranu v obdobju Beneške republike. Knjižnica Annales 7. Koper, Zgodovinsko društvo za južno Primorsko.

Darovec, D. (2007): Piranska oljčna desetina in vprašanje notarjeve javne vere v Istri v visokem srednjem veku. In: Budak, N. (ed.): Sacerdotes, iudices, notarii…: posrednici među društvenim skupinama / Sacerdotes, iudices, notarii…: mediators among social groups. Poreč, Pučko otvoreno učilište, Zavičajni muzej Poreštine, 91–98.

Darovec, D. (2010): Ruolo dei vicedomini istriani nella redazione degli atti notarili in rapporto ad uffici affini dell'area adriatica. Acta Histriae, 18, 4, 789–822.

Darovec, D. & Z. Bonin (2011): The financial operations of urban and rural confraternities in the Koper area as revealed by reports from church and state officials between the 16th and 18th centuries. Annales, Ser. hist. sociol., 21, 2, 461–500.

De Vergottini, G. (1924): Lineamenti storici della costituzione politica dell'Istria durante il Medio Evo, I-II. Roma, Società istriana di archeologia e storia patria.

Du Cange, C. (1733): Glossarium ad scriptores mediae et infimae Latinitatis, Parisiis: sub oliva Caroli Osmont, 1733–1736, Tomus tertius: [E-K]. kol. 1520–1538.

Duby, G. (1985): Trije redi ali imaginarij fevdalizma, Ljubljana, Studia humanitatis, (slov. edicija: prev. Gregor Moder, orig. Les trois ordres ou l'imaginaire du féodalisme, Paris, Éditions Gallimard, 1978.).

Dumezil, G. (1958): L'Idéologie tripartie des Indo-Européens. Bruxelles, Latomus.

Durkheim, E. (1995): The Elementary Forms of Religious Life. Translated and with an introduction by Karen E. Fields. New York, The Free Press.

Ebner, P. (1979): Economia e società nel Cilento medievale, I. Roma, Edizioni di storia e letteratura.

Faggion, L. (2008): Il notaio, la società e la mediazione in età moderna nelle storiografie francese e italiana: un confronto. Acta Histriae, 16, 4, 527–544.

Faggion, L. (2013): La pacificazione e il notaio nel vicariato di Valdagno nel secondo cinquecento. Acta Histriae, 21, 1–2, 93–106.

Ferrara, R. (1977): *Licentia exercendi* ed esame di notariato a Bologna nel secolo XIII. In: Notariato medievale bolognese II. Roma, Consiglio nazionale del notariato, 47–120.

Flasch, K. (1988): Das philosohische Denken in Mittelalter. Reclam, Stuutgart.

Flori, J. (1998): Chevaliers et chevalerie au Moyen Age. Collection «La vie Quotidienne». Paris, Hachette.

Genuardi, L. (1914): La presenza del giudice nei contratti privati italiani dell'alto Medio Evo. Annali del Seminario giuridico della R. Università di Palermo, III, 37–100.

Gluckman, M. (ed.) (1962): Essays on the Ritual of Social Relations. Manchester, University Press.

Grafenauer, B. (1952): Ustoličevanje koroških vojvod in država karantanskih Slovencev : Die Kärntner Herzogseinsetzung und der Staat der Karantanerslawen. Ljubljana, Slovenska akademija znanosti in umetnosti.

Grbavac, B. (2008): Notari kao posrednici između Italije i Dalmacije – studije, službe, seobe između dvije obale Jadrana. Acta Histriae, 16, 4, 503–526.

Grbavac, B. (2011): Svjedočanstvo o stvarnosti ili fikcija: zadarski notari između formulara i prakse. Acta Histriae, 19, 3, 393–406.

Grbavac, B. (2013): Oporuka i inventar splitskog notara Jakova pok. Ubertina de Pugliensibus iz Piacenze. Prilog proučavanju splitskog notarijata. Acta Histriae, 21,1–2, 75–92.

Grimes, R. L. (2006): Rite out of Place: Ritual, Media, and the Arts. New York, Oxford University Press.

Kambič, M. (2010): Dednopravni položaj hčera po statutih piranskega komuna – recepcija ali kontinuiteta rimskega prava. Acta Histriae, 18, 4, 769–788.

Keller, H. (1993): Die Investitur. Ein Beitrag zum Problem der 'Staatssymbolik' im Hochmittelalter. Frühmittelalterliche Studien, 27, 51–86.

Kos, F. (1902–1915): Gradivo za zgodovino Slovencev v srednjem veku, I–IV. Ljubljana, Leonova družba.

Kos, M. (1928): Gradivo za zgodovino Slovencev v srednjem veku, V. Ljubljana, Leonova družba.

Kos, M. (1956): Aus der Geschichte der mittelalterlichen Urkunde Istriens – Studien zur älteren Geschichte Osteuropas, I: Festschrift H. F. Schmidt. Wiener Archiv für Gesch. des Slawentums u. Osteuropas, II, Graz, 49–62.

Le Goff, J. (1985): Za drugačen srednji vek. Simbolno obredje vazalstva. (orig. Pour un autre Moyen Âge. Le rituel symbolique de la vassalité (1965). Paris, Edition Gallimard, 1977). Ljubljana, Studia humanitatis, 383–461.

LEGGI, Decreti e Terminazioni del Ser.mo Magg.r Cons.o etc., Concernenti il buon guerno dell'Istria. Valerio Da Riva, Pod.tà e Cap.o di Capodistria, 1683.

Leicht, P. S. (1910): Note ai documenti istriani di diritto privato dei secoli IX–XII. In: Miscellanea di studi in onore di Attilio Hortis. Trieste, G. Caprin, 179–201.

LEX LAT. - Lexicon Latinitatis Medii Aevi Iugoslaviae, I–III. Zagabriae, Editio Instituti historici Academiae scientiarum et artium Slavorum meridionalium, 1973.

Lombardo, M. L. (2012): Il notaio romano tra sovranità pontificia e autonomia comunale (secoli XIV–XVI). Milano, Giuffrè.

Majer, F. (1904): Inventario dell'Antico Archivio Municipale di Capodistria. Capodistria, Tip. Cobol-Priora.

Marcarelli, M. (2014): Il terzo nei riti di mediazione e di pace nel Friuli del Cinquecento. Acta Histriae, 22, 2, 225–240.

Marković, S. (2010): Notarijati medievalnih komuna crnogorskog primorja. Odrazi antičkog nasljeđa, autonomnosti urbaniteta i humanističkog univerzalizma. Acta Histriae, 18, 4, 823–846.

Mauss, M. (1923–1924): Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques. Année Sociologique, seconde série. (slov. edicija: Esej o daru in drugi spisi. Ljubljana, Studia humanitatis, 1996, prev. Zoja Skušek).

MGH. CRF - Monumenta Germaniae Historica. Capitularia regum Francorum. 1. 1883 (1994), 2. 1890–1897 (2001). München, Monumenta Germaniae Historica.

Mihelič, D. (2001): Piransko olje in koprska škofija: začetek 13. stoletja. Acta Histriae, 9, 2, 311–320.

Mihelič, D. (2011a): Piranski notar Dominik Petenarij – pričevalec časa. Acta Histriae, 19, 4, 645–658.

Mihelič, D. (2011b): Prilog proučavanju zemljoposjedničke strukture srednjovjekovne Istre (s naglaskom na posjedu Freisinške biskupije). Vjesnik Istarskog arhiva, 18, 345–361.

Morteani, L. (1886): Notizie storiche della città di Pirano. Trieste, Stab. tip. di L. Herrmanstorfer.

Morteani, L. (1896–1897): Sulla lite per la decima dell'olio tra i vescovi di Capodistria ed il clero e popolo piranese. Archeografo Triestino, n.s., 21, 249–265.

Muir, E. (2005): Ritual in early modern Europe. Cambridge, Cambridge University Press.

Pani, L. (ed.) (2009): I quaderni di Gualtiero da Cividale (1274–1275, 1291–1294). Fonti per la storia della Chiesa in Friuli. Serie medievale, 9. Roma, Udine, Istituto storico italiano per il medioevo, Istituto Pio Paschini.

Pedani Fabris, M. P. (1996): *Veneta auctoritate notarius*: storia del notariato veneziano, 1514–1797. Milano, Giuffrè.

Pertile, A. (1894–1902): Storia del diritto italiano dalla caduta dell'Impero Romano alla codificazione, VI/I. Torino, Unione Tipografico-Editrice.

Petkov, K. (2003): The Kiss of Peace. Ritual, Self, and Society in the High and Late Medieval West. Leiden, Boston, Brill.

Petti Balbi, G. (1974): L'investitura e le "vacature" nel collegio notarile di Genova. Archivi e Cultura, 8, 17–33.

Pini, A. I. (2002): Bologna nel suo secolo d'oro: da «comune aristocratico» a «repubblica di notai». In: Tamba, G. (ed.), 2002, 1–20.

Povolo, C. (2014): La terza parte. Tra liturgie di violenza e liturgie di pace: mediatori, arbitri, pacieri, giudici. Acta Histriae, 22, 1, 1–16.

Pratesi, A. (1983): Appunti per una storia dell'evoluzione del notariato. In: Studi in onore di Leopoldo Sandri. Roma, [s.n.], 759–772.

Roach, L. (2012): Submission an Homage: Feudo-Vassalic Bonds and the Settlement of Disputes in Ottonian Germany. History, The Journal of the Historical Association, 355–379.

Rolandino, R. (1546): *Summa Totius Artis Notarie*. Venezia, [s.n.]. (Ristampa anastatica a cura del Consiglio Nazionale del Notariato. Bologna, Arnaldo Forni Editore, 1977).

Rožac, M. & A. Pucer (2010): Piranske notarske pergamentne listine, I. del, Predbeneško obdobje 1173–1283, 1. zvezek 1173–1212. Koper, Pokrajinski arhiv Koper.

Schmitt, J.-C. (2000): Geste v srednjem veku (La Raison des Gestes dans l'Occident médiéval, Paris, Edition Gallimard, 1969). Ljubljana, Studia humanitatis.

SENATO MISTI. Parti (deliberazioni, decreti) del Senato veneto, attinenti all'Istria (1332–1440). Atti e Memorie della Società Istriana di Archeologia e Storia Patria, 3–6, 1887–1890.

Someda De Marco, P. (1958): Notariato friulano (Prefazione di Tiziano Tessitori). Udine, Arti Grafiche Friulane.

Southern, R. W. (1995–2001): Scholastic Humanism and the Unification of Europe. 2 tom. Blackwell, Oxford u.a.

STAT. PIR. - Statut Piranskega komuna od 13. do 17. stoletja / Gli statuti del comune di Pirano dal XIII al XVII secolo. Pahor, M., Šumrada, J. (eds.). Ljubljana, SAZU, 1987.

Stipišić, J. (1985): Pomoćne povijesne znanosti u teorici i praksi. Zagreb, Školska knjiga.

Tamba, G. (ed.) (2002): Rolandino e l'ars notaria da Bologna all'Europa. Atti del convegno internazionale di studi storici sulla figura e l'opera di Rolandino: organizzato dal Consiglio notarile di Bologna sotto l'egida del Consiglio nazionale del notariato, Bologna, città europea della cultura, 9–10 ottobre 2000. Milano, Giuffrè.

Tilatti, A. (2006): I protocolli di Gabriele da Cremona: notaio della Curia patriarcale di Aquileia (1324–1336, 1334, 1350). Roma, Istituto storico italiano per il Medio Evo.

Vilfan, S. & B. Otorepec (1962): Les archives notariales en Yougoslavie. Archivum, XII, 105–120.

Warner, D. A. (2001): Ritual and Memory in the Ottonian Reich: The Ceremony of *Adventus*. Speculum, 76, 255–283.

Wilentz, S. (ed.) (1999): Rites of Power: Symbolism, Ritual, and Politics since the Middle Ages. Pennsylvania, University of Pennsylvania Press.

Zabbia, M. (2013): L'investitura notarile e la validità degli instrumenta alle soglie del Duecento. Il caso del notaio Domenico da Pirano. Scrineum Rivista, 10, 191–214.