

A Lawful History: Judicial Ordines, the Ius Commune and Virtuous Litigation in Norman Sicily

Abstract: This article considers the developing role of the ius commune in twelfth-century Sicily through an examination of the text known as the Historia de Regno Sicilie. The text, a narrative history, has long been mined by historians as a document of mid-century political crisis in the kingdom. This article, however, argues that the Historia should be interpreted through a legal frame: its purpose can only be understood when it is read against twelfth-century ordines iudiciarii. The Historia seeks to identify a set of normative rules for judicial conduct, invoking a specific and technical vocabulary. As such, it can be read as a document of the reception of Roman law in Sicily. The article then discusses how the Historia stands in relation to other evidence for the development of ius commune jurisprudence in the Norman regno, and the ways in which the text may provide a distorted picture of legal practice. Finally, it considers why an argument about procedural law should have been made in the form of a narrative history, and what this might suggest about broader trends in twelfth-century thought.

Some Sicilian Litigants

Between the late 1140s and the early 1150s, John of Salisbury observed at first-hand the manifold grievances, disputes and legal cases brought to the papal court for resolution.

Approximately a decade later he drew on those memories to write his Historia Pontificalis.¹

Among the multitude of litigants who made their way to the curia during this time was Count Hugh II of Molise (a region of Apulia, then part of the Kingdom of Sicily), who came to Eugenius III in order to gain a divorce from his wife, with a view to marrying again.² John

¹ For a discussion of John's time with the curia and the likely date of composition, see the introduction to Historia Pontificalis, ed. M. Chibnall (Oxford: Clarendon Press, 1986), xx-xxx.

² This incident probably dates to 1150, but see further Historia Pontificalis, Appendix V, 99-100. For the broader context of such strategies, see Constance B. Bouchard, "Consanguinity and Noble Marriages in the Tenth and Eleventh Centuries," Speculum 56 (1981): 268-87.

does not offer a glowing account of Hugh as a litigant. The Count of Molise arrived at the curia accompanied by his own men and other officials from the Sicilian kingdom, who had been instructed to swear that Hugh and his wife were related within prohibited degrees of consanguinity, a connection which would render their marriage invalid. To secure the result he wanted, Hugh had taken a belt-and-braces approach: several Sicilian bishops had been pressed into supporting his claim, and he had also bribed members of the curia. Hugh's scheming, however, was no match for Pope Eugenius, who, as John proudly recounts, recognised the falsehoods of the Sicilians' testimony.³ Eugenius then enquired into the standing of Hugh's witnesses, who boasted that they were considered men of such integrity in Apulia that they had been admitted in witnesses in two other divorce cases (tante fidei ut in duobus divortiis testes admissi sint). With that, Eugenius had caught them out. The Pope proclaimed that this was evidence not of their integrity but of their unsuitability--he would scarcely accept the word of someone who had appeared as a witness in even one other divorce case, let alone two. When the Sicilians believed they were demonstrating their credentials, they were in fact demonstrating their doubtful character (suspectus), and their lack of understanding of the conventions of canonical procedure. Eugenius bound the men--on pain of anathema--never again to appear as witnesses against a marriage, and, through a masterful display of oratory and affection, ultimately persuaded Count Hugh to remain loyal to his lawful wife.⁴

John of Salisbury depicts the Count of Molise, his sworn followers, the Sicilian bishops and the officials of the Sicilian kingdom as complicit in this attempt to manipulate developing ius commune rules on the requirement for witnesses to their own advantage. John

³ Historia Pontificalis, c. 41, 80-81.

⁴ Historia Pontificalis, c. 41, 82.

is not seeking to characterise this disregard for lawful procedure as a uniquely Sicilian trait, but rather to condemn those unscrupulous lords who sought to influence the law for their own ends, turning to unethical devices to profit from the legal system.⁵ It should be noted, however, that the inhabitants of Sicily do not distinguish themselves by their legal probity in John's history. Though Sicilians⁶ are far from the only group who flout the law (the Romans, too, come in for some heavy criticism for their desire to usurp papal rights and powers⁷), they do so with some regularity. Moreover, Sicilian attempts to subvert the right rule of the canons take their cue from the top: John aims several barbs at Roger II, the crafty (versutus) king of Sicily, who deliberately sought to evade papal jurisdiction by having his son William consecrated king without first consulting the pope--a shameless challenge to right order, as Sicily was the patrimony of the see of St Peter.⁸

The Historia Pontificalis offers a few brief glimpses of Sicilian kings and lords attempting to circumvent the canons and established right (ius). It is an unflattering and partial account, but a valuable one, given the multifarious challenges of recreating a picture of the legal world and legal jurisdictions of twelfth-century Sicily. This article considers how

⁵ For example, Eugenius is also obliged to deal with a matter of forged papal charters: c. 43, 86-87; and two papal legates are found attempting to extort money from litigants, c. 36, 72.

⁶ I use the term here, as John does, to describe the subjects of the ruler of the kingdom of Sicily.

⁷ Historia Pontificalis, c. 27, 59.

⁸ Historia Pontificalis, c. 34, 68-69. For further dealings between Eugenius and Roger, see c. 32, 65-66. Sicily's status as a "patrimony" was more papal projection than legal or political reality.

John's account might correlate with another description of Sicilian attitudes to law, found in a text which describes the state of law in Sicily in the 1160s, only a decade after the events of John's Historia Pontificalis. This is the Historia de Regno Sicilie, a relatively well-known work, but one which has rarely been considered for the account of law it provides.⁹ There is much to be gained from recognising that the Historia offers a commentary on the state of the law in Norman Sicily.

Twelfth-century Sicily was a kingdom of multiple and overlapping legal traditions: the inherited Byzantine law of the southern mainland, the customary law of cities like Capua and Bari, and the Roman-style legislation introduced by King Roger II--in addition, of course, to the ecclesiastical law which governed religious matters and which so frustrated the Count of Molise. All available evidence points to the considerable sophistication of legal discussion and practice in Norman Sicily. Yet the Historia portrays the kingdom as a place stubbornly ignorant of (or resistant to) established norms of legal procedure, with Sicilian lords and kings incapable of observing even the most basic elements of "just" action in court. The Historia thus provides rich pickings both in terms of revealing the rapidly changing nature of the relationship between law and virtue in the twelfth century, and in terms of understanding why a medieval author might choose to make a discussion of legal procedure the structural centrepiece of a work of history. Moreover, once one appreciates how the Historia mixes a set of legal and moral claims it becomes possible to set this text in its

⁹ The Latin text is provided in La Historia o Liber de Regno Sicilie e la Epistola ad Petrum Panormitane Ecclesie Thesaurarium di Ugo Falcando, ed. G. B. Siragusa (Rome: Forzani, 1897). Unless otherwise noted, translations are taken from The History of the Tyrants of Sicily by "Hugo Falcandus", trans. Graham Loud and Thomas Wiedemann (Manchester: Manchester University Press, 1998), hereafter cited as HTS.

twelfth-century context. The work begins to look less like an outlier, a fringe production focused on peculiarly Sicilian iniquities, and instead one can appreciate its connections to other works, texts which similarly attempt to explain how newly-developed rules from the ius commune can be used to reinforce and burnish long-standing principles of Christian virtue.

The *Historia de Regno Sicilie*

The textual history of the *Historia de Regno Sicilie* (also known as “The History of the Tyrants of Sicily”) makes even the most sanguine scholar shudder;¹⁰ it poses seemingly insoluble riddles of authorship and provenance.¹¹ The *Historia* is the major narrative source for events in Sicily between the years 1154 and 1169.¹² It begins at the death of Roger II (r.1130-54), the first crowned Norman ruler of the kingdom, and divides into two sections. The first covers the period 1154-66, and concludes with the death of William I; the second and more detailed section provides an account of the years 1166 to 1169, the period during which Sicily was ruled by Margaret of Navarre, wife of William I, on behalf of her son,

¹⁰ On some of the problems, see Graham Loud, “History Writing in the Twelfth-Century Kingdom of Sicily,” in *Chronicling History: Chroniclers and Historians in Medieval and Renaissance Italy*, ed. S. Dale, A. W. Lewin and D. J. Osheim (University Park, PA: Pennsylvania State University Press, 2007), 48.

¹¹ Evelyn Jamison, *Admiral Eugenius of Sicily: His Life and Work and the Authorship of the Epistola Ad Petrum and the Historia Hugonis Falcandi Siculi* (London: Oxford University Press, 1957), 191.

¹² Graham Loud, “The Chancery and Charters of the Kings of Sicily (1130–1212),” *English Historical Review* 124 (2009): 779–810, for the evidentiary challenges of this period.

William II. The other striking feature of the text is its tone: the author presents Sicily as a place of entirely unparalleled iniquity in twelfth-century Europe. He considers Sicily to be unique amongst contemporary kingdoms for the depravity of its court, and promises to relate “a story whose frightfulness would be enough... to make it completely unbelievable... were it not that in Sicily there is nothing amazing about the performance of deeds of such extreme wickedness.”¹³ The Historia is an indispensable document for interpreting events in the Norman kingdom after Roger’s death;¹⁴ however, the historian wishing to draw on it must grapple with the fact that we know so little about its composition.

It is perhaps easier to state what is securely known about the Historia: its author was present in Sicily to witness at least some of the events he narrates, and he displays considerable erudition and knowledge of the Latin classics, Sallust in particular.¹⁵ The name long associated with the text is that of “Hugo Falcandus”.¹⁶ This ascription was first made in the editio princeps published in Paris in 1550, printed from a now-lost manuscript.¹⁷ There is no evidence for the existence of a Hugo Falcandus as a historical actor in Sicily, and the name may be a misreading of the lost Paris manuscript, its poor condition being remarked upon at the time of printing. Alternatively, “Hugo Falcandus” may have been a pseudonym adopted to disguise the author’s identity: given his less than complimentary treatment of the

¹³ HTS, 55.

¹⁴ The importance of the Historia is only increased by the fact that after it concludes in 1169, there is no substantive narrative source for the history of kingdom until c.1240.

¹⁵ Loud, “History Writing,” 43–5; Jamison, Admiral Eugenius, 177-78.

¹⁶ For the sake of simplicity, and following modern convention, I will refer the author as “Falcandus” throughout.

¹⁷ Jamison, Admiral Eugenius, 183. For the manuscript tradition see 358-73.

power-brokers of Norman Sicily, anonymity would have been a prudent choice. As to the author's identity, various guesses have been ventured over the past century.¹⁸ Suggestions have included Hugues Foucaud, Abbot of Saint-Denis; Admiral Eugenius of Sicily; Robert of San Giovanni, a Sicilian royal notary; the Angevin courtier Peter of Blois, who was briefly tutor to the young William II; or Peter's brother, William. Equally, it may be the work of a minor figure at the Sicilian court whose name has not been preserved.¹⁹

Moreover, just as we do not know who wrote the text, nor can we say when it was written. The Historia may have been composed during the reign of William II, or begun after his death in 1189.²⁰ Whether 1169 was intended to mark a deliberate conclusion to the narrative or whether the text simply breaks off is similarly disputed.²¹ Nor, for that matter, do we know where it was written, or how "local" a project it was. These questions of provenance and authorship have been argued for over a century, but there has been no decisive intervention in the debate. In the absence of new evidence, historians may have to settle for choosing, according to taste, between a range of plausible hypotheses.

This article, therefore, prefers to consider how the text was constructed, rather than focusing on the question of who constructed it. It develops a line of argument first suggested

¹⁸ HTS, 30-42; Gwenyth Hood, "Falcandus and Fulcaudus, Epistola ad Petrum, Liber de Regno Sicilie: Literary Form and Author's Identity," Studia Medievalia 40 (1999): 5-7.

¹⁹ Eduardo D'Angelo, "The Pseudo-Hugh Falcandus in His Own Texts," Anglo-Norman Studies 35 (2012): 144.

²⁰ Hartmut Hoffmann, "Hugo Falcandus und Romuald von Salerno," Deutsches Archiv für Erforschung des Mittelalters 23 (1967): 133-38.

²¹ Hood, "Falcandus and Fulcaudus," 31; D'Angelo, "The Pseudo-Hugh Falcandus," 146.

by Enrico Besta in 1907, who noted the depth of the author's knowledge of public law in Sicily.²² To state that Falcandus is particularly engaged with law is not necessarily to make the claim that he--whoever he was--was any sort of legal specialist, but rather to recognise that he had absorbed certain ideas, current in the mid-twelfth century, about the status, prestige and importance of Roman-style ius, and its value in governing a realm. It is not surprising that Falcandus considered law to be important: law was an increasingly vital technology for both secular and ecclesiastical rulers. What is rather more surprising is that the significance of this theme as providing a frame for the moral judgments of the Historia has not previously been noted. One of the challenges presented by the anonymity of the author of the Historia and our consequent lack of biographical detail is placing the author in his particular legal context, and, in particular, determining whether he was more familiar with canon or civil law. What should be recognised, however, is that when it came to legal procedure, such distinctions were not always hard and fast. A significant number of men trained as masters of both laws (including Peter of Blois, one suggested candidate for the authorship of the text). Procedural manuals often speak of rules which apply to judges in both ecclesiastical and secular courts.²³

This article makes repeated reference to Falcandus' interest in law and "lawfulness". These terms are to be taken broadly, for they encompass a number of ideas. Falcandus'

²² E. Besta, "Il liber de Regno Siciliae e la storia del Diritto Siculo," in Miscellanea di archeologia, storia e filologia dedicate al Prof Antonino Salinas (Palermo: Virzi, 1907), 283-306.

²³ See further Tancred, Ordo iudiciarius, ed. F. Bergmann (Göttingen: Vandenhoeck et Ruprecht, 1842), 1.1., p. 91; and the comments of M. Eichbauer and D. Summerlin in The Use of Canon Law in Ecclesiastical Administration, 1000-1234 (Leiden: Brill, 2019), 12-14.

conception of law is multifaceted. It can be found in his admiration for the virtue of iustitia, the quality which makes a good judge and a good ruler, and which allows one to rule with fairness and equity. From his perspective, is no surprise that Sicily is a chaotic place when those who dominate the royal court have no love for justice. A further component part of lawfulness is the enforcement of a kingdom's positive laws by its administrators: for Falcandus, assessing Sicily in the 1160s, it seems that these laws could be broken with impunity, and flagrant crimes go unpunished. A third category of law--perhaps the most significant in the Historia--is judicial order and procedural regularity.²⁴ When Falcandus describes the detail of attempts at legal reform in Sicily, he is often describing how procedure was observed or let slide. He is interested in observing how accusations are made and who makes them, how trials proceed and how evidence of witnesses is weighed--in short, the kinds of rules being articulated and set down in the developing literature of ordines iudicarii during this period.²⁵ Falcandus' vision of a lawful and well-governed kingdom requires the presence of law and justice in each of these three senses.

²⁴ The term "procedure" here is used in the sense described by Dominique Bauer: the twelfth century developed a legal order of a "proceduralist" character which was increasingly concerned with the process by which legal decisions were made valid, and was particularly focused on determining where laws sat within particular institutional systems. Dominique Bauer, "The Twelfth Century and the Emergence of the Juridical Subject--Some Reflections." Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung 90:1 (2004): 207-27.

²⁵ Cf. Linda Fowler-Magerl, Ordines Iudicarii and Libelli de Ordine Iudiciorum (From the Middle of the Twelfth to the End of the Fifteenth Century) (Turnhout: Brepols, 1994). Our evidence for the state of legal teaching and learning in Sicily for this period is

Judicial order in Norman Sicily

The first half of the Historia de Regno Sicilie is a tale of calamitous decline, explaining how, under William I, the kingdom greatly deteriorated from the heights it had reached under Roger II. The theme of moral decline, of course, was an ancient one--and Falcandus underscores this point with frequent references to the Roman moralist Sallust. According to Falcandus, William I's administration (led by the villainous figure of Maio of Bari, the chief minister²⁶), was frequently at odds with the lords of Sicily, a series of disputes which regularly led to accusations of capital crimes against several nobles. The description of these disputes might otherwise be a straightforward account of political unrest, but for the very particular legal terminology which the Historia attaches to them. One need consider only a few examples among many, as it is the Latin phrasing, not the details of individual disputes, which is so striking. First, when Count Simon of Policastro was accused of treason, Falcandus reports "he was given no opportunity to prove his innocence or to reply to the accusations which had been made against him in accordance with legal procedure (nec obiectis ordine iudiciario respondere). For he was immediately arrested and thrown into

limited, but see Paul Oldfield, "The Kingdom of Sicily and the Early University Movement," *Viator* 40:2 (2009): 135-150.

²⁶ HTS, 60. A useful summary of Maio's career and political significance is provided in Donald Matthew, "Maio of Bari's Commentary on the Lord's Prayer," in Intellectual Life in the Middle Ages: Essays presented to Margaret Gibson, ed. Lesley Smith and Benedicta Ward (London: Hambledon, 1992), 118-44, esp. 118-23.

prison.”²⁷ This point about the absence of a proper hearing of the allegations against Count Simon is a theme which Falcandus returns to later in his narrative: “when he [Simon] bravely stated that he would reply to each of the accusations, he was not allowed to proffer his arguments (suis ei allegationibus uti non licuit): for he was suddenly arrested, condemned, and sent to prison, where he died some years later.”²⁸ Another enemy of the royal court, the powerful Calabrian lord Roger of Martorana, also fell foul of the king and was denied the regular processes of justice: William I, “charging him with treason, ordered him to be imprisoned and blinded, although he had neither been convicted nor had he formally admitted guilt, as the legal rules require (neque convictum neque sollempniter iure confessum, prout ordo iudiciarius exposcebat).”²⁹

Falcandus’ choice of language consciously echoes the procedural rules for the conduct of cases in the ius commune, and repeats precisely the kind of stipulations to be found in the developing genre of the ordo iudiciarius. The actions sanctioned by William I contravene even the most basic principles for conducting a legal action. This is apparent when one compares the details of the text to the foundational and most influential judicial manual of the period, Bulgarus’ De arbitris et iudicibus (probably composed between 1131 and 1141).³⁰ Bulgarus was perhaps the most famous and influential Bolognese jurist of the

²⁷ HTS, 65.

²⁸ HTS, 73.

²⁹ HTS, 126.

³⁰ De arbitris is translated in B. C. Brasington, Order in the Court: Medieval Procedural Treatises in Translation (Leiden: Brill, 2016), 80-111. For a discussion, see Emanuele Conte, “Ordo iudicii et regula iuris: Bulgarus et les origines de la culture juridique (XIIe siècle),” in Frontières des savoirs en Italie à l’époque des premières universités (XIIIe-

twelfth century, and De arbitris (a widely-circulated text, which took the form of an epistolary treatise) offered an outline of court procedure, developed from the rules of Roman law. Bulgarus had begun by explaining the different roles of the parties in court: the difference between a judge and arbitrator, the role of the advocate, and, in particular, the fact that the defendant has the right to bring arguments in his defence, and that the burden of proof rests with the plaintiff.³¹ The judge, moreover, is obliged to scrutinise those accusations, rather than simply accept them at face value. So dominant were these assumptions in governing legal proceedings that it is not much of a stretch to suggest that Falcandus assumed that his Latinate readers would have recognised these principles of procedure as fundamental to the operation of law, in much the same way as he expected his audience to appreciate his frequent classical allusions. Indeed, reading the *Historia* as a text adjacent to twelfth-century ordines on judicial procedure bears out one of Fowler-Magerl's fundamental points: discussion of legal procedure was not limited to a single type of manuscript but can be found across a great variety of medieval texts.³²

Falcandus' commentary thus offers a critique of William I's administration founded in the assumptions of the ius commune: it is not that imprisonment or blinding are necessarily inappropriate punishments for those found to have acted against the crown. Kings may punish, but only when they have first observed the correct legal procedure; but William I allows the accused no opportunity to speak in their defence. Thus the first part of the Historia

XVe siècles), ed. J. Chandelier and A. Robert (Rome: Ecole française de Rome, 2015), 157-76.

³¹ Bulgarus, De arbitris, 91-92. For a slightly later (c.1214-16) statement of these principles, see Tancred, Ordo iudicarius, 1.1 (pp. 91-5), on the limitations placed on judges, and also 2.6 (pp. 147-50) on the circumstances in which judgment should be refused.

³² Fowler-Magerl, Ordines Iudicarii.

provides an account of tyranny founded on royal weakness: the cruel, oppressive and arbitrary exercise of power is made possible by William I's failure to abide by legal norms, and by his willingness to promote wicked ministers like Maio of Bari, who happily transgress the law. It is the second part of the Historia which is rather more compelling in thinking of how tyranny--and its converse, just rule--can be conceptualised in relation to law. The dominant figure in the second, more detailed section of the Historia is Stephen du Perche.³³ Stephen, a son of the Count of Perche and a cousin to the regent, Margaret of Navarre,³⁴ was one of a number of French relatives the queen had brought to Palermo after the death of William I.³⁵ Stephen was duly appointed Chancellor of Sicily and Archbishop-Elect of Palermo.³⁶ What defines Falcandus' account of Stephen du Perche's rule is his attempt to transform Sicily into a "lawfully" ruled kingdom. Similarly, it is through a description of

³³ HTS, 159-60.

³⁴ For background on the family, see Kathleen Hapgood Thompson, "The Counts of the Perche, c.1066–1217," (PhD dissertation, University of Sheffield, 1995). There has been no detailed study of Stephen himself.

³⁵ Joshua C. Birk, Baptized Sultans: Norman Kings of Sicily and the Rise of the Anti-Islamic Critique (Basingstoke: Palgrave Macmillan, 2016), 221. For the political situation in Sicily following the death of William I, HTS, 25-26.

³⁶ HTS, 161-62. As Stephen had not yet reached the canonical age of 30, he could not be consecrated as archbishop. For a discussion of the significance of these roles and the governing mechanisms of Sicily more generally, see H. Takayama, "Familiares Regis and the Royal Inner Council in Twelfth-Century Sicily," *English Historical Review* 103 (1989): 357-72.

Stephen's attitude towards, and reform of, Sicilian law that Falcandus demonstrates Stephen's virtuous character to his readers.

The catalyst for Stephen du Perche's engagement with legal reform occurs soon after his arrival in the kingdom, with the arrest of a court notary who had organised an attack on a group of men carrying a royal writ and royal seal.³⁷ It should be noted that the notary's guilt was not in dispute, only the question of his punishment. He had flouted crown authority and broken the royal peace, and the laws of Sicily made capital provisions against crimes which injured royal maiestas.³⁸ Stephen had the man imprisoned while he considered the appropriate punishment. It is at this point, the Historia recounts, that Stephen encountered difficulties and deliberate obstruction from Sicilian magnates. The Bishop of Syracuse, complaining of the decision to punish the notary for breaking the royal peace, accused Stephen of acting "contra ius et rationem," and caustically observed that "perhaps it was the sort of decision that was usual (solere decerni) in France, but such a judgment had no validity in Sicily (sed in Sicilia nequaquam hoc iudicium obtinere)."³⁹ The Bishop added that "the notaries of the court had great authority, and they should not be condemned so easily."⁴⁰

Whether or not the Bishop of Syracuse spoke these words, it is worth asking why Falcandus chose to insert his legal commentary into the Historia, and how he anticipated his

³⁷ HTS, 164.

³⁸ See Roger's Assizes, XVIII, as printed in G. M. Monti, Lo Stato normanno svevo. Lineamenti e ricerche (Trani: Vecchi, 1945), 128.

³⁹ HTS, 164. Loud and Wiedemann translate the phrase "solere decerni" as "customary": I have avoided this term as it suggests a reference to customary law which is not present in the text.

⁴⁰ HTS, 164.

readers responding to it. Much turns on how one interprets the argument that punishing the notary would be “contrary to justice and right reason.” According to the narrative which Falcandus has presented, this claim appears unconvincing: the just course for the notary-- whose guilt was not in doubt--is punishment in accordance with the severity of his offence. Similarly, the bishop’s complaint that Stephen du Perche wished to make it “so easy” (tam facile) to condemn the men of the court runs contrary both to the sense of the passage and how this incident develops. For the remainder of the narrative, Stephen is occupied in struggling to punish those who are evidently guilty but whose powerful positions make it difficult for them to be brought before the courts.⁴¹ Finally, the bishop’s reference to French legal practice was presumably intended to criticise the pursuit of the notary as a foreign and unwelcome custom. Yet Falcandus’ Latinate readers, one can fairly suppose, would have been familiar with the principle (evident in both the ius commune and in a long Augustinian theological tradition) that the crown’s purpose is to guarantee peace to the people and to punish those who break it.⁴² Although Falcandus was writing at least several decades before

⁴¹ See, for example, Stephen’s struggles in the case of Robert of Calatabiano, HTS, 166-69. Falcandus’ narrative sets out how, as a series of accusations of theft and murder made against the lord proceeded in the courts, Robert attempted to use every possible technique to avoid the case being brought to justice: this included attempting to intimidate his accusers, offering bribes to officers of the court, and finally pleading with the queen to intervene and halt the case. This incident is also striking for the fact that it requires Stephen du Perche to engage with both royal jurisdiction and ecclesiastical law, for Robert has committed offences against both crown and church.

⁴² Susan Reynolds, “The Emergence of Professional Law in the Long Twelfth Century,” Law and History Review 21 (2003): 347-66. The principle that the function of

the idea that punishment of crime was a public good became an established legal maxim, the idea of a royal duty to punish malefactors was widely recognised, even if its expression was occasionally inchoate.⁴³ This was certainly a principle affirmed by the statements of the Sicilian crown: the role of royal power is to punish the wicked in order to protect the good; a power which extended to maintaining and preserving the peace.⁴⁴ In short, it seems that Falcandus is here employing a satirical tone: no-one could rationally assent to the bishop's proposition that ius stood on the side of those who sought to evade due punishment; what in Sicily was dismissed as "French" affectation and unnecessary pre-occupation was in fact a fundamental principle of social order, congruent with universal Christian principles of reason and justice. It was the case of the notary, Falcandus explains, and the courtly opposition

secular power was to provide peace for Christian communities by using coercive power to ensure earthly order was a fundamental pillar of medieval political thought, deriving ultimately from Augustine's *City of God*, book 19. The same idea is scattered throughout the texts of Roman law, recognising the coercion of the wicked as an imperial duty--for example, Digest 1.18.13; 2.1.3.

⁴³ See, for example, Tancred's Summula de criminibus, (c.1210), edited in R. M. Fraher, "Tancred's Summula de criminibus: A New Text and a Key to the Ordo iudiciarius," Bulletin of Medieval Canon Law 9 (1979): 29, providing the phrase "quoniam rei publice interest ut crimina non remaneant impunita." For the development of the maxim, see R. M. Fraher, "The Theoretical Justification for the New Criminal Law of the High Middle Ages: Rei publicae interest, ne crimina remaneant impunita", University of Illinois Law Review (1984): 577-96.

⁴⁴ e.g. Rogerii II Regis Diplomata Latina, ed. Carlrichard Brühl (Köln: Böhlau, 1987), 213; see too the preface to the Assizes in Monti, Lo Stato, 115-16.

Stephen encountered in ensuring an appropriate punishment for his offence which provided the catalyst for what followed, spurring the Chancellor to consider how Sicilian justice might be more thoroughly reformed.

Falcandus is, of course, far from the only twelfth-century historian to criticise the ability of powerful members of a royal court to use their connections to escape justice and evade the punishments mandated by law codes. Laments about courtly corruption are a song common to chroniclers across Europe in this period.⁴⁵ In this regard, Falcandus' suggestion that Sicily is uniquely corrupt, its depravity unparalleled in any age, does not quite ring true. However, Falcandus' narrative is founded upon the principle that the ruinous state of Sicily is, at least in part, a result of its rulers' disregard for the procedures of law and justice. The Historia makes implicit appeal to the idea that there are certain fixed legal requirements which are the foundations of good rule, and that there can be no basis for stable governance where certain widely-understood principles of judicial procedure and legal process are not applied in practice.

The idea that Falcandus is writing for an audience whom he assumes will be attuned to his concern for proper legal procedure is reinforced when we consider another episode from earlier in the Historia. In what would otherwise be a rather formulaic story of a supposedly anti-Christian plot by a Muslim eunuch at the court in Palermo, Falcandus chooses to emphasise how anti-Christian violence takes the form of interference in the processes of the law. In 1162, William I left the palace eunuch Martin ("Gaytus Martinus," or

⁴⁵ Walter Map, De nugis curialium, ed. and trans. M. R. James (Oxford: Clarendon Press, 1983), 2-9, for a representative complaint about the corruption of the court in another Norman realm.

Caid Martin⁴⁶) to administer the city of Palermo when he departed on a military campaign. What William I did not realise when entrusting this responsibility to Martin was that, according to Falcandus, Martin held all Christians responsible for the death of his brother during an earlier attack on Palermo, and saw this as the opportunity to pursue his vengeance.⁴⁷ Martin did so by accepting any accusation brought against a Christian, no matter how flimsy, and allowing it to proceed to trial by combat (monomachia).⁴⁸

It is here that the specifically legal concerns of Falcandus' critique of Sicilian rulership become evident. Trial by combat was an acceptable means of proving guilt in Sicily, iuxta curia consuetudinem (according to the traditions of the court). But Martin did not administer the procedure fairly: instead he incited young men who had no patrimony and who sought glory to come forward as accusers, assuring them that if they lost in battle they would not lose royal favour. Allegations were whipped up with little regard for whether or not the actions were well-founded. As a result, "there was now so much madness and fury in the city that anyone who had an ancient feud against anyone else, or who had verbally insulted someone in the course of litigation, immediately went to the court of Caid Martin; he was

⁴⁶ Martin was chamberlain of the royal palace and director of the duana de secretis. See H. Takayama, The Administration of the Norman Kingdom of Sicily (Leiden: Brill, 1993), 127-28.

⁴⁷ Birk, Baptized Sultans, 174-75, for Falcandus' attitudes towards Muslims.

⁴⁸ HTS, 130. For a later Italian example of laws governing the legal status of judicial duels, see Liber consuetudinum mediolani anni MCCXVI, ed. Enrico Besta and Gian Luigi Barni (Milan: A. Giuffrè, 1949), 53-54, 95-96.

always very ready to accept lawsuits of this sort, made himself available to everyone, and was especially keen to act as judge in these cases.”⁴⁹

What Falcandus presents is a subversion of the picture of justice presented by every civilian, canonist and moralist: Martin showed care (diligentia) in attending to accusations, but only in order to satisfy his own desires. Indeed, Martin had so little respect for justice that he allowed any accusation to proceed, without concern for the outcome--whoever won, his brother's death would be vindicated through the punishment of a Christian. When the stream of accusations began to dry up, Martin bent procedure further. He turned to those who were not customarily permitted to make accusations--including slaves, maidservants, and women of ill-repute (infamia). Martin changed the rules to allow these groups to make accusations, accepting claims “in the absence of proof” (vice probationum admissis). Each of these groups, permitted by Martin to bring accusations, were those whom the jurists of the ius commune considered ineligible to testify, unable of providing the evidence that valid legal action could be founded upon.⁵⁰ Once again, Falcandus is offering a specifically technical, legal and procedural critique of the moral failings of the lords of Sicily.

We may not accept Falcandus' account of Martin's actions or motivations, but what is striking is the angle of approach. Procedural injustice is no mere secondary detail of Martin's immorality--it is the substance of it. Martin's immorality is demonstrated by his willingness

⁴⁹ HTS, 130.

⁵⁰ See Bulgarus, De arbitris, 93-94; and 96, emphasising the judge's duty to examine and remove the testimony of those who are suspect. For a further point of comparison, see the principles set out in Quellen zur Geschichte des romisch-kanonischen Processes im Mittelalter, ed. L. Wahrmund (Innsbruck: Verlag der Wagnerschen Universitäts-Buchhandlung, 1925) iv, 3-5.

to set aside commonly-applied standards for testimony,⁵¹ allowing cases to proceed on the basis of an accusation made by someone of bad legal standing; an accusation which ought to have been disqualified.⁵² Falcandus here is not delving into obscure or complex questions of legal procedure: Martin encourages violations of the basic principles set out in twelfth century ordines iudiciorum. They are easily recognisable as examples of how bad character and a desire for revenge express themselves in bad judgment, disregard for justice and an attempt to set aside procedural restraints.

Stephen du Perche and the restoration of law

This world--a world where law courts are established, but no consistent rules are applied within them--is the world where Stephen du Perche is appointed chancellor. Stephen's role in the Historia thus becomes the task of changing this state of affairs in Sicily and enforcing

⁵¹ For an example: Bruce Brasington, "De testibus tractaturi: A Late Twelfth-Century Italian Canonistic Treatise on Legal Procedure," Vergentis. Revista de Investigación de la Cátedra Internacional Conjunta Inocencio III 4 (2017): 168-77; and "Tractaturi de iudiciis," in Incerti auctoris ordo iudiciarius, pars summae legum et tractatus de praescriptione, ed. C. Gross (Innsbruck: Verlag der Wagnerschen universitäts-buchhandlung, 1870).

⁵² These should not be confused with rules about the fama of the accused, for which see Chris Wickham, "Fama and the Law in Twelfth-Century Tuscany," in Fama: The Politics of Talk and Reputation in Medieval Europe, ed. Thelma Fenster and Daniel Lord Smail (Ithaca, NY: Cornell University Press, 2003), 15-26, esp. 16-17. For the question of the reputation of witnesses, see G. R. Evans, "Notoriety: A Mediaeval Change of Attitude," Ecclesiastical Law Journal 20 (1997): 629-38.

royal justice. According to Falcandus, after the first incident with the royal notary, Stephen made it his aim to enforce proper judicial process, consistently, and in every case: “he [Stephen] wanted to preserve the rigour of justice (iustitie rigorem) to such an extent that he thought that neither his friends nor even the magnates of the court should be spared. He would not allow the subject population to be oppressed by powerful persons, and would not pass over any injury to the poor by pretending to be unaware of it.”⁵³ Falcandus presents Stephen’s reforms as requiring that justice be done without regard for the judge’s personal loyalties--a rule about judicial partiality that could be found in any twelfth-century treatise on the right operation of the courts.⁵⁴ The insistence that even Stephen’s “friends” could not expect exemptions from the law also echoes the point repeatedly made by later twelfth- and

⁵³ HTS, 164-65. It may be possible to discern in this a reference to the canonist category of “*miserabiles personae*”, those in special need of the protection of the law--an idea being discussed by Stephen of Tournai in his summa in the 1160s. There may also be an echo here of Roger II’s Assizes (XV) in which Roger commends to judges the special treatment of wards, orphans, and others whom the law should take care over for reasons of piety. See James A. Brundage, “Legal Aid for the Poor and the Professionalization of Law in the Middle Ages,” The Journal of Legal History 9:2 (1988): 169-79.

⁵⁴ Cf. Bulgarus, De arbitris, 103, following Codex 7.64.3. See also Pasquale Porro, “Rien de personnel,” Revue des sciences philosophiques et théologiques 94 (2010): 481-509, and Kenneth Pennington, “Due Process, Community and the Prince in the Evolution of the *Ordo Iudiciarius*,” Rivista internazionale di diritto comune 9 (1998): 9-47.

early thirteenth-century jurists that that proof, rather than the private sympathies of the judge, ought to be the determining factor in criminal cases.⁵⁵

Of course, the fact that the “hero” of Falcandus’ text should insist on justice being done, and particularly justice being done for the poor, is far from surprising. Justice, after all, was understood to be a cardinal virtue, essential in a ruler⁵⁶: “love justice, you who govern the earth,” scripture instructed; an injunction often borrowed in medieval specula principum.⁵⁷ Establishing Stephen’s love of justice was a sure mean of indicating his virtue. However, what makes this more than a straightforward demonstration of virtue--and what turns this passage into a statement about the relationship between justice as a virtue and law as a means of achieving a virtuous society--is what follows. Stephen’s declaration that no-one would be immune from having their crimes considered by a court had a dramatic and immediate effect on Sicilian politics. As Falcandus presents it, the poor clamoured to utilise the law’s mechanisms, proclaiming Stephen as someone sent by God to restore the court to a virtuous state.⁵⁸ He is not too far from implying that adherence to legal procedure is a

⁵⁵ R. M. Fraher, “Conviction according to Conscience: The Medieval Jurists’ Debate concerning Judicial Discretion and the Law of Proof,” Law and History Review 7 (1989): 23-88, esp. 29. For a contemporary Anglo-Norman parallel, one might look to the importance of obtaining powerful friends to aid one in court, as demonstrated in the Anstey case: Paul Brand, “The Origins of the English Legal Profession,” Law and History Review 5:1 (1987): 33-4. I am grateful to the journal’s reviewer for making me aware of this similarity.

⁵⁶ Cf. I. P. Bejczy, “Law and Ethics: Twelfth-Century Jurists on the Virtue of Justice,” Viator 36 (2005): 197-216.

⁵⁷ Wisdom i.1: diligite iustitiam qui iudicatis terram.

⁵⁸ HTS, 165.

divinely-sanctioned act; an idea which echoes the claims made by a number of jurists that earthly legal procedure could be inferred from divine models.⁵⁹ Falcandus then relates how wronged parties flocked to the court in Palermo in order to launch legal actions against the powerful, whom they had previously feared to challenge. The influx of would-be claimants was such, Falcandus reports, that there were not enough judges available to examine the cases, nor enough notaries to compose the documents to begin actions.⁶⁰

We should not, of course, unquestioningly accept this narrative of Stephen du Perche single-handedly reforming the Sicilian judicial system. Even considering the relatively sparse documentary evidence available to us, it is apparent that Falcandus embellishes, offering panegyric praise for Stephen's re-invention of the Sicilian legal system. It is likely that Stephen's "restoration" of justice amounted to a reorganisation of the magna curia, the body responsible for assembling the law courts, determining which cases were to be heard, and assigning judges to cases.⁶¹ Even in this, Stephen was building on older foundations: there is evidence for the administration of justice under royal auspices as early as the 1150s, with a

⁵⁹ The canonist Paucapalea, for example, writing c.1150, explained that the requirement for two or three witnesses in canonical procedure descended from the stipulations of Moses and could be found in the Old Testament. Paucapalea, Summa, ed. J. F. von Schulte (Giessen: Emil Roth, 1890), prologue, 1.

⁶⁰ HTS, 165.

⁶¹ Evelyn Jamison, "Judex Tarentinus: The Career of Judex Tarentinus, Magne Curie Justiciarius, and the Emergence of the Sicilian Regalis Magna Curia under William I and the Regency of Margaret of Navarre, 1156-1172," Proceedings of the British Academy 53 (1967): 309.

college of royal judges established by Maio of Bari in 1156.⁶² Two more difficult questions to answer are whether there truly was any popular acclaim for Stephen's actions, and what motivated his actions. One might well read far less noble motives into Stephen's actions: in an increasingly factionalised court, an appeal to the people of Palermo and a demonstration of personal popularity could have provided Stephen with a means of insulating himself from the instability of court dynamics, even if that appeal was more a matter of style than substance. Likewise, reorganising the magna curia would certainly provide an opportunity for Stephen to demonstrate his power and the strength of his position within the court. Yet one cannot disregard completely the possibility that the historical Stephen du Perche did have some concern for what appropriate norms of law and justice should be: we encounter him writing in 1167 to Pope Alexander III to ask for advice on the appropriate legal penalties to inflict on Muslims who have attacked Christians.⁶³

Regardless of the likely gulf between the historical Stephen du Perche and the heroic Stephen du Perche presented by Falcandus, in the Historia it is law which defines Stephen's career and signals his moral character. Whether as a result of his legal reforms or the complexities of Sicilian court politics, Stephen du Perche's career in the kingdom was short lived: having alienated many powerful figures, he was forced to leave the island in 1168, in fear of losing his life at the hands of a band of conspirators. Stephen died at sea as his boat

⁶² Jamison, "Judex Tarentinus," 301-2.

⁶³ Paul Fridolin Kehr, Italia pontificia, sive Repertorium privilegiorum et litterarum a Romanis pontificibus ante annum MCLXXXXVIII Italiae ecclesiis monasteriis civitatibus singulisque personis concessorum (Berolini: apud Weidmannos, 1906), x, 232.

made for Syria,⁶⁴ and his associates were driven out of the kingdom.⁶⁵ If one subscribes to the view that the author of the Historia was a member of the party of Frenchmen who had accompanied Stephen to Sicily, then this experience may partly explain the embittered tone of the narrative.

It is also this praise for Stephen du Perche which makes the Historia such a distinctive text. The second half of the work does not describe the actions of a king, but of an official who acts not upon royal command, but in his own right and out of his own sense of moral obligation to justice. Many twelfth-century texts depict kings remaking the law, and plenty of twelfth-century law codes exult kingly authority in doing so--as a sign of royal pleasure as much as royal power. The comparison one might draw here--a comparison occasionally drawn--is with Anglo-Norman England, often cast as a state comparable to Norman Sicily in its “precocious” legal development. The final clause of Henry II’s Assizes of Clarendon (1166), a text contemporary with the events described in the Historia, underlines that any legal changes introduced to achieve justice are given their form and force through the will of the king.⁶⁶ The provisions of the Assize apply only so long as they please the king (quamdiu ei placuerit). Although the introduction to the text describes the Assizes as made with baronial advice and assent, the force of these legal changes derives from the king’s will (dominus rex vult; a phrase repeated several times in the text).

The Historia addresses a similar set of legal reforms: like the Assizes of Henry II, they aim at pursuing justice and peace by regulating access to the courts and defining how

⁶⁴ HTS, 212-13; 218.

⁶⁵ HTS, 212.

⁶⁶ Select Charters and Other Illustrations of English Constitutional History, ed.

William Stubbs, rev. by H. W. C. Davis (Oxford: Clarendon Press, 1921), 170–73.

criminal activity can be prosecuted. The significant difference in Sicily, and in the Historia, however, is who wields that power: it is not William II, nor the regent queen mother. It is Stephen, a royal agent, whose actions often go beyond merely “restoring” good law which has fallen out of use and which move close to “reforming” law and legal practice wholesale. The legal authority described in the Historia derives from royal authority, but Falcandus pays very limited attention to the legal dignity of Norman rulers. It is an unusual approach, not least because late twelfth and thirteenth-century legal theorists widely understood such powers of legal “correction” to belong to the prince and the prince alone.⁶⁷

One further possibility raised by this reading, moreover, is that the Historia in its current form should be taken as a “complete” history, intended to vindicate the posthumous reputation of Stephen, which must have been at a low ebb in the aftermath of his death. The Historia presents Stephen as faced with a near impossible task: imposing a series of legal restraints upon a courtly society which benefits from the absence of those restraints. This would explain the conclusion of the text--just as news of Stephen’s death in exile reaches Palermo--the triumph of Sicilian corruption over a virtuous man. This would also place Falcandus in emulation of the Sallustian model he so evidently admires: the Historia is not an attempt at relating the history of a people or kingdom, but, like Jugurtha and Catiline, the telling of a particularly dangerous moment in the history of the res publica. Sallust had told the story of the moral degeneration of Rome by focusing on a relatively short period of time: so too could Falcandus in Palermo.

From the time of Stephen du Perche’s arrival until his departure, legal scenes are prominent in the Historia. Authorial comment on these events repeatedly emphasises that the

⁶⁷ Cf. Kenneth Pennington, The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition (Berkeley, University of California Press, 1993).

change brought to Sicilian justice by Stephen was that common standards were now applied in every case. Thus when the master justiciars of the court presided over the trial and sentencing of a doctor guilty of poisoning the powerful Robert of Bellisina, Falcandus comments that the physician was sentenced because “he gave the judges every confidence that he had indeed committed the crime (ut plenam iudicibus fidem faceret hoc eum maleficium perpetrasse).”⁶⁸ The effects of Stephen’s legal reforms continued to be popularly heralded: the people, seeing that “no-one was being denied his rights, but that the strict rule of justice was being upheld in every judgment,” bring accusations against another powerful, previously “untouchable” figure: Richard, Stratigotus of Messina. He is indicted for robbery, murder, theft and arson,⁶⁹ and Falcandus describes judges listening carefully to the allegations made on both sides of the case and making careful inquiries into the evidence before giving sentence.⁷⁰

Falcandus’ decision to include the detail of criminal trials in his Historia must owe something to his classical models. A trial offered him the opportunity to engage in a display of learned judicial oratory, to construct courtroom speeches and incorporate them into his work, just as Sallust had done in Catiline.⁷¹ However, a desire to draw classical allusions alone cannot explain the repeated insistence that the advent of Stephen du Perche brings about justice by enforcing a change in judicial procedure. To understand the significance of this authorial choice, one must cast the net more widely, and examine the connection between law and rulership in twelfth-century historical writing.

⁶⁸ HTS, 174-75.

⁶⁹ HTS, 183.

⁷⁰ HTS, 184.

⁷¹ e.g. HTS, 187-89.

Procedural Histories

It is worth first considering Falcandus' interest in law in relation to his Sicilian predecessors.⁷² Falcandus is the only narrative history to cover the later Norman kingdom, but both Alexander of Telese (writing c.1136)⁷³ and Falco of Benevento (covering the years 1102-39),⁷⁴ composed accounts of the politics of the kingdom under King Roger. These two authors, Falcandus' immediate and "local" southern Italian predecessors, have strikingly little to say about matters of law and justice. This is all the more striking given that Falco was himself a notary and civic judge, a promotion he notes as part of the action of his chronicle.⁷⁵ When examining Roger II's legacy, for example, both Alexander and Falco discuss the king's

⁷² For an overview: T. S. Brown, "The Political Uses of the Past in Norman Sicily," in The Perceptions of the Past in Twelfth-Century Europe, ed. P. Magdalino (London: Hambledon, 1992), 191-210. For an important comparison which considers the definition of "tyranny" in both Falcandus and John of Salisbury, see Graham Loud, "The Image of the Tyrant in the Work of 'Hugo Falcandus'," Nottingham Medieval Studies 57 (2013): 1-20.

⁷³ For a detailed account of the considerations in dating Alexander's Ystoria, see the historical commentary provided by Clementi in Alexandri Telesini Abbatis Ystoria Rogerii Regis Sicilie, Calabrie Atque Apulie, ed. D. Clementi and L. De Nava (Rome: Istituto storico italiano per il Medio Evo, 1991), 224-67.

⁷⁴ See Graham Loud, "The Genesis and Context of the Chronicle of Falco of Benevento," Anglo-Norman Studies 15 (1993), 177-98.

⁷⁵ Falco of Benevento, Chronicon Beneventanum: Città E Feudi Nell'Italia Dei Normanni, ed. E. D'Angelo (Firenze: SISMEL Edizioni Del Galluzzo, 1998), [1133].

morality, but make little mention of the law. Alexander has no more complicated conception of law than as a tool used by kings to suppress wicked behaviour,⁷⁶ and he offers a conventional portrait of Roger as a king in the biblical model who loves justice, condemns evil, and follows the model of Old Testament kingship by attempting to use just rule to achieve peace.⁷⁷ Where Falcandus' account of history is structured around law, Alexander's is structured around scripture. While punishing the wicked is a central function of Roger's kingship, the mechanisms by which that justice is made to work are not described. Falco of Benevento, by contrast, has much to say about Roger's injustice: but that concept is not applied with any legal specificity.⁷⁸ For Falco--almost reversing the picture presented by Alexander--Roger's injustice derives not from his breaches of a particular law or laws, but rather his personal moral failings and his disregard for Christian codes of behaviour.

It is not the case that Alexander or Falco deliberately omitted law as a way of defining tyranny, or that they were necessarily uninterested in law. It is rather that Alexander and Falco, writing in the 1130s, inhabited quite a different conceptual world to Falcandus. By the 1160s, "law" as a category was more precisely defined, its influence more widely felt, and its particulars were much more relevant to the assessment of good rulership than they had been for Falcandus' predecessors. Breaking off from writing in the 1130s, Alexander and Falco's works do not bear witness to one of the most remarkable facets of Roger II's reign, his legal reforms.⁷⁹ Between 1135 and 1140, jurists in Palermo worked at produce a compilation of

⁷⁶ Alexander of Telese, Ystoria Rogerii Regis, prologue, 3.

⁷⁷ e.g. Ystoria Rogerii Regis, 1.21, 18-19; 4.3, 82.

⁷⁸ Falco, Chronicon, 224-26.

⁷⁹ For the context of this production, see Kenneth Pennington, "The Birth of the Ius Commune: King Roger II's Legislation," Rivista internazionale del diritto commune 17

royal legislation for Roger, a text sometimes known as the Assizes of Ariano.⁸⁰ Roger was--with judicious borrowing from Justinian and the canons--setting down a corpus of laws for the new kingdom, and ambitious project, laws reflecting his own ideas about royal dignity.

One of the questions to be considered in this regard is exactly how different the legal world of Falcandus looked from that of Alexander or Falco. Part of the problem, of course, is that we have no secure dating for where or when Falcandus was writing. If we put it towards the end of the likely window--post-1189, after the death of William II--we place the text in a world which was increasingly saturated with law, and where the professionalisation of the Sicilian judiciary continued apace. Yet even were the date of composition closer to 1169 (the moment at which the history breaks off), legal development had been considerable. Roger's later reign had built a framework which the many types of law in the kingdom could be fitted into, a set of legal relationships which could be articulated. Of course, the difference between the Historia and its predecessors may in part be a matter of subjective authorial experience: Falcandus' position at court (whatever, precisely, that was) meant that legal matters and legal reforms impinged more directly on his life and career than they had for Alexander, a Benedictine abbot. However, it would be unwise to overlook the fact that a structural change had taken place in the kingdom: law mattered markedly more to Sicilian royal self-definition and governance in the 1160s than it had done in the early 1130s. Falcandus, like John of

(2006): 23-60; see also the Ystoria Rogerii Regis, 1.21, 18, which does mention Roger setting down an edict at a meeting of his nobles in Melfi. Clementi's commentary on the text (181) emphasises the positive reception of Roger's "vigorous" approach to law by southern Italian landholders.

⁸⁰ For the misleading implications of the label "Assizes," see Pennington, "The Birth of the Ius Commune."

Salisbury, was writing in a world which had been radically reshaped by ideas of shared standards of judgment, and where legal process mattered as much as legal verdict.

Roger II was far from alone among twelfth-century rulers in appreciating the utility of law. Indeed, it is almost a truism to recognise that rulers experimented with law both in order to take control of their domains, but also to enhance their personal dignity and prestige--from Henry II in the Anglo-Norman realm, to Frederick II at the end of the “long” twelfth century. The new “legal consciousness” undoubtedly permeated historical writing: law could not but be written into histories.⁸¹ Law was an essential context for history, whether it was the fact of a king who now asserted himself as the head of a legal system in a manner quite unlike any of his ancestors had done before him;⁸² or the fact, for ecclesiastical historians, that so much church business was now occupied with matters of lawsuits and legal arguments.⁸³

This “legal” tendency in historical writing became increasingly pronounced across the twelfth century, and is much more observable in its latter half. It is evident across many different types of history, becoming part of the narrative in any number of ways. One may

⁸¹ The other connection between law and history lay in the common understanding--derived from classical rhetoric--that the writing of history required many of the same rhetorical skills as courtroom oratory. For discussion, Matthew Kempshall, Rhetoric and the Writing of History (Manchester: Manchester University Press, 2011), 243.

⁸² Bjorn Weiler, “The King as Judge: Henry II and Frederick Barbarossa as seen by their Contemporaries,” in Challenging the Boundaries of Medieval History: The Legacy of Timothy Reuter, ed. P. Skinner (Turnhout: Brepols, 2009), 115-41.

⁸³ Alain Boreau, “How Law Came to the Monks: The Use of Law in English Society at the Beginning of the Thirteenth Century,” Past & Present 167 (2000): 29-74, for law as an inescapable reality even for those separated from the world by monastic life.

consider two quite differing examples from authors active in the later twelfth century. First, Ralph Diceto, the Dean of St Paul's, writing a universal chronicle running from the birth of Christ to his own times, the late 1180s, included a digest of the prologue of the canonist Ivo of Chartres in his Abbreviationes chronicorum.⁸⁴ Ralph considered that work, discussing the relationship between law and morality and how law shapes human actions, to be a document worthy of study by those who would read or write histories. Secondly, the preface to Gervase of Tilbury's Otia imperialia (c.1214), written for Otto IV--a work which describes the wonders of the natural world and the history of the world, a work of recreation--begins with an exploration of the authority of law, quoting from both the Decretum and Justinian's Institutes, and explaining how law and natural law shape the duties of rulership.⁸⁵ In short, legal analysis, whether in the description of trials as important historical events, or in more careful reflection upon legal ideas and precedent, was an inescapable context for the writing of history. To ignore it would have been to ignore one of the engines of historical action. By the late twelfth century, the justice of a ruler was no longer measured as a matter of virtuous action--instead it was also about how justice was realised through adherence to legal codes and legal argument. One did not have to be a trained lawyer to make this point: one only needed to have observed the increasingly prominent place that the law courts, and the written administration and bureaucracy accompanying those courts, were coming to play in society. It is fundamentally unsurprising, then, that Falcandus would use the law as a means of

⁸⁴ Ralph Diceto, Abbreviationes chronicorum, in The Historical Works of Master Ralph de Diceto, Dean of London, ed. W. Stubbs (London: Longman, 1876), 24-33.

⁸⁵ Gervase of Tilbury, Otia imperialia, ed. and trans. S. E. Banks and J. W. Binns (Oxford: Clarendon Press, 2002), 7. Gervase himself had studied canon law at Bologna, and taught there for a brief period.

navigating the dynamics of Sicilian history in the 1160s; nor is it surprising that he would resort to the law to strengthen the position of the Stephen du Perche, the champion of the latter part of the Historia.

We know next to nothing about Falcandus. The fact that he was interested in what law meant and how it was exercised need not mean that he had personally studied law. One should note, moreover, that Falcandus' critique is not always a strictly legal one, and his vision of "law" is closely intertwined with ideas of virtue. In listing the ways in which Sicilian magnates have offended, Falcandus often elides (or fails to make a distinction between) defined legal offences and transgressions of moral codes of conduct, sometimes resorting to bringing a catch-all accusation of iniustitia against his target.⁸⁶ Nor, moreover, are the legal principles which Falcandus sets down particularly sophisticated, complex or representative of the cutting-edge of later twelfth-century jurisprudence. He is concerned with the basics of procedure, not the subtleties of legal argument. Indeed, this may be one reason why the "legal" dimensions of the text have been so often overlooked in modern scholarship. The points of judicial procedure on which Falcandus insists--that allegations should be followed by a response from the accused, that judges should scrutinise the cases they preside over--seem, *prima facie*, utterly unremarkable, even rather banal.

If one wished to play down the significance of procedure in Falcandus' history, one might argue that it merely represents a continuation of long-standing political and rhetorical traditions which exulted the importance of royal justice and the role of the king in ensuring peace; the same themes as found in the arenga to Roger's Assizes. On that account, the Historia is a political, not a legal document. But this cannot be the case, for two reasons. The first is textual. Falcandus' vocabulary is technical and legal. Even if the legal rules set out in

⁸⁶ e.g. HTS, 166.

the Historia are not the most complex, this cannot be said to be merely a continuation of old patterns. At the very least, the Historia introduces and integrates new kind of vocabulary into the language of royal authority; setting up “procedure” as a means of assessing the quality of justice. The second, and perhaps more important reason is one I have already touched upon. This text represents a break with older notions of kings-as-peacemakers because, quite simply, the bringer of peace is not a king, but a royal officer--a man specifically recruited and brought from France in order to undertake a specified role in the administration of Norman Sicily. The power to do justice may, in theory, flow from the royal person of William II, but in practice justice is only done through the determination of Stephen du Perche to measure law, to apply rules appropriately and correctly. The text is political and “royal”, but it is no less legal and “official”.

The Historia is not, sensu strictu, an ordo iudiciarius, yet it is unmistakably marked by the concerns which informed the writing of such treatises. Thus, if Falcandus’ devotion to Sallust marks him out as a participant in a twelfth-century renaissance in historical writing, then so too does the “legal” hue of his work indicate his place in a historical tradition newly emerging in the twelfth century: where the law becomes as important an institution of kingship; one worthy of notice and comment by those who chronicle the unfolding of events in the saeculum.

This leads us, however, to the apparent contradiction in the Historia, and one of Falcandus’ rather awkward contortions. As I have emphasised throughout this article, Sicily in the earlier twelfth century had not been intellectually isolated from the “recovery” of Roman law in Latin Europe, nor physically excluded from the Europe-wide exchange of trained jurists and students. Roger II--whose style of kingship was a kind of bricolage, borrowing and adapting whatever traditions would support him--was no less keen to take from Justinian than he was from Byzantine and Islamic rulers. Roger recognised, as the

prologue to the Assizes of Ariano makes evident, what claims about the authority of law could do both for his own royal image and the status of his kingdom. Law empowers the king to set straight the workings of justice and mercy which have become warped,⁸⁷ asserting the power of judgment is a godlike thing. Roger's laws, of course, left much space for what was customary in Sicily, noting that existing usages, customs and laws were not abrogated unless they were in contradiction with royal edicts.⁸⁸ Roger and the jurists in his service thought not only about how law might heighten royal authority, but how law demanded control over royal officers. Procedural checks were built in: discussing how to punish judges who acted fraudulently or contrary to the laws, and how they might be removed, with severe punishments to prevent this.⁸⁹

Where, then, are Roger's laws, and Roger's judges, in the Historia, and the legal system he bequeathed to his son and grandson? They are nowhere reflected: one could be forgiven for reading Falcandus' Historia and assuming that Sicily in the mid-1160s was almost a legal terra nullius, untouched by the procedural innovations of the ius commune (or else, that Roman-style law had been so long in abeyance that it had been entirely forgotten). Falcandus' Sicily is also a place of extreme polarisation, where good rulership and wicked misrule are absolutes, and where law and adherence to lawful procedure is a demonstration

⁸⁷ Cf. Roger's preface to the Assizes in Monti, Lo Stato, 114-16.

⁸⁸ For those customs, see Paul Oldfield, "The Bari Charter of Privileges of 1132: Articulating the Culture of a New Norman Monarchy," Historical Research 88 (2015): 577-98.

⁸⁹ Assizes, XLIV, 156-57; Pennington, "Birth of the Ius Commune," notes that Roger's punishment for judicial malfeasance was considerably more severe than the Roman models the compilers were drawing upon.

that one is on the side of the angels. Some protect the citizens through ratio and ius; others manipulate the law in order to exert their will. Stephen du Perche is engaged in a valiant struggle to assert the rightfulness of procedural justice, endeavouring to create something straight and standardised out of the crooked timber of Sicily. The line of demarcation is strict.

The picture painted by Falcandus, however, bears little relation to what we understand the reception of the learned law to have looked like in other parts of Italy in this period. Chris Wickham's work on Tuscany has emphasised how the twelfth century saw Roman-style law coexisting and complimenting other older forms of legal practice and customary approaches to disputes.⁹⁰ Roman law had its ideological advantages, but it was not transplanted wholesale--it was grafted in, used when useful. Falcandus, however, frames this as a stark choice, and a political, not social narrative. Either one must follow procedure or fall into tyranny; ius is a zero-sum game. The contrast is rhetorical, and it is not supported by the historical evidence. Clearly, legal reform was being discussed in Sicily long before Stephen du Perche, and interest in justice and lawful good order did not die with his exile.

The reasons for Falcandus' stark, black-and-white view of the world, where virtue and procedure are inseparable, stem, I suspect, from the conventions of medieval historiography. For medieval authors, history followed a classical, Ciceronian rhetorical mode. It invited the reader to choose between two types of behaviour: the wicked and the praiseworthy, examples

⁹⁰ Chris Wickham, Courts and Conflict in Twelfth-Century Tuscany (Oxford: Oxford University Press, 2003); see also Susan Reynolds, "Rationality and Collective Judgment in the Law of Western Europe before the Twelfth Century," Quaestiones Medii Aevi Novae 5 (2000): 3-19, and Emanuele Conte, "Roman Law vs Custom in a Changing Society," in Custom: The Development and Use of a Legal Concept in the Middle Ages, ed. Per Andersen and Mia Münster-Swendsen (Copenhagen: DJØF, 2009), 107-22.

to shun and examples to emulate. Falcandus lay his understanding of law over this exemplary framework; procedural probity became attached to moral goodness; both were absolute and uncompromising standards. At the very start of the Historia, Falcandus' had reminded the reader that his own models of virtue, the ancient romans, had "kept death masks of their fathers in their homes, so that the achievements of their fathers would always be before their eyes"--another image which he took from Sallust.⁹¹ For Falcandus, in Norman Sicily, law functioned in a similar way to those death masks hanging in Roman homes: it was not simply a tool, but an object of reverence, a reminder of past glories and future aspirations--a demonstration of the virtue of the individual, and of the virtue of the society which preserved and venerated it.

⁹¹ HTS, 55-56. See Sallust, Jugurtha, iv.5.