LIVING WITH CONFLICTS IN STATELESS FRANCE: A TYPOLOGY OF CONFLICT MANAGEMENT MECHANISMS 1050-1200

Along with keeping the peace, administering justice has been a paramount function of government in the western political tradition. Public justice is a keystone of modern social and political order, and for over six centuries has been both the goal of and often the mechanism for the creation of the nation state. In contrast to other societies such as that of Japan, where contracts and conflicts, both private and corporate, seldom require the intervention of courts or legal specialists, the West has become accustomed to seeing more or less centralized, formal institutions of justice within which the normal disputes and frictions of living in complex society can be ironed out. This is not of course to say that in contemporary French or American society conflicts and disputes normally lead to the courtroom—on the contrary, the vast majority are settled "out of court" through some sort of informal or extra-legal compromise.

1 Preliminary versions of this paper were presented at Loyola University of Chicago, The Western Society for French History, and the Ecole des hautes Etudes en Sciences Sociales. The author is grateful to Professors Jean-Paul Poly, Stephen White, Kermit Hall, Barbara Rosenwein, Francis X. Hartigan, and Bertram Wyatt-Brown for their criticism and advice.

2 Martin Mayer, The Lawyers (New York: 1967); James Willard Hurst, The Growth of American Law: The Lawmakers Boston: 1950. For a recent, transnational examination of the literature on dispute settlement seen Mark Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) about our Allegedly Contentious and Litigious Society," U.C.L.A. Law Review vol. 31 (1983) pp. 4-71. Galanter points out that much of the current attention on comparative litigation is based on false perceptions. For example, comparative statistics of judges, lawyers, and civil cases per million of population for France, Italy, the United States, and Japan (p. 62) are as follows:

<table>
<thead>
<tr>
<th>Country</th>
<th>Judges</th>
<th>Lawyers</th>
<th>Civil Cases</th>
</tr>
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<tr>
<td>France (1973)</td>
<td>84.0</td>
<td>206.7</td>
<td>30.67</td>
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<tr>
<td>Italy (1973)</td>
<td>100.8</td>
<td>792.6</td>
<td>9.66</td>
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<td>U.S. (1980)</td>
<td>94.9</td>
<td>2348.7</td>
<td>44.0</td>
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<td>Japan (1973)</td>
<td>22.7</td>
<td>91.2</td>
<td>11.68</td>
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For a discussion of the interpretation of these statistics, which indicate that while Japan may have fewer professional judges and lawyers, its litigation rate is in fact higher than countries such as Italy, see Galanter, pp. 57-61.

3 On the percentages of grievances which actually end up in court filings see Richard E. Miller and Austin Sarat, "Grievances, Claims and Disputes: Assessing the Adversary Culture," Law and Society Review vol. 15 (1980-81) pp. 525-566. A
However, encouraging such private conclusions is the knowledge, shared by all parties, that there exist public courts which will, in time and after considerable expense, provide definitive judgments to which all parties will be required, or even forced if necessary, to adhere. Thus, whether the judicial system is actually engaged to resolve a conflict or simply invoked, overtly or tacitly, to press for a conclusion, courts capable of rendering relatively impartial, definitive decisions and of enforcing those decisions are an essential part of the fabric of western society.

Not surprisingly, therefore, medieval historians, reflecting on the period of western history when such courts were either non-existent or when courts’ jurisdiction extended over only unfree elements of society, have been perplexed by the seeming lack of means of social control and conflict management. From a modern perspective, or even from the perspective of the fourteenth century, such societies appeared anarchic. In the past, legal and institutional historians in particular have found themselves on unfamiliar terrain and tended either to pass over the feudal period as a primitive stage of organization, to dwell on private courts exercising jurisdiction over dependents, or to dismiss the means of conflict resolution, feuds, and the like, as more evidence of “feudal anarchy.”

The traditional view of legal historians such as Y. Bongert was that between the demise of the Carolingian comital court system in the tenth and eleventh centuries and the rise of royal and comital courts in the late twelfth, there existed no institutions by which the "feudal anarchy" of the period could be mitigated. The pioneering work of Georges Duby on the judicial institutions of Burgundy first published in 1946 seemed if anything to reinforce this image since, as he brilliantly demonstrated, the traditional forms of public judicial institutions, in particular the courts of the count and bishop, gradually evolved into voluntary tribunals of arbitration. By the end of the eleventh century, he concluded, "seules des obligations morales et l'influence persuasive de leurs pairs

study conducted in the U.S. in 1980 indicated that for every 1000 grievances (defined by the authors as the combination of an event and the willingness on the part of individuals to label that event as a grievance) only 50 actually resulted in court filings. p. 544.


However, while seeming to confirm the conclusions of generations of legal historians, Duby's examination also pointed to way for a new approach to understanding the institutions of social control in feudal Europe: True, one should not look to the courts of decentralized France for an understanding of these mechanisms. Rather, one must examine the moral horizons and extra-legal forms of social pressure to understand what had replaced the old Carolingian legal structures. In other words, an understanding of the means by which conflict was handled in feudal France is possible not through the methods of traditionally conceived institutional and legal history, but rather through the methods the social and cultural historian.

Duby's challenge to examine these social and moral dimensions has been taken up by a number of American and European medievalists who have begun to change the way that conflict and dispute mechanisms in feudal Europe are to be understood. The first to begin to give some shape to the social structures involved in these "obligations morales et l'influence persuasive de leurs pairs" was Frederic Cheyette, who in a 1970 article examined the role of compromise settlements in dealing with disputes in the Midi. He argued that prior to the middle of the thirteenth century, conflicts were seldom settled by authoritative courts in accordance with objective legal criteria. Rather they were worked out by arbiters, either formally chosen or simply friends and advisors, whose goal was not to judge according to a set of rules but rather to find a solution that would defuse a real or potentially explosive situation.

Following Cheyette's lead, Stephen White examined the general thesis developed by Cheyette, namely that conflicts not settled by war were settled by compromise arranged through informal and voluntary use of arbiters, in the West of France in the eleventh century. He concluded that:

Compromises were not reached, as judgments were, through the application of only a few rules deemed legally relevant to a dispute. Instead, they took account of conflicting obligations and of concerns about social ties as well as property rights...[and] served...to reconcile disputing parties and to create social ties of the sorts that collectively constituted the formal

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6 Hommes, p. 46.

7 "@U(Suum Cuique Tribue" @U(French Historical Studies vol 6(1970) pp. 287-99.
social structure of the communities in which disputes took place... 

Most recently, Stephen Weinberger has examined conflicts between clerics and laity in Provence and has found that such conflicts, rather than being evidence of "feudal anarchy," represent rather that the laity in conflict with the church are attempting to defend their hereditary rights against claims of the church based on legal titles.

In a different but closely related area, Lester Little, and others, have examined a variety of rituals by which religious communities attempted to coerce their opponents in the course of disputes. These rituals, which included various forms of liturgical clamores or cries to God and his saints for justice, appeared most frequently in monastic liturgical books of the tenth through twelfth centuries, precisely the period when such justice was not available through human institutions.

As a result of all of these new studies, it is becoming increasingly clear that the image of conflict in feudal society is an extremely complex one, and one which is more closely related to the structures of society and culture than to legal tradition. Medieval society had a wide variety of non legal means with which to deal with conflict, and these appear evidence of anarchy only when observed from within the anachronic perspective of legal history.

Much remains to be done before the nature of conflict in feudal France can be adequately understood. In the past twenty five years, an important number of specific regions' judicial institutions have been examined and a chronology of the transformation of Carolingian judicial institutions may soon be

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9 "Les conflits entre clerics et la<@i(cs dans la Provence du Xie si|cle," Annales du Midi vol. 92(1980) pp.269-279


possible. However, more careful studies of the transformation of judicial institutions in specific regions along the model of Duby's Burgundian work and Henri Platelle's studies of St. Amand are needed. Likewise, more examinations of the make-up and functioning of courts of arbitration like those of Cheyette, White, and Weinberger are necessary. In addition, examinations of the rituals by which conflicts were directed and transformed are essential, and one waits with great anticipation for the completion of Lester Little's study of the liturgical clamor in France, Italy and Spain.

In addition to such examinations, one must also to rethink the conceptual models within which to understand the place of conflict in feudal society. The traditional legal model of dispute settlement is, as is now clear, inadequate. Instead, medievalists must begin to look for different conceptual frameworks, and those most likely to be of use to us are found in the rich and often contradictory literature of legal anthropology. Medieval historians are by no means the first


scholars to encounter societies which deal with conflict and
dispute without benefit of impersonal centralized institutions of
justice capable of rendering and enforcing definitive verdicts.
Many such societies exist, and while medieval Europe was
radically different from the world of the Barotse of Northern
Zimbaubi or the !Kung Bushmen of Kalahari, the experience of
anthropologists studying how these and other societies deal with
social tensions can assist us in formulating the categories
within which to understand medieval Europe. The following, then,
is an attempt to suggest a preliminary model for understanding
medieval conflict.

I The Example of Chorges

To illustrate the salient
characteristics of medieval conflicts we will first examine in
some detail one such dispute and then use it to explore the
underlying structures and processes in similar cases. The
specific example under consideration concerns a late
eleventh-century dispute between the monks of St. Victor of
Marseilles and a group of milites in the area of Chorges
(Haute-Alpes, near Embrun). The apparent issue was a quarrel over
the possession of the sponsalicium, that is the foundation
endowment, of the priory of Chorges which had been donated to St.
Victor in 1020. The prior's determination to present his version
of what transpired between the monks and the laymen resulted in
the inclusion in the cartulary of St. Victor of a long (ten pages
in the Guerard edition)\textsuperscript{15} narrative of the conflict. In fact a
sort of mini-chronicle, the text presents the prior's view of the
conflict, which may be perceived as a social drama within which
certain fundamental issues of hierarchy, local community
structure, and relationships were acted out.

This drama was performed against a background of general
crisis of authority in the region which began with the death in
1062/63 of Count Joffred of Provence and became overt when his
son, Bertrand, the last representative of the comital house, died
in 1090 or 94, precipitating a rivalry between the counts of
Barcelona and Toulouse for control of the region.\textsuperscript{16} To this
political crisis was added the turbulence of the Gregorian reform
in Provence which was particularly hard fought and violent. The
simoniacal Bishop Ribert of Gap had been deposed, probably by
Pope Nicolas II, in spite of great opposition on the part of the
local knights which resulted in Pope Alexander II placing the
diocese under interdict. His successor, a monk of la Trinité de
Vendôme, Arnulf, so displeased the local knights that he was

\textsuperscript{15}B. Gujrard, ed. Cartulaire de l'Abbaye de Saint-Victor de

\textsuperscript{16}Jean-Pierre Poly, La Provence et la Societé fJodale
assassinated by one of them in 1074.\textsuperscript{17} There resulted a vacuum of public authority and, in the words of a charter from Montmajor "because of this there was no duke or marquis who could make right justice, every lay order from the lowest to the highest daily practiced its injustice."\textsuperscript{18}

The text begins in media res with the death, excommunicate, of Poncius de Turre, one of the knights who had held the sponsalium in spite of the monastery's protests. In order to have him buried in consecrated ground, his kin agreed to abandon all the property demonstrably part of the original donation and in return to hold in fief certain mansiones. The prior, demurred, saying that the final approval had to be given by Cardinal–Archbishop Richard who was abbot of St. Victor.

At the meeting presided over by Count Isoard of Gap\textsuperscript{19}, the monks representing the abbot and the knights approved an accord in the absence of the archbishop, but claimed that one part of the sponsalium, the manors of Benedet Pela, had later been divided into two mansi, those of Salamus and Ferreng. Since the charter of donation did not mention these two properties by name, the knights insisted that they had never been part of the sponsalium. The meeting ended in confusion.

The knights then went to their lord, Archbishop Lantelmus of Embrun, and said that the prior, by bringing the matter to the count, had acted against the archbishop's interests. The latter was furious and reprimanded the prior. Nevertheless, he allowed the count to arbitrate the issue. In the meantime however, the knights and the monks began to prepare for battle.

To prevent violence an assembly was held at which the count and the archbishop asked their advisors (judices), assembled in the Church of St. Christopher, how best to conclude the dispute. They suggested that Peter Pontius should ask his mother about the extent of the sponsalium and then that he should show it under oath. Prior William rejected this, insisting that the saints and the monks might lose simply through the ignorance of Peter. He was assured however that if he could prove more property than that which Peter showed, the monks could have it. Then Peter and Peter de Rosset were called and informed of the agreement (placitum). They were compliant, and Peter Pontius gave a pledge (fideiussor) in the amount of 100 solidi in the

\textsuperscript{17}Poly, 261-62.

\textsuperscript{18}"propter hanc causam quid tunc temporis non erat dux nec marchio qui rectam justiciam faceret, sed a minimo usque a maximum omnis laicalis ordo quotidiam iniustiam exercebat."Poly, p. 208 note 216.

\textsuperscript{19}Isoard de Mison was actually a vicount, originally an agent of the count subordinate to the bishop who had profited from the situation to assume the comital title. See Poly, p. 203.
hands of the archbishop as guarantee that within four days he would indicate the totality of the sponsalium and swear his oath. On the appointed day however, he indicated only the property as he had previously acknowledged. He agreed to swear his oath the next day, but on the morrow he was nowhere to be found in the entire village.

Some time later Peter de Rosset asked Prior William to intervene before John's lord, the count, to obtain permission for him to marry John de Turre's widow and his son John's daughter. William was hesitant because his widow was under excommunication for continuing to hold part of the sponsalium and he feared that through the marriage he would loose Peter's amicicia. Peter promised that if William would assist him, he would make her renounce the property before marrying her. William agreed and arranged the betrothals. However, when the knights and monks met to discuss their agreement at a placitum the former insisted that the monks give them forty solidi in return for their curpito. The monks refused, the groups parted sine amore, and the knights had to celebrate the marriage without the customary blessing.

Shortly after, the knights robbed a priest of St. Victor who was passing through Rosset with wine for the priory. When William went to demand them back, he was roundly cursed. He then appealed to the count who called Peter de Rosset before him, demanded gages, and ordered him to surrender the entire portion of the sponsalium which he held unjustly, to end his "malefacta" and to recompense the monks for the injuries done them. A few days later, Peter and his sons went before the archbishop and surrendered the property into his hands in the presence of the monks. In turn, the archbishop released him from excommunication.

This forced settlement lasted only as long as the count was in the area. As soon as he went on crusade in Spain the knights again began to harass the monks. Again they were excommunicated, but this only encouraged them to redouble their attacks. They pastured their animals on the sown fields, cut down trees on the property for firewood, appropriated offerings destined for the church, and even prevented the monks from bringing the last sacraments to the dying Bailiff Martin, going so far as to throw the eucharist and the cross out of the house when the monks arrived at the bedside. When Martin died the monks buried him, but from the money which he had willed to the priory, Peter Poncius and Peter de Rosset took ten solidi and gave them instead to another monastic community, that of St Michaels. The monks appealed to the countess but without effect.

Later, when the knights' lord, Archbishop Lantelms, visited Chorges, he forced them to acknowledge that the disputed manses belonged to the sponsalium in a three step process.

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20 One might wonder if such a violent attack on the eucharist and crucifix did not already suggest the presence of the heresy which would appear in the region a short time later.
First, he secured the knights’ pledge that they would do what he commanded them concerning the property which they held from him in fief and secured their promise with a warranty of 200 solidi and two fideiussores. Then, the archbishop forced (his?) bailiff Peter to come before him in the church and testify concerning the sponsalicium by threatening him with excommunication. Peter reluctantly admitted that the manse of Benedet Pela belonged to the sponsalicium. Outside the church Archbishop Lantelmus forced the knights to admit that the property belonged to the sponsalicium or lose their fiefs.

Following this formal recognition, the archbishop sought a compromise. He assembled the two parties and offered to retain the knights as vassals from the half of the tasche of Benedet Pela and from certain mansiones. The knights, however, refused, claiming that they would rather surrender one half of the manse of Benedet Pela and give the monks other property, or they would be willing to hold the entire property in fief of the monks and to pay an annual census. The archbishop refused these counter offers and the compromise failed: the knights continued to hold the disputed property as before.

Prior William brought the matter up once again when the count of Urgelle came to Chorges. Once more the monks and knights appeared and repeated their claims and counter claims. Much of the sparring this time involved finding reliable witnesses whose testimony would be acceptable to both parties. William suggested the sons of one Guina Tasta Ceias, but Bruno Stephanus replied that they were too young to be suitable; William then offered the death bed testimony of father, but Bruno, perhaps with sarcasm, asserted that a dead man was too old to serve as a witness. Finally the bailiff Peter was again selected. He repeated his oath sworn at the previous meeting, acknowledging that the disputed mansus and several other properties had been part of the original sponsalicium, and all agreed to accept his testimony. The knights returned the property into the hands of the archbishop and the Count Isoard urged William to accept the knights as his vassals (thus returning the property to them in fief). William agreed in principle but insisted that such a decision could only be made by the absent

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21 Bailiffs of the counts and of the bishops were a relatively recent innovation in the region. The "bail" which they held was more precarious than a fief and hence Peter was under great pressure to cooperate. See Poly, p. 203.

22 Count Ermengaud, who died ca. 1090. See Poly, p. 272.

23 This death-bed confession made to the prior in the presence of his children would have been inadmissible in a court of Roman law because it was not first hand. Even in such negotiations as these one sees the memory of Roman law which was once more beginning to make its way into daily life.
abbot of St. Victor. He attempted to arrange a meeting between Peter de Rosset and Peter Poncious and the abbot, but the two knights refused to attend.

Only when the abbot came to Chorges itself did they meet with him. This time they admitted that the manse of Benedet Pela and several other disputed properties had been part of the sponsalicium. However William pressed them to acknowledge not only the properties that Bailiff Peter had specifically enumerated but also others apparently included in his general description of the sponsalicium. This the knights refused to do without further sworn testimony. However, because the only person whose testimony the knights would accept, William Peter (possibly the son of Bailiff Peter, who may have died in the interim), was not the abbot's vassal, the abbot could not force him to provide an oath. At this point the abbot stated that one would have to wait for Archbishop and Count Isoard to report what the bailiff had testified. Whether or not this ever took place is unknown, since the account ends at this point with the bitter comment, "Et ita remansit."24

Analysis: Conflict as Structure

This greatly simplified account of the dispute might at first seem to support the traditional image of conflict in eleventh century society as something close to anarchy: the avaricious knights; the weakness of the count; the inadequacy of the various attempted settlements, all might imply a society without order or control. However, when one examines more closely the background and the various phases of the dispute, one recognizes a carefully structured series of events touching on the fundamental issues of status, power and lordship in the region of Chorges during a period of rapid social and institutional change precipitated by the reform movement and the conflict over the disputed Provençal succession.

Initially, we must begin with the recognition that in eleventh century Chorges as indeed in most societies including our own, strife played an integral and on the whole constructive role in daily life.25 Strife was an organic part of the organizational structure of this society. The social units to which one belonged had different interests, the pursuit of which naturally led to disputes both with other similar groups (kindred vs. kindred; monastery vs. monastery; lord vs. lord) and between

24 The conflict, which would gradually be transformed in the twelfth century into a question of competing jurisdiction of the count and archbishop, would continue for well over a century. See Poly, La Provence, p. 203 and notes.

kinds of groups (lay vs. ecclesiastic; family vs. feudal following; regular clergy vs. secular clergy.) The prior, the archbishop, and knights were each involved in different pursuits in harmony with different values, some of which conflicted with those of others. The Prior was concerned with the territorial integrity of his institution's property, a concern for which he would have to render an account both to the powerful abbot of St. Victor of Marseille and to St. Victor himself; the Archbishop was likewise concerned with the temporalities of the diocese, as well as with his relationship as feudal lord with his vassals. The knights were eager to protect what had become hereditary family rights in their locality.

In addition, conflicts arose from the pursuit of interests between different orders or social levels: lord vs. peasant; town vs. countryside; bishop vs. lower clergy. The origin of conflict was not limited to tensions within the social fabric—the very religious understanding of the relationship between the natural world and human actions prevalent in the culture led inevitably to alterations. Because every aspect of the world was understood as having a direct meaning in human life, then what we would today call "natural disasters" were understood as endowed with meaning and demanding retribution or at least some sort of human reaction against those judged culpable—plagues, famines, floods, or crop failures thus meant that the Jews, witches, heretics, sinners, or kings who had been perceived to have directly or indirectly caused them had to be destroyed, expelled, punished or corrected, depending upon the circumstances and interpretation within the community.

In the small village and county communities of continental Europe these conflicts were not limited, as they often are today, to one relationship or one aspect of a complex social fabric. In medieval society daily or at least frequent contacts with one's opponents was inescapable. Thus, conflict was a constant and ongoing part of one's entire life as enemies were forced to encounter one another, perhaps even to work together, and certainly to pray together, on a frequent basis. This constantly reinforced atmosphere of hostility involved, ultimately, not only the opponents themselves and their immediate families, but the entire community. Every conflict had the potential to draw into it a wider society; individuals and families were forced to take sides, to define their relationships to the principal participants. In the conflict at Chorges, this is particularly evident. One sees a conflict which involves not only the prior and the de Turre brothers, but also the vassals of each of these, their lords (the abbot and the archbishop respectively), their kin, and ultimately their neighbors who are forced to testify for or against them. The circle of conflict becomes progressively wider.

The fatal magnetism which individual feuds exercised on society at large is perhaps best illustrated in contemporary literature. The essence of the tragedy in medieval epics and sagas is often exactly this, that a man, burdened by complex
obligations to estranged parties, is ultimately and fatally drawn into their conflict. Neutrality was unthinkable. The most obvious example is the conflict between Roland and his father-in-law Ganelon, which ultimately leads to the deaths, not only of the two principals, but also of the peers, numerous Frankish knights, and thirty of Ganelon's kinsmen (not to mention thousands of Saracens). At Chorges, the prior attempts to avoid seeing Peter de Rosset drawn into the web of conflict knowing that he risks losing his friendship; the bailiff Peter attempts to avoid testifying because he knows that to do so will mean to place himself within the conflict. In both cases, these efforts to escape the conflict come to nought.

From this process of taking sides, of testing bonds, came not only social antagonism but cohesion as well. Dispute thus served to define the boundaries of social groups: kindreds, vassal groups, patronage connections, and the like. Moreover, conflicts created new groups as individuals or parties sought new alliances to assist them in pressing their claims. Finally, every conflict tested the implicit, preexisting social bonds and hierarchies, and in every new outbreak of dispute the existing ties had to be reaffirmed or denied. The Chorges dispute tests and reinforces the bonds uniting the de Turre and de Rosset groups, tests and strengthens the loyalty of their vassals and amici, and forces the entire local community to define itself in relationship to the two sides. By the end of the account (which is not the same as the end of the dispute), the knights have reason to doubt the strength of their bonds with their lord, the archbishop, and to take comfort in the loyalty of Bruno Stephanus and their other vassals who have proven their devotion. The archbishop and the monks, who had often faced each other as

opponents, have drawn closer together in their mutual effort to end the conflict.

Like the dispute over the sponsalicum itself, the narrative does not begin at the "beginning" and carry through to the "end." This is typical of such records because these conflicts were such an essential part of the social fabric that one can hardly speak of them in this society having a beginning, middle and an end. They were more structures than events—structures often enduring generations. The basis for social forms themselves was often a long term, inherited conflict without which social groups would have lost their meaning and hence their cohesion. As historians, then, our interest must be less in how these long-standing antagonisms were resolved than rather how they were handled. The uses of conflict are more significant than either the "causes" or the "resolutions" of discrete incidents since both the beginnings and the endings which appear in our sources are seldom really that. They are rather evidence of significant moments when deeper conflictual structures break into the open, are used for certain social purposes, and then seem to disappear only to reemerge later.27

These outbreaks or manifestations of conflict are not random but involve rather issues particularly critical to that portion of society which we can glimpse in our texts. These issues are land and land use, lordship, and honor, the latter being at once a concrete term including the first two and a broader category of the public, ritual recognition of status and enjoyment achieved through the others, its opposite being the honte feared above all else in chivalric society. Likewise, the forms of dramatic outbreaks of conflict in this society was far from random. These included often the violent seizure of property, the killing or capturing of opponents, and the real or ritual exercise of power over persons or things in dispute. All of these characteristics are present in the above example. The apparent issue is land, however, in order to understand the background one must return to the foundation of the priory and the original donation of its sponsalicum by Archbishop Rado of Embrun and Isoard de Mison in 1020.28 The foundation gift included a manuscript identified by the name of the person who worked it, one Benedet Pela (Benedictus Pelados), which Archbishop Rado donated as well as other lands given by Isoard. Over the next

27 Legal anthropologists speak increasingly of "dispute processing" to describe the mechanisms with which conflicts are handled. However, as Miller and Sarat point out in "Grievances, Claims, and Disputes," p. 526, such an emphasis tends to obscure the social context of disputing. By speaking of disputes as dynamic structures one emphasises their integral role in society.

28 Poly, p. 84, note 59; Linques et domaines en Provence Xe—Xle siècles (appendix to the unpublished version of Poly's thèse Droit 1972, Université de Paris II K; CSV nos. 691; 1057.
fifty years, the family of the viscount of Embrun (to which
Isoard de Mison probably belonged) made a series of donations to
St Victor, but relations between the local powers of Embrun and
the great Marsaillais monastery were not always calm: the
Archbishop was involved in a series of conflicts concerning
rights over the temporalities of the priory.29 Likewise, the
knights involved in the dispute were hardly less closely
connected with the priory; their families were connected by to it
exchanges and various relationships over generations. They were
more old friends than enemies of the priory, although they were
also vassals of the Archbishop, who had apparently given them the
disputed property in fief. Peter de Rosset in particular had
made previous donations to St. Victor.30 Such men had done much
for the priory and now wanted a particular relationship with this
institution which, in the sixty years since its foundation, had
developed into an increasingly important landholder and power in
Chorges. What they were seeking was not simply property but
rather to clarify the proper structural relationships among
themselves, their lord Archbishop Lantelmus, and the priory. This
is clear from the repeated efforts, not simply to obtain the
sponsaliciun, but to become vassals of the priory infiefed with
all or part of the sponsaliciun. The importance of such a
positive bond of friendship is emphasized by the terminology:
William fears to loose Peter de Rosset's amiciun; after their
quarrel the knights depart sine amore. This friendship must be
created or restored in order to settle the issues at stake;
without such a settlement, which will necessarily involve an
explicit delineation of the relationships among the parties, no
settlement of the property question will have any hope for
success. Nor is there any possibility that a neutral relationship
might exist between the monks and the knights. Until a real
settlement is reached, the two groups will remain enemies, the
one excommunicated, that is, under attack by the Church; the
other harassed and bothered at every turn by the knights.

The problems underlying the conflict are thus deeply
tied to the changing power structures of the region in which
purely local groups, the knights, are attempting to define their
relationships with a great, geographically diversified and
powerful monastery. But when did the latent conflictual structure
result in overt, explicit hostilities, that charged episode which
one would traditionally term the dispute? It is impossible to
know. It was already underway at the beginning, it continued

29 CSV 699 records the attempt to settle a dispute over a
number of churches between Archbishop Lantelmus and the monks of
St. Victor.

30 CSV 691. In addition, Peter de Rosset, Peter Baill, and
others involved in the conflict appear as signatories to two
charters of donation to St. Victor by the Viscount Isoard and
Archbishop Guinamannus (the predecessor of Lantelmus): CSV 692, 698.

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after the document ended, and, although "settled" several times, it continued to flare up again and again.

These conflictual structures latent in the social fabric seem to have flared into overt conflict at specific, critical moments when social bonds (and hence the conflicts which helped to create and to sustain them) had to be reassessed and rearticulated. At Chorges, the moments of particular stress were instances of transition in the two communities: the death of John was one such, as were the marriages of Peter de Rosset and his son. These were the moments in the aristocratic lifecycle when relationships had to be spelled out and property holdings had to be clarified. At least as significant in these circumstances was the fact that the sacramental offices of the Church were needed and thus the monks had a greater leverage than at other times. Like the conflict itself, which could smolder for years, a sentence of excommunication was not necessarily as difficult a burden to live with as the church might have liked, but it was certainly a difficult burden to die with, and perhaps even more difficult to be buried with. Likewise, the delicate negotiations around the remarriage of a widowed heiress required the assistance of the prior, both to negotiate with the widow's lord and to bless the union.

Such conflictual structures as we have described are by no means unique to medieval Europe. The unusual aspect of "dispute processing" in the period of the eleventh and twelfth centuries is that, in much of Western Europe, there existed no effective, centralized means by which these outbreaks could be channeled, limited, or converted into other forms of social action. In the course of the tenth and early eleventh centuries, public comital courts which had functioned more or less well in the Carolingian period, had disappeared in large areas of Europe.  

rapidly became, private. Individual landowners or landholders, that is, the old aristocracy, the newly emerged free warrior society, and the ecclesiastical institutions all had their own courts, but these served only to provide justice to their unfree or semi-free dependents. Here "justice" was severely dispensed and real judgments were "recognized" through oaths, ordeals, or, in areas of Roman legal tradition, testimony. However the jurisdiction of these courts did not extend beyond the circle of a lord's dependents, and often he was unable even to require his own vassals to resolve their disputes in his court. Less institutions of public order, these courts were prized as important source of revenue and social control.

One could not say that between those who were powerful enough to escape such private jurisdictions, that is the milites or knightly order and the Church, no public system of law or justice prevailed. However, the public system justice was immanent in the community and expressed itself in just such negotiations as those we have examined at Chorges rather than in a transcendent, central authority such as a count. In fact, counts such as Isoard of Gap should be seen less as impotent public authorities than individuals attempting to coerce or cajole their neighbors into submitting to their private justice. This does not mean that law and legal systems were unknown. On the contrary, one could almost speak of a superabundance of legal systems: the traditional Germanic laws as transmitted and emended by the Carolingians, Roman law still alive in many southern regions of Europe; a body of Church law; and an emerging feudal law. What was rather lacking was a mutually obligating sense of


community with a jurisprudential system or other means by which the individuals dominating society could be controlled and constrained. Where comital courts continued to meet, participation by the free population was largely voluntary, and decisions, often deceptively termed "judgments" (judicia) in the documents which preserved the form but not the content of the Carolingian tradition, were not enforceable by the count or judge. Even when a particularly strong count was able to impose his justice on the free society of his region, this imposition was usually possible only through fear, and his disappearance, through death or absence, was sufficient grounds for the judgment to be ignored and for the violence to break out anew. 33 No community based on an abstract "rule of law" checked or controlled the eruption of violent conflict. 34

The situation at Chorges was exactly as outlined above. In spite of the presence of the nominal lords of the region, the archbishop and the count, and in spite of the vocabulary of the text which speaks of judices, placita, justiciam facere, justiciam dare, placitum facere etc., the sorts of proceedings can hardly be termed adjudications of the dispute. Rather than "judges," the archbishop, the count, and their advisors could do nothing more than suggest solutions or, at best, impose temporary resolutions which dissolved as soon as the count was out of the region. The moment that Isoard left for Spain to fight the "barbarians," leaving the land sine potestate, the old conflict resumed. Lacking such a community of mutually recognized authority and an internalized sense of the "rule of law," individuals and groups related to each other as amici, that is,


33 In addition to the example of Provence, a prime example of the precariously of even those judicial systems which seemed well developed by the late eleventh-century is Flanders, where the structures established by the counts rapidly disintegrated following the murder of Charles the Good. See James Bruce Ross's excellent introduction to her translation of Galbert of Bruges' account of the murder: Galbert of Bruges The Murder of Charles the Good Count of Flanders: A contemporary Record of Revolutionary change in 12th century Flanders (New York, 1967) pp. 46-47. On the judicial institutions of the counts and the communes see R.C. Van Caenegem, Geschiedenis van het Strafrecht in Vlaanderen van de XIe tot de XIVe eeuw (Brussels:1954), and Geschiedenis van het strafprocesrecht in Vlaanderen van de XIe tot de XIVe eeuw (Brussels: 1956).

34 On the development of modern notions of rule of law and legal tradition see the recent and provocative synthesis by Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition Cambridge, Mass.:1983).
those who were bound by a pax or friendship, or inimici, who faced each other in a potential or actual state of war. Beginning in the tenth century, the Peace of God movement attempted to induce members of society to bind themselves together in a pax which would establish a common, positive relationship among neighbors and form the basis for community control. This attempt to substitute God's peace for the no longer effective king's peace met with opposition both from below, as free warriors considered it an imposition on their freedom, and from above, as kings, emperors and counts recognized it as a form of competition. Not surprisingly, except in those areas where magnates were able to coopt the Peace of God and to use it to expand their territorial authority, it failed to produce lasting institutions of public justice or peacekeeping based on a spiritual consensus.  

III Mechanisms for Conflict Management

If there was no public court system with recognized jurisdiction, however, this is not to say that society existed in a state of anarchy. The groups and individuals belonged to a society and culture remarkably homogeneous and, within this homogeneous system dealt with their conflictual relationships according to a complex of shared values and implicit rules.

The primary model for dealing with others with whom one had a dispute was armed self-help, the feud. This was the natural

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36 On the feud as a fundamental structure in medieval Europe, see Otto Brunner, Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte <@I(Osterreichs im Mittelalter) (Vienna: 1965) pp. 1-110. Although Brunner is treating a much later period, the political and social structures of late medieval Austria resemble those of France at an earlier period. For analyses of feuding in cross cultural perspective see Jacob Black-Michaud, Cohesive Force: Feud in the Mediterranean and the Middle East (New York:1975), and Max Gluckman, "The Peace
means of righting wrongs in a social group which based its existence and justified its social role in warfare. The model of the feud was not confined to the laity. The clergy, and especially the monastic communities which dominated the religious society of the period, shared the ideal of their martial brothers and were ready to wage a spiritual war and even a physical one against their enemies.\(^3^7\) Thus armed conflict was a natural means by which to press one's claims. However, such conflicts, often termed *guerra* in contemporary sources, were by no means unlimited wars aimed at extinguishing the family or party in opposition. Usually such a *guerra* was intended to reestablish a balance in real or imagined offenses (an eye for an eye) and thus to restore an equilibrium of honor, or such *guerra* were waged in order to achieve temporary advantage and force the enemy into a negotiation of the deeper issues underlying the conflict. These issues might be possession of property, the clarification of hierarchical relationships, or the recognition of traditional mutual bonds and obligations. When, for example, Hugo "Chilarcius," frustrated in his attempts to win what he considered proper treatment from his lord, William IX of Aquitaine, disavowed his bonds of fealty and began a *guerra* against his lord, going as far as seizing some of his castles, he had no intention of making the break permanent. The "war" was but a limited, ritual attack designed to indicate the seriousness of the situation and to win him a stronger bargaining position with his once and future lord.\(^3^8\)

Of course, a feud need not be carried on only by warfare: it could equally well be pursued through occasional harrassment, interference with the daily activities of the enemy, or even in


verbal attacks in assemblies or law courts. The knights and monks at Chorges had various means to press their ends, each particular to their social position. The knights sought to exercise lordship over the property in dispute, or at least to prevent the monks from doing so, by seizing their property, destroying crops, and in general disrupting the exploitation of the land. They also attempted to hamper the monks in the exercise of their religious activities, particularly when those, such as the administration of the last rites, would be likely to benefit them materially.

For their part, the monks sought to interrupt the continuity in the lay community through refusal to perform the sacraments and through excommunication (launched of course by the archbishop). Just as the guerra was a ritual war intended to exert pressure on the enemy, these liturgical measures could be brought to bear for the same effect. Such measures included rituals of excommunication, liturgical cursing, public shaming, and the like. They served both to announce to society at large the wrong which had been done and to reaffirm the proper structural relationship which, according to the clerics, had been upset. They also sought to force the wider society to take sides in the conflict and thus to bring pressure for settlement or at least containment on their enemies from the community at large. Rather than rituals of conflict resolution, these rites should properly be seen as means of continuing the conflict within the

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39See Laura Nader points out in "The Anthropological Study of Law," The Ethnography of Law p. 18-19, on the various functions of litigation in addition to maintaining order, including performing punitive functions, ruining enemies, defeating competitors, serving as a moral "turning point" as the drama of the court provides a mechanism for socialization or enculturation, to test values other than legal ones, for economic gain, and even to provide entertainment.

On the channelling of conflicts into ritual see Roberts, Order and Conflict pp. 59-61.


42Little, "Formules,"; "La morphologie." On the close relationship between ritual cursing and excommunication see Little, "La morphologie," pp. 49-53.

43Geary,"L'humiliation."
shared cultural and religious values of the society in such a way as to strengthen the relative position of the church in the conflictual structure of society.

Each of these rituals was public. Excommunications and ritual curses, for example, normally took place during the Sunday Mass immediately after the reading of the Gospel. A ritual humiliation, in which the relics and other sacred objects of the church were placed on the floor and covered with thorns, took place after the consecration and before the kiss of peace. The meaning of the ritual was clearly and graphically explained to those present. In the case of excommunication, the bishop explained to the congregation just how the person to be excommunicated had offended God and, through his extravagant pride, had cut himself off from the communion of the faithful. The ritual cursing practiced in monasteries which did not have the episcopal power to excommunicate likewise sought to make clear the offenses of the enemy and to claim through impressive if fictional episcopal and papal confirmations, the right to curse opponents. The ritual humiliation sought the same clarification by a physical inversion of the proper hierarchical status: the relics and sacred images of the church were placed on the floor and covered with thorns to show how, through their pride, the enemies had overturned the divine order. At St. Amand, after the crucifix had been placed on the floor of the church, a list of the offenses committed by the monastery's enemies was placed in the outstreched hand of the Christus so that He, and presumably everyone else, would know exactly the cause of the humiliation.

While at the heart of these rituals was a clamor, a ritual cry to God for help, the religious did not stop at a

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divine appeal. The liturgies were designed to influence the public to take sides. The excommunicate became an exile within his own community. Under pain of joining him in his excommunication, no one was to give him food or shelter, or even to converse with him unless it was with the purpose of bringing him to repentance. The terrible curses called down upon the head of the monastery’s enemies were likewise to visit anyone who aided him. Following the ritual of humiliation, the church was closed to the local laity, thus depriving everyone in the area of divine access until the situation was corrected.

Within these rituals can be seen three goals. First, they were intended to isolate the enemy both from God and from man. Second, they sought to disrupt the normal social relations of the community—to bring usual daily intercourse to a halt. Third, they presented an image of the proper hierarchical structure of the world as well as a graphic, ritual image of the unnatural inversion caused by the offender. By suggesting how the divine system had been threatened, the clergy could orient the understanding of every natural accident, injury, or reverse of fortune in the enemy camp as divine retribution falling on the evil-doer and his allies.

Just as at Chorges, such rituals had particular effect at certain critical moments in men’s lives. In the hour of his death, an excommunicate or long time enemy of the local monastery might be led by fear of damnation to reach a settlement. Failing this, the Church had another powerful weapon: after his death it could refuse him Christian burial. It is not unusual to find accounts of agreements reached between heirs and monasteries

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49 On exile, see Roberts, Order and Dispute, pp. 65-67. On excommunication as exile, see Le Bras, pp. 226-227.

50 "...et qui ille (excommunicato) quasi christiano communicaverit, aut biberit, aut eum osculatus fuerit, vel cum eo colloquium familiare habuerit, nisi forte ad satisfactionem et paenitentiam cum provocare studierit, aut in domo sua receperit, aut simul cum eo oraverit, procul dubio similiter sit excommunicatus." PL 138.1125. Le Bras, p. 246 note 12.


52 Geary, "L’Humiliation," p. 34.

while the body of the old opponent lay uninterred in their midst. \textsuperscript{54} Likewise at the time of a marriage, which in knightly society was an important alliance between kindreds as well as the crucial means of continuing the family, the laity were eager for a church blessing which was highly desirable although not absolutely essential to ensure a fruitful and legitimate union. Thus the Church could exert at this moment particularly strong pressure on opponents.

These pressures both on the individuals involved and on the wider community were intended not to destroy the enemy of the church, but rather to bring him into some form of negotiation. Although texts were written from the perspective of the clergy often read as though the results of such rites were the abject surrender of the evil doers, a closer examination usually suggests that, under the pressure of the wider public, the friends, and the lord of the opponent, a negotiated compromise was reached.

The ultimate purpose of the negotiation was to establish a pax or amicitia between the two parties, that is, to create a positive relationship to replace that of the state of war which had previously existed. At Chorges, both sides were quite willing, if other forms of direct action failed to restore amicitia, to resort to arms. This threat to turn the conflict into open warfare seems to have been a major factor in the involvement of the wider community in attempts to arbitrate the dispute. \textsuperscript{55} The negotiation might be carried on directly between the leaders of the opposing parties. Thus, the abbot or prior of a monastery might meet face-to-face with a knight who disputed the monastery's claim to a piece of property and attempt to resolve the issue. \textsuperscript{56} More frequently, as at Chorges,

\textsuperscript{54} Another example of the pressure which could be exerted on an opponent's party at the moment of his death and burial is that of Wichardus of Ruffey, preserved in a charter of Cluny A. Bruel, ed. Recueil des Chartes de l'Abbaye de Cluny vol. 3 (Paris:1876 no. 2009, pp. 221-222. The document and the conflict between the kindred of Wichardus and the monks of Cluny which it records is discussed by Georges Duby in his La societé au XIXe et XIIe siècle dans la région Mâconnaisse 2 edition (Paris:1971) p. 222.

\textsuperscript{55} the count and archbishop were particularly concerned "ut bellum non esset inter monachos et milites." CSV, p. 557

\textsuperscript{56} On private convenientiae in general, see White, "Pactum," pp. 292-307; and Fossier, Enfance, p. 396. Fossier sees these negotiations as efforts to "cultivering" established justice while White argues, as do we, that these convenientiae may have been more effective at resolving basic, structural problems than mere judgments might have been. Penelope D. Johnson, @UN(Prayer, Patronage, and Power: The Abbey of la Trinité), Vendôme, 1032-1187) (New York:1981), p. 93, finds the percentage of
negotiations concerning serious matters were carried on by an
arbiter mutually agreeable to both parties. 57

The position of arbiter was not institutionally designated
but rather a job given to someone who by virtue of his social or
charismatic position could exercise a certain moral force in the
community and who had some sort of relationship with both
parties. 58 A perfectly neutral arbiter probably could not have
been found in such a society, but even if one could have been, it
is likely that each side hoped that the ties binding the arbiter
to his own party would prove strongest. Often the arbiter was a
count, bishop or abbot, but in any case he exercised his role
only with the agreement of the parties. In our example, Neither
the archbishop nor the count was a disinterested observer. The
archbishop was the lord of most of the knights involved in the
dispute—indeed, they contended that he had given them the
disputed property in fief. John de Turre had also been the vassal
of the count, since it was from him that Peter de Rosset had to
obtain permission to marry John's widow. It was because of these
personal ties, not because of their jurisdictions, that they were
called upon the attempt the arbitration. This is clear from the
initial anger of the archbishop when he learned that the matter
had been brought not to him but to the count, as well as from the
count's apparent willingness to allow the archbishop to arbitrate
the affair in his stead.

The count and the archbishop were assisted in their
task by their advisors (iudices, sapientes) who participated in
the interrogation of the parties, offered their consilium, and in
general took an active part in the proceedings. These were the
vassals of the count. 59 These advisors are essential at every
step of the deliberations, representing as they do the wider

settlements reached by negotiation during the period she has
studied increasing from 57% to 86%. She points out however, that
just as we shall see below, these negotiated settlements were not
necessarily any more successful in settling the disputes than
judicial proceedings.

57 Karl S. Bader, "Arbiter arbitrator seu amicabilis
compositor" Zeitschrift der Savigny-Stiftung, Kan. Abt. vol. 47
(1960), pp. 236-276; On the transformation of judges into
arbites, Duby, "Recherches," esp. pp. 11-13; Cheyette, "Suum
Eckhoff, "The mediator, the Judge and the Administrator in

58 On the neutrality or involvement of arbiters in
differently structured societies see Roberts, Order and Dispute,
p. 74, 120-122; 150-153.

59 "...coram domino Ysoardo comite et omnibus suis,..." CSV,
p.555
community, and the arbitrors are careful to make no suggestions without their advice.

The two groups of opponents were also present at the arbitration sessions with their own supporters, their vassals and other amici, to give them advice and to attempt to being the proceedings to a satisfactory conclusion. Attendance at these assemblies was largely voluntary. Although summoned, the knights did not always appear, and even when present, they were free to leave if the proceedings seemed to go against them, as in the case when Peter Poncius left the village before having to swear an oath recognizing the sponsalicium. Often the arbitrator attempted to secure promises to abide by his decision through the giving of guarantors and by demanding oaths specifying a sum of money to be forfeited if the agreement was not accepted. These guarantors might be kinsmen or vassals of the interested parties and were in some cases to remain virtual hostages until an agreement was reached.60 At the assemblies held before the count, the knights gave one of their vassals, Bruno Stephanus, "in manu [comitis]" as a fideiusssor and in turn the monks gave a fideiusssor of their own.61 This same Bruno Stephanus, along with Peter Cedal, was fideiusssor at a later assembly before the archbishop.62 These guarantors seem to have served not only to guarantee that their party would abide by the decision, but also to have actively counseled them to reach an accord. At the initial proceedings, these fideiusssores seem to have been the only guarantees provided by the parties. As the conflict escalated and the participants increasingly refused to accept the proposed compromises, subsequent assemblies began with the pledges of specified amounts of bond money. The initial oath pledging a bond, at first one hundred, then two hundred solidi, was sworn in the hands of the presiding archbishop or count.63

Just as oaths sworn at the outdoor, initial portions the proceedings were necessary to begin the assemblies, oaths of witnesses were central to the deliberations which took place in the interior portions of the sessions. As central as they were, however, their effectiveness was limited both by the fact that the principals in the conflict could not be forced to accept the testimony offered under oath and that that except under very specific circumstances individuals could not be forced to swear oaths. Thus Prior William could refuse to accept the oath sworn

60 On hostages in the process of settlement in Flanders see Van Caenegem, Geschiedenis van het Strafrecht, pp. 264-280.

61 CSV. p. 557.

62 CSV, p. 561.

63 "Petrus Pontius dedit fideiusssorem per centum solidos in manu archiepiscopi...." CSV, p. 558, "Ita firmaverunt in manu archiepiscopi per ducentos solidos." p. 561.
by Peter Poncius, not because he might be lying, but simply because he might be ignorant of the truth.\textsuperscript{64} Also, witnesses suggested by one or another party could be refused by the other for various reasons.

Since the arbiters were not acting in any official, public capacity, their ability to extract valid oaths from principals and witnesses was limited to personal bonds that they might have with the individual who they hoped to have swear. Thus the archbishop could force his bailiff Peter to swear, not as the judge of a public court, but as his archbishop who could excommunicate him and, possibly more to the point, because Peter was his agent.\textsuperscript{65} For the same reason, the Cardinal Archbishop Abbot of St. Victor was unable to extract a valid oath from William Peter.\textsuperscript{65} Finally, even when an individual seemed ready to swear, it was possible for him to avoid the oath by simply disappearing. When Peter Poncius failed to appear to swear the oath he had promised to swear, the monks had apparently no recourse, and the count and archbishop took no action against him. Again the voluntary nature of the entire proceeding is striking.

The time and place of the sessions were important parts of the mis en scene, just as we have seen to be the case in excommunications, ritual curses, humiliations, and the like. These sessions took place on public festival days, usually Sundays or, in of the assemblies at Chorges, the Saturday before Palm Sunday.

Just as the dates for the assemblies emphasized their public nature, so too did the settings. The assemblies normally took place at the church of St. Christopher, both outside (apparently on the porch) and within. One sees a certain rhythm of motion from the exterior to the interior and back again. Initial and formal phases of the negotiations, such as initial complaints, oaths to accept the recommendations of the arbiters, and the giving of hostages and gages took place in the more public exterior assembly. Count Isoard, in good Carolingian tradition, was holding his assembly in open air when the knights, fearing that things were going against them went to inform the archbishop that the prior was acting against his interests. Likewise, the initial complaints in the second assembly held before the count and the archbishop took place outside, before the "judges" entered the church to deliberate among themselves how best to

\textsuperscript{64}"Et si Petrus Poncius totum sponsalicium non scit, ... pro qua re vos dicitis hoc quod nos amplius scimus, propter suum sacramentum et proper suam insipienciam, sancti et nos perdamus?" CSV, p. 558.

\textsuperscript{65}Nos non habemus potestate super eum ut per nos faciat sacramentum. CSV, p. 564.
terminate the quarrel. After the knights had prevented the monks from ministering the last rites to the dying Bailiff Martin, the archbishop began proceedings outside the church were he had Peter Ponciius and Peter de Rosset swear to abide by his decision before actually beginning proceedings.

The more private, detailed and complex aspects of the proceedings took place within the church itself. Here the arbitrators and their advisors questioned, cajoled and threatened the parties. There, for example, It was within the church that the archbishop reprimanded Prior William for having taken the affair to the count rather than to him. Likewise, at the assembly held on the Saturday before Palm Sunday, the judices interviewed each of the parties privately in the church. There also Peter the Bailiff was interrogated and forced, by the fidelity which he owed the archbishop, to identify the entire sponsalicium under oath.

The arbiter operated not according to any one of the competing and contradictory laws more or less recognized in the society but rather according to what might be termed a form of equity. That is, he attempted to change the structural relationship between the parties, not simply to negotiate the apparent issue. Thus, while the overt reason for a negotiated settlement might have been the seizure of a person or property under the authority of the opponent, the actual subject of arbitration might be older, deeper and more complicated problems merely symptomised by the seizure.

On the overt issue the arbiter, advised in turn by the respected members of the community both lay and spiritual, usually suggested a compromise. Seldom did anyone emerge a clear winner or looser in such proceedings. At Chorges, every attempted solution, except for the disastrous attempt by the count to force the return of the entire sponsalicium after the attack on the priest transporting wine, included some form of division of the property in question. Frequently, the compromise, when the dispute was between religious and secular opponents, was presented as an act of charity: property long in dispute might be

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66 CSV, p. 557.
67 CSV, p. 561.
69 The notion of a compromise as the key to settlements is the central point emphasised by Cheyette and White and distinguishes these settlements or attempted settlements from judgments.
awarded to the lay party who then would donate it to the church for the spiritual benefit of the donor and his family. 70

Ideally, too, the arbiter helped bring about a new structural relationship between the opponents. It was insufficient, as might be possible in our society, that after the issue was settled the parties would move from a relationship of hostility to one of neutrality. Their daily interaction indicated that the best assurance that the conflict would not again disrupt society was that a positive relationship should replace the negative one. Thus between lay groups the end of the negotiation was often cemented by a firm pact of friendship which specified concrete forms of mutual assistance. In disputes between lay and ecclesiastical institutions, the ecclesiastical institution was often urged to return the property in dispute to the layman in fief.71 Thus the layman would have the property which he had claimed and would be united with the monastery or church through the bonds of fealty. At the first session of arbitration at Chorges, it was suggested that the knights retain certain properties which they would hold in fief from St. Victor. 72

70 It is impossible to know how many charters recording donations "pro animis" actually record quiponiones of property in dispute, since they often take the form of a simple donation. For example the noticia quiponiones made in 1054 by one Ramundus Gaucellinus, his wife Petrolina and his brother Petrus Gaucelinus on behalf of the monastery of Psalmodi. Archives d)partmentales du Gard, H 160, fols. 199v-200r. On the importance placed on quiponiones over adjudications see White, "Pactum," p. 302.

71 In Provence, all or part of the disputed property might be returned to the opponent as a life-time benefice. Examples include: a dispute between one Eldegarda femina deo devota and Archbishop Rostagnus of Arles in 925 (Grande Cartulaire de Arles, no. 33, fol. 34v-35r) and a settlement between one Salvator and St. Andreas lez Avignon in 1006-14 (Avignon, 109). Similar settlements might be concluded with peasants as well. Around 1012 abbot Archinirus of Montmajour concluded an agreement with the inhabitants of the property of the priory at Correns by stipulating that the property could remain in the family only as long as it did not pass outside of the community. Such property could not be used as dowery, nor could it be sold or mortgaged to anyone outside the community. (B.N. ms. lat. 31915, fo. 51r-51v.)

72 "Ysoardus iussit talem difinitionem inter illos...et ipsi filii Ponci habitent asillas mansiones quas monstraverant de sponsalitio, propter fidelitatem Sancti Victoris et monachorum...." CSV, p. 555. "Nos (Petrus Poncius et Petrus de Roset) tale plactum fecerimus...habemus totas mansiones per fidelitatem illorum (monachorum) et mittant in illas censum quod eis solvamus per singulos annos." p. 562. "Tunc (Comes) Isoardus
variation on this proposal again proposed at each subsequent session. Even if no formal vassallic relationship was formed, the layman might well receive a "gift" from the monastery. Stephen Weinberger has considered that the likelihood of receiving a gift at the end of a dispute may have encouraged laymen to press the most absurd claims.\(^7^3\) While this possibility cannot be excluded, one should view the gift not simply as gain for the receiver, but also for the giver: by accepting a gift, a positive relationship between giver and receiver was established\(^7^4\), a relationship which, like the relationships created by other ritual conclusions of hostilities, defined and established the structural connections between giver and receiver. In conflicts between lay groups, this new treaty might be sealed with a marriage alliance.\(^7^5\)

If the compromise was accepted by both sides, a new ritual of reconciliation was performed. Just as the public had been involved in the original announcement of the rupture, so was it included in the reunification. In lay society this often included a banquet.\(^7^6\) An excommunicate was solemnly met by the bishop at the door of the church and ritually brought back into the community.\(^7^7\) Following a reconciliation after a ritual humiliation the layman paid his humble respects to the saints and their relics were joyfully returned to their places of honor.\(^7^8\)

rogavit Willelmum ut eos retinerent de eo sibi placeret." p. 563.


\(^{74}\) White, "Pactum," 302-303. One must not conclude too hastily that such rituals of gift giving were unambiguous or intended merely to restore peace. Gift could be intended to humiliate as well, and their meaning could be subject to later conflicting interpretations and might form part of the grounds for resuming the conflict.

\(^{75}\) Van Caenegem, Geschiedenis van het Strafrecht, pp. 280-307 on rites of reconciliation in Flanders.

\(^{76}\) White, "Pactum," p. 297; Van, Caenegem, Geschiedenis van het Strafrecht, @U(Ibid).

\(^{77}\) "Cum aliquid (excommunicatus)...poenitentia ductus veniam postulat...episcopus, qui eum excommunicavit, ante januas ecclesiae venire debet...circumstare....tunc episcopus apprenhensa manu eius dextera eum in ecclesiam introduct, et ei communionem et societatem christianum reddat...." PL 138.1125-1126.

\(^{78}\) Geary, "L'humiliation," p. 35.
Even if the conflictual structures remained, these public rituals indicated that the parties had publicly returned them to a latent rather than an active mode, and the life of the community could proceed.

Just as no beginning was entirely new in the history of social conflicts, many endings were not definitive. Ideally the community had been restructured through the process—the overt period of conflict had served as a social drama during which the community had experienced a catharsis and emerged changed for the better. However, this is much to ask of any social system, and especially of one in which, as we have seen, conflicts were a positive force in defining social groups and structures. Thus, in spite of the vows, the exchanges of hostages, and the like, it was not unusual for one or the other party to refuse to accept the solution offered by the arbiter as, more commonly, to avoid having to break his oath, for him to absent himself from the proceedings, as did Peter Poncius, as soon as it became clear that things were going against his interests. Moreover, even after a compromise had been accepted, underlying social tensions and opposing interests, if they had not been entirely resolved for all members of each opposing group, could reemerge in the next generation, upon the death of the principal parties, or even if, after accepting the compromise, one party later felt that public opinion judged that his honor had thereby suffered.  

Harriulf, in his life of Bishop Arnulf of Soissons, for example, tells of just such a situation: a knight of Aldenburg, Willian the Long, had a son notorious for his criminal behaviour. The son

79 On conflicts as social dramas see Laura Nader, "The Anthropological Study of Law," Laura Nader, ed. The Ethnography of Law, pp. 16-17. In On the necessity and difficulty of obtaining adequate participation in such proceedings see Stephen White, "The Laudatio parentum in Northern France in the Eleventh and Twelfth Centuries: Some Unanswered Questions," American Historical Associations Proceedings 1978. White, in "Pactum," pp. 297-298, describes some of the rituals used at Marmoutier to obtain approval of family members, including in one case three infant sons too young to talk or at least to swear an oath, who indicated their consent by touching the charter recording the agreement and receiving from the abbot one denarius. The dispute above concerning the settlement achieved at the death of Wichardus of Ruffey was later called into question by his heirs who objected to the means by which their consent had been acquired, and Abbot Odilo of Cluny had to renegotiate the issue, finally giving them 23 solidi to confirm the original donation. Bruecl, nos. 2008 and 2009. Johnson, in Prayer, Patronage, and Power, pp 94-97, also comments on the longevity of conflicts and suggests that the monastery often won finally simply because it was "...a wealthy corporate community that could keep alive and defend its claims beyond the temporal and financial limits possible for most families." p. 95.
was caught in the act of housebreaking and killed by the homeowner, one Siger. In spite of the manifest guilt of the son, William normally would have had to avenge the death of his son. However, St. Arnulf arranged a peace between William and Siger. However, soon after people began to wonder why William had accepted the death of his son so lightly, and this talk, which caused William to lose face, induced him to break his peace and to attack his son's slayer.  

The conflict between the knights and prior of Chorgues is no exception to the above rule. No conclusion to the conflict was reached, at least not in the extant documentation. The reasons for this are much deeper than simply the perfidy of the knights or the stubbornness of the prior.

First, the evidence on which to make a settlement was extremely difficult to control. In Provence, a region of strong Roman legal tradition, it is not surprising to see that written evidence was considered important. However, the written material (in this case, the charter of donation) was inadequate because such a small portion of the complex social and economic activities of the day were recorded. True, an authentic charter recorded the initial donation of the manse of Benedet Pela, but the subsequent divisions of the property were apparently made without any written record having been produced. Since this was the rule rather than the exception, the value of the one written document was accordingly decreased. The real basis for decision was then the memory of the community. However the community was made up of individuals intimately involved with the claimants, not neutral observers, and thus the testimony, laboriously extracted by the oaths discussed above, was of as limited value as the written evidence.

Perhaps even more fundamental to the problem was the fact that the real issue was not really the possession of the manse of Benedet Pela but rather the relationships uniting lay and ecclesiastical groups in the region. The priory at Chorgues was only one of many, many such holdings of St. Victor of Marseille, and while an amicable solution of its problems with the knights of the area may have been very important to the prior, he lacked the authority to conclude negotiations on his own. The abbot, who alone could reach such a conclusion, was part of a much wider and more complex world, in which the dealings with these particular knights would have had a much different meaning and lower priority than for his prior.

The knights, too, were limited in their options and confined by their involvement in a wider and more complex system, that of the archbishop's vassalage. Throughout the proceedings,

they claimed not that the disputed property belonged to them, but rather that they had received it in fief from the archbishop. Thus in their opposition to the prior they were defending their lord’s interests, although of course because of the de facto inheritability of fiefs, they were also defending their own. Being the vassals of the archbishop, they no doubt expected his support in the proceedings, and his acceptance of the claims of Prior William must have seemed to them an attempt to abrogate his obligations to them. From their perspective, what has happened is that their lord has formed a new relationship with the monks which excluded them from their traditional rights as his vassals. Thus one understands their anger, resentment and suspicion at every suggested compromise that would not have left them in possession of the property they had traditionally held and bound to the acknowledged owner of the property, be he the archbishop or the abbot, by clear bonds of fealty. Little wonder then that as long as the archbishop and the abbot pursued their wider ends in the increasingly complex world of late eleventh century Provence, the knights and the prior of Chorges found themselves unable to resolve the tangles of their conflict in which they were bound.

IV Conclusions

To conclude our brief examination of conflict management, we can say that in the society of the eleventh and twelfth centuries conflictual structures were of such a fundamental and enduring importance that attempts to resolve conflicts were less significant than attempts to use them for a variety of purposes. Conflicts might be acted out through ritualized but nonetheless deadly violence, or they might be pursued through the transformation of these rituals of violence into rituals less dangerous to the society at large. When efforts were made to end conflict, they seem to have been directed largely to the transformation of the social structures giving rise to the conflicts, hence the attempts in arbitration to establish positive bonds rather than simply to eliminate hostility. That these efforts were often ineffectual should be hardly surprising given the need within social groups to preserve the conflictual structures which gave them cohesion.

We have said nothing about the gradual transformation of these voluntary courts of arbitration into institutions of binding arbitration and ultimately adjudication. This is because such a development probably never took place. The ability to impose judgments on parties in a dispute implies a quite different relationship than those possible or even considered desirable by contemporaries. Such a court would necessarily exercise a coercive power to enforce a peace, even when the basis for conflict continued between the parties.

Such courts did continue to exist during this period, but only for those not fully “free.” These courts had real judges who “recognized” the judgement of God brought against those under their jurisdiction and meted out definitive decisions and penalties. However, these courts were designed less to
settle disputes, to rebuild a better, conflict-free society, than to improve income, control dependents through coercive judicial force, and thus to demonstrate the power of lordship.\textsuperscript{81} When, in the course of the thirteenth and fourteenth centuries, new court systems were established across Europe with a jurisdiction that included those who had previously been outside of any jurisdiction, they developed not from an increasing acceptance of arbiters or some sort of social contract increasingly binding free men, or from the joyful acceptance of a better quality of justice. It appears rather that these courts came imposed from above as counts, kings, bishops and popes managed to expand their coercive judicial authority from their serfs and slaves to the free warriors, nobles and clerics of Europe.

Patrick J. Geary
University of Florida

\textsuperscript{81}See Van Caenegem, \textit{Geschiedenis van het strafrecht} on the difference between what he calls "evolved penal law" and "law of reconciliation."