

The Usatges of Barcelona : The Fundamental Law of Catalonia

Donald J. Kagay

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Preface

[vii] In the second part of his great novel, Cervantes has the Knight of Sad Countenance enter a printing shop of Barcelona and utter the following words:

...it seems to me that translating from one language into another...is like viewing Flemish tapestries on the wrong side; for, although you see the pictures, they are covered with threads which obscure them so the smoothness and gloss of the fabric is lost.[Miguel de Cervantes, *The Adventures of Don*

Quijote, ed. J.M. Cohen (1950; New York, 1983, part II, chap. 62, p. 877].

Such is the bane of any translator. How does he retain the “figures” of the original text while transmitting it into his own language? This quandary is further complicated when the text in question is over seven-hundred-years-old; for, not only must its words be translated but the obsolete societal usages they describe must also be made clear. To remain within these margins, I have followed the *Bastardas i Parera* Latin edition as closely as modern usage allows. In the majority of the *Usatges* articles, as in many modern law codes, a form of judicial syllogism outlines in the first clause a certain situation and proceeds, in the second, to state the laws's response to it. With few exceptions, the authors of the code used future more vivid conditional with the future perfect indicative to form such clauses. At times, they lapse into the present subjunctive for the second part of the syllogism. In both forms, the phrase is best translated in the English present indicative. Nouns and adjectives follow classical norms more closely but even with these forms a large number of neologisms have entered the code in Latin rainment. The most important of these are treated in text footnotes.

It is thus hoped that the following translation may be rendered faithfully in accordance with the idiosyncracies of the original and in line with the rules of modern English. If I prove successful at this task, the assessment of translation by the Knight of the Sad Countenance must convey some dubious satisfaction:

But I do not mean to imply that this exercise of translation is not praiseworthy; for, a man might be occupied in worse things and less profitable occupations [Ibid., 877].

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Abbreviations

[viii] Frequently cited works will be abbreviated in the following manner:

ACA Archivo de la Corona de Aragón, Barcelona

Anuari *Anuari de l'institut de estudis catalans*

AEM *Anuario de estudios medieval*

AHDE *Anuario de història del derecho español*

AHR *American Historical Review*

BRALB *Boletín de real academia de buenas letras de Barcelona.*

BRAH *Boletín de real academia de història.*

CAVC *Colección de los cortes de los antiguos reinos de Aragón y de Valencia y el principado de Cataluña*. Edited by Fidel Fita y Colomé and Bienvenido Oliver y Esteller. 27 vols.

Madrid: Real Academia de Historia, 1896-1922.

CDACA *Colección de documentos de Archivo General de la Corona de Aragón*. Edited by Prospero Bofarull y Moscaró, 42 vols. Barcelona: J. Eusebio Montfort, 1850-1856.

CHCA *Congres d'història de la corona de Aragó* [Preceding Roman numeral indicates congress number].

CHE *Cuadernos de història de España*.

CSCV *Cartulario de "Sant Cugat" de Valles*. Edited by José Ruis Serra. 3 vols. Barcelona: Sobs. de López Robert et. al., 1945-47.

CSJP *Chronicle of San Juan de la Pena: A Fourteenth-Century Official History of the Crown of Aragon*. Translated by Lynn Nelson. Philadelphia: University of Pennsylvania Press, 1991.

DJ *Documentos de Jaime I*. Edited by Ambrosio Huici Miranda and Maria Desamparados Cabanes Pecourt. 5 vols. Valencia: Anubar, 1976-88.

DHA *Dictionary of the Middle Ages*. Edited by Joseph R. Strayer, et. al. 13 vols. New York: Scribners, 1982-89

EG *La formació i expansió del feudalisme català*. Edited by Jaume Portella I Comas. Actas de Col·loqui Organisat per Col·legi Universitari de Girona, 8-11 de Gener de 1985: Homenatge a Santiago Sobreques i Vidal. *Estudi General 5-6* Girona: Col·legi Universitari de Girona, 1985-6.

EUC *Estudis universitaris catalans*

GCB *Gesta comitum barchinonensium. Textos llatí i català*.

Edited by Louis Barrau-Dihigo and Jaume Massó Torrents.
Cròniques catalanes, 2. Barcelona: Institut d'Estudis Catalans,
1925.

HC *Història de Catalunya: Biografiès Catalans*. Reprint
series, 1925.

Handbuch Mittelalter: Die Gelehrten Rechte und die Gesetzgebung.
Vol. 1 of *Handbuch der Quellen und Literatur der Neuren
Europäischen Privatrechts Geschichte*. Edited by Helmunt Coing,
3 vols. in 7 pts. Munich: Beck, 1973-88

LFM *Liber feudorum maior*. Edited by Francisco Miguel
Rosell. 2 vols. Barcelona: Concejo Superior de
Investigaciones Cientificas. Sección de Estudios Medievales
de Barcelona, 1945-47.

LV *Leges Visigothorum. Monumenta Germaniae
Historica. Legum: sectio I*. Edited by Karl Zeumer.
Hanover: Hahn, 1902.

[ix]

Marca *Marca hispanica sive limes hispanicus, hoc est,
geographica et historica Cataloniae, Ruscinonis et
circumiacentium populorum*. Compoled by Pierre de
Marca; Edited by Étienne Baluze. Paris: F. Maguet, 1688.
Reprint. Barcelona: Editorial Base, 1972

MRAH *Memorias de la real academia de la historia*

RABM *Revista de archivos, bibliotecas, y museos*.

Structures féodales *Structures féodales et féodalisme dans l'Occident
méditerranéen, Xe-XIIIe siècles: Bilan et perspectives de recherches*.
Colloque International organisé parla Centre National de la
Recherche Scientifique et l'École Française de Rome, Rome, 10-
13 October 1978. Rome: École Française de Rome, 1983.

The Usatges of Barcelona :
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Introduction

The Importance of the *Usatges of Barcelona*

[1] Law is a systematic force that humans create in order to regulate both public and private social relations. One may be said to “possess” a law if the applicability of the law depends on individual status or membership in a particular society; one may be said to be “subject to” a law if the applicability of the law is universal throughout a specific territory. The difference between “personal” and “territorial” law characterizes much of late antique and medieval legal and social history.

From the fifth century of the Common Era, territorial law of the Roman Empire was replaced in many of the new Germanic kingdoms by the personal laws of the different groups that constituted these kingdoms.

Foc

Roman law itself became the “personal” law of provincial Romans. The personal character of the “folk laws” later changed to accommodate the newer “feudal” relations between lords and vassals. Foc

From the twelfth century, the intricate and learned old territorial law of Rome was re-discovered. The study of the imperial codes began to undermine the older laws of personal status, the rules governing the relations between lord and vassal, and the essentially oral method of preserving and transmitting the older law. Kings and princes, served by men trained in the Italian or southern French centers of education in the Roman law, readily turned to the systematic and highly articulated jurisprudence of imperial Rome as a conceptual base that could be used to override or outflank older folk or feudal strictures. Fod

Under this influence, much of Europe shifted from “personal” legal systems toward [2] those with a territorial base. The rulers (whether holding a royal or some other princely title) governed “homelands” (*patria*), and the laws they approved or enacted were valid as far as their power ran. Far from being displaced, however, feudal relations were now regularized and they eventually entered into the realm of written, learned law. No code of the twelfth century illustrates this complex process and reflects more of the various legal forces of the era as does the *Usatges of Barcelona*. Fod

The significance of the Barcelona code can scarcely be overstated in local Catalan and general European terms. Issued in the mid-twelfth century by officials and judges within the court of Count Ramón Berenguer IV of Barcelona (1131-62), the laws effectively defined both Catalonia itself and the dynasty that would rule it for five centuries. This disparate collection of feudal practice, peace and truce statutes, and excerpts from Roman and Visigothic law codes became the source from which all other Catalan laws flowed. In reality, its hybrid nature may explain how the *Usatges* came to be Catalonia’s fundamental law. As a composite of so many different legal elements, the code, or at least parts of it, gave something for almost everyone to claim. With the general acceptance of them in Catalonia, the laws began to influence legal forms in neighboring southern France and in realms of the Crown of Aragon. In time, they came to symbolize a Catalan nationalism long suppressed but not defeated by Castile.

The *Usatges* were also highly significant in regard to contemporaneous European legal trends. The code serves as a juridical litmus test that can measure with some accuracy the transmission of

learned Roman law from Italy or southern France into Catalonia. Fod

It also shows [3] how important the experience of rediscovered Roman law was to both royal administration and the renewal of legislation within Catalonia and throughout Europe. Fod

The creators of the *Usatges* were not simply scribes but were in a sense scholars who used new trends in learned law to rectify the judicial norms of their own land. When the learned law seemed to fail, they used its “style” to address new situations. If the local customary law was silent on a certain point, they simply fabricated novel and learned elements. In the case of the *Usatges*, they even occasionally acted as forgers on a grand scale, attributing their work to the court of Ramón Berenguer I of the mid-eleventh century. If, as Michael Clanchy has pointed out, such legal counterfeiters were indeed “experts at the center of the literary and intellectual culture” of the era. Fod

Their work, then, was not simply a transformation of customary feudal practice into writing, nor was it a true statutory law, since the sovereigns who commissioned it are not even mentioned in it. Like many other codes of the twelfth century, the *Usatges* comprised a set of academic laws which represented the feudal world not exactly as it was but as the “law givers” (*legislatores*) professed to see it.

The Emergence of Barcelona and Catalonia: A Maze Among Iberian Mazes

Spain was born in a violent geological past in which one range of mountains after another was thrown up across the countryside. As a result, the Iberian Peninsula entered history as one of Europe’s most mountainous regions. Fod

Nowhere has this mountainous aspect more touched [4] the affairs of *homo ibericus* than in the northeastern corner of the Peninsula known as Catalonia. In geological and geographical terms, Catalonia is a microcosm of Iberia itself. Ringed by cordilleras of various ages and heights, the land is itself divided by mountain ranges into three distinct zones. To the north, Catalonia is separated from and linked to France by the Pyrenees. Fod

The Pyrenean passes formed thoroughfares between Spain and France long before either existed as states. The route of the *Via Domitia*, which connected Perpignan to Barcelona, led down into Catalonia’s second geographical zone, that of the Mediterranean littoral. For most of its

length, this *costa brava* is as Richard Ford described it in 1845: “wild and picturesque?” Fod

The very irregularity of the coastline and lack of navigable inlets has bestowed a position of commercial dominance on Barcelona, the only large port in region. Fod

By and large, these first two geographical zones constitute the region which came to be known as Old Catalonia. New Catalonia, the district conquered from Islam from the late eleventh century onward, forms the third. Bounded by the Segre River and the cities of Tarragona, Lerida, and Tortosa, this great wedge of fertile territory owes its existence more to riverine than to tectonic forces. As Catalonia’s greatest river) the Ebro, meanders from its source in the Sierra del Cadi to its mouth below Tortosa, a great alluvial basin is deposited and constantly resculpted. This swath of flatland, broken only occasionally by escarpments, has long lent itself to large-scale irrigational agriculture. Fod

[5] The political divisions of the land that would become Catalonia are clearly reflected from its geography. Thus it was no accident that Barcelona, the preeminent port of the region, came to dominate the Ebro *buerta* and eventually the Pyrenean uplands. Such a development, however, could only take place because of the remarkable drive of the counts of Barcelona as well as the fairly isolated geographical arena in which this expansion took place. From its physical nature as “a refuge and labyrinth,” Catalonia was given its political character. Fod

The Triumph of Catalonia and the Count of Barcelona

Northeastern Spain has from prehistoric times served as a entrepot. Under the Roman Empire, the region comprised a large part of *Tarraconensis*, the most important of the Roman provinces carved out of the Iberian Peninsula. Fod

It retained its significance even after the Visigothic invasions of the fifth century. Despite the lingering importance of Tarragona as the province’s metropolitan see, Barcelona emerged as the area’s greatest administrative and commercial center. Even after the Visigothic ruling house shifted its power base to Toledo in the seventh century, Barcelona remained the most active port of the realm. Its clergy, though briefly falling under the spell of the Arian heresy in the late sixth century, formed a significant missionary

force for the conversion of the large numbers of pagans still living in the eastern Pyrenees. Fod

The Muslim conquests of 711-18 destroyed the Visigothic kingdom. Northeastern Spain fell under the influence either of the new invaders or of the Frankish kingdom. Much of the northern half of the Peninsula was a staging point for Muslim military operations which [6] eventually spilled over the Pyrenees into the southern ranges of the Merovingian realm, only to be slowly driven back by such Frankish leaders as Charles Martel in the mid- eighth century. This Christian drive southward was capped by the victories of Charlemagne (769-814) and Louis the Pious (814-40) , which brought most of the Catalan coast as far south as Barcelona into the Carolingian orbit. This new territory quickly came to be called the Spanish March or *marca hispanica*. Fod

The uneasy stalemate between Christian and Muslim in the Spanish March, along with the distance of this battle zone from the core of Carolingian administration, made the delegation of power a fact of Iberian political life. Members of eminent Visigothic and Frankish families bearing the title of count or marquis held temporary dominion over the Spanish lands in the name of the Carolingian sovereign. Such marcher agents tended to transfer their official jurisdictions into heritable allodial tenures on which they founded or advanced their noble status. The beginnings of a regional social consciousness and political identity also stirred among the general population. Long referred to by the Franks as *hispani*, the Visigothic refugees had first settled in southern France shortly after the Islamic conquest. They held land from the Franks in a system known as the *aprisio*. By this arrangement, a cultivator gained full possession of undeveloped land if he worked it for a prescribed period. This same form of land settlement was carried into the *marca hispanica* by the *hipani* who accompanied the Carolingian invaders back into the Peninsula. Fod

Thus from the pockets of native noble power along the Pyrenees and among the scattered peasant communities in the isolated uplands, a new society was crystallizing [7] which from 844 even the Carolingian Emperor was forced to recognize. Fod

In spite of this growing social cohesion, the political reality of all

the emerging realms of Christian *Iberia* remained distinctly hostile to centralization of any kind. Even the configuration of authority in the Spanish March militated against a single ruler. In political terms, the region was a cluster of comital and viscomital domains which recognized no overlord other than the distant Carolingian Emperor. Fod

In a very real sense, then, Catalan political history until well into the thirteenth century was bound up with the struggle for superiority on the part of one section of the land over all others. The chief agent of this conflict was an important Visigothic family of Urgel and Carcassonne, certain of whose members from the ninth century had acted as Carolingian delegated rulers in a number of counties of the Spanish March, including Barcelona, Ausona, and Gerona. From this authority base, the first count of Barcelona, Wifred I the Hairy (873-98), followed two distinct paths to the domination of the *marca hipanica* – the conquest of neighboring Muslim territory and the extension of suzerainty over adjacent Christian counties. Both of these aims were furthered by an extensive castle building program which is reputed to have given Catalonia its name as “the land of castellans.” Fod

While Wifred set Barcelona on the road to dominion of its Catalan environs and surrounding Muslim territory, his immediate successors were forced from this prudent course by a series of disasters which almost overwhelmed the dynasty. His grandson, Borrell II (951-993), seeing no advantage in alliance with a distant and ineffective king of Francia, [8] “separated from the kingdom of the Franks” and took Caliph al-Hakam II of Cordova (961-976) as lord. Fod

When the Muslim ruler died with only a small son to succeed him, one of the young caliph’s officials (later given the sobriquet “he who has been made victorious by Allah” (*al-Mansur bi’llah*)) established a number of sweeping reforms, including the creation of an effective army. From 977, this new force harried the Christian states of the Peninsula to the very breaking point. In 985 al-Mansur unleashed his professional troops on Catalonia. With no possibility of Carolingian assistance, Borrell II faced the Muslim invasion with a makeshift host which was easily defeated by the Muslim veterans. Barcelona now lay open to the invaders, and on July 6, 985 this “most noble of cities” was sacked and, like most of Christian Spain, left for dead. Fod

Yet with al-Mansur’s death in 1002, his reforms fell into disrepair, and by 1013 Muslim Hispania was fragmented into smaller political units, the

ta'ifas, which were ruled by the kings of the factions, former governors, or agents of the caliph. Fod

In a mere thirty years, the Iberian situation had drastically altered, and Christian realms, once under constant threat of attack by the infidel, had taken the offensive and would shortly initiate one of the most important phases of the *reconquista*.

Before Catalonia was ready for such foreign enterprises, however, a broadened local sovereignty base was essential. Such a development seemed impossible in the anarchic environment of early eleventh-century Catalonia. The network of castles that dominated Catalonia unleashed “a measured reign of terror” by the castellans on the surrounding populace [9] and defied all central control – even from the lords who had built the castles. Fod

The Count of Barcelona, Berenguer Ramón I (1017-35), vilified in his own land as “a weak knight. ..of little strength,” conducted few campaigns in Muslim Hispania and thus commanded neither golden tribute from the rulers of the *ta'ifas* nor respect from his own great men. Only through the efforts of his mother, Countess Ermessinda, was the Count of Barcelona able to retain his power. Fod

The possibility for the extension of comital authority took place during the reign of Berenguer Ramón’s son Ramón Berenguer I (1035-76). Spending much of his youth avoiding entanglement in a series of internecine wars among the great lords of Cerdanya, Pallars, and Urgel, this canny ruler capped his advance into adulthood by suppressing a two-decade long revolt by his cousin Mir Geribert in 1059. Fod

Attracting an increasing body of support, the Count was able to maneuver all of the Catalan barons into formal recognition of his overlordship. As suzerain of all the great nobles of the Spanish March, the Count strongly asserted his role as the principal judge of the land and surrounded himself with legal advisers who “judged, heard suits, and made rulings according to the [Gothic] laws.” Fod

He also felt confident enough to take measures of pacification not confined to the feudal sphere. In 1064 and 1068, he adapted the clerical peace and truce to civil ends. The importance of this action cannot be over-stressed since the *pax et treuga* gave the count of Barcelona enhanced ruling possibilities not only as a national protector but also as a national legislator. As Thomas Bisson has rightly pointed out, the peace and truce laid the legal guidelines for Catalonia’s “constitutional order” down into

the [10] thirteenth century. Fod

Though the reign of Ramon Berenguer I set the stage for the advance of his comital office on all fronts, this foundation of power was not built on until the eve of the twelfth century. In the intervening three bloody decades, several assassinations within the count of

Barcelona's family brought his land to the brink of civil strife. Fod

With the reign of Ramón Berenguer III (1097-1131), however, the possibilities of a greater Catalonia began to emerge. Ironically, many of the early territorial gains of this young man – “very pleasant, generous, and accomplished in arms” – came into his hands without the drawing of a sword. In 1111 and 1117 respectively, the count fell heir to the small but strategic Pyrenean counties of Besalú and Cerdanya, leaving only two other major sections of the old *marca hispanica* outside the direct control of the Barcelona house. Fod

In 1112 he concluded a marriage with Countess Douce of Provence which would eventually extend the influence of the Barcelona house beyond the Pyrenees.

Profiting from the disarray of Muslim *ta'ifas* that bordered his lands, Ramón Berenguer III followed his predecessors' policy of extorting “yearly tribute” (*parias*) from the rulers of these states, who paid these sums in the misguided hope that the Iberian Christian states would accept their cash in lieu of their land. Such tribute money did not, however, prevent the count from engaging in such urban reclamation schemes as the resettlement of the long-ruined town of [11] arragona in 1118. Nor did the flow of Muslim gold northward into the count's coffers dissuade his people from slowly recovering territory in the no man's land between his own realm and the *ta'ifas* of Lerida and Tortosa. Fod

Rather than closing ranks against the invaders, the Muslim kinglets were their own worst enemies, often allying with Christian forces against their coreligionists. It was widely and bitterly asserted among contemporary Muslim intellectuals that both Christian greed and the immorality of their own people had “weakened the bonds of the community of the Prophet”

Fod

With such an atmosphere of general despair, it is little wonder that *ta'ifa* society fell under the severe influence of the Almoravids. This Berber

dynasty had gained control of the majority of North Africa before it intervened in Hispanic affairs with the impressive victory over a joint Christian army at Zallaqa in 1086. Fod

When the count was forced to beat back a Muslim invasion on his own soil in 1108, his stance toward Muslim Spain entered a distinctly warlike phase that culminated in 1114 with a crusade against the Balearic Islands.

Conquering a portion of the chain's largest island, Majorca, he could only hold it for a year because the Muslim population so outnumbered his own forces. Fod

Despite this setback, a clear precedent of territorial aggrandizement at the expense of the infidel had been established. It would not be lost on the next count of Barcelona, Ramón Berenguer IV (1131-62).

The new count, like his counterpart in Aragon, Alfonso I the Battler (1104-34), was passionately committed to the war on Islam and in 1134 dedicated himself for a full year to the [12] service of the military religious order of the Templars. Fod

With these martial goals firmly fixed before him, Ramón Berenguer proceeded to lay plans for the invasion of the two major *ta'ifas* that bordered his land. These aims came to fruition in 1148 and 1149 when he commanded a polyglot crusading army in the conquest of Tortosa and Lerida. Fod

The rapidity of Ramón Berenguer IV's conquests starkly emphasized how different were the lands he now ruled. In Old Catalonia, the descendant of the Spanish March, the feudal and principal order imposed by Ramón Berenguer "the Old" in the 1060s and 1070s was largely locked in place. In the newly-conquered territory, New Catalonia, a brand of feudalism existed but lords exercised fewer quasi-public rights, and vassals on all levels received extensive privileges and exemptions as an inducement to settle the new lands. Both sections were tied together by the count of Barcelona's claim to rule them by virtue of his office of *princeps*. Despite the differences between these two regions, a political unity was beginning to form between them, and this unity largely resided in their allegiance to the count of Barcelona as sovereign. Fod

A similar kind of monarchical unity in regnal diversity developed in 1137 when the marriage of Ramón Berenguer IV to Queen Petronilla of Aragon lashed two very different countries to the will of one ruler. Fod

Catalonia: The Bonds and Divisions of a Nascent Society

The prototype for all the realms of Christian Iberia was the defunct but partially-remembered [13] Visigothic kingdom. A view of this state and its institutions is preserved in the monumental Visigothic law code of the region, the “Book of Judges” (*Liber Judiciorum*; *Fuero Juzgo*) which constituted the prime legal text throughout the Christian portions of the Peninsula until the eleventh century. Fod

With the sudden demise of the Visigothic kingdom, other influences gradually came into play. In the land that became Catalonia, Frankish political forms soon grew to dominate. An “official” nobility emerged from the remnants of the Visigothic noble class, and other wealthy *hispani* who acted as Frankish agents. These “princes” (*principes*) or “wielders of public authority” (*potestates*) generated the ruling families in each of the Catalan counties, including that of Barcelona. Fod

In reality, however, the exigencies of Catalonia as a frontier were ringed by infidel enemies prevented the immediate duplication of a strong Visigothic-type monarchy and nobility. Instead, small farming communities developed in the countryside and around the largely-deserted urban sites. Fod

This “society of free men” generally owned their own land and had some degree of power in the communal groups they were part of. Fod

By the mid-eleventh century, the Catalan countryside had changed from a scene of allodial land tenure and peasant liberty to one dominated by castles and those who staffed them. The castellans and garrisons were effectively supported by the land and population that surrounded the fortress. While the castellans were obliged to turn over control of their fortresses to the “official” lords who owned them, they increasingly retained these strongholds as their own bases. A corps of [14] professional warriors, uncontrolled even by their own overlords, was thus unleashed on the surrounding rural population. Fod

Between the sack of Barcelona in 985 and the victory of Ramón Berenguer “the Old” over his last principal rival in 1059, the “militarization” of Catalan society, to use Archibald Lewis’s phrase, took place. Relations between weak and strong men were established in the Spanish March by the adoption of Carolingian forms of allegiance and

conditional service in exchange for lordly grants of land. Fod

In the world of shifting alliances and rivalries that comprised eleventh-century Catalonia, the pressing need for loyalty was accomplished by the linkage of vassallic dependence to feudal tenancy. The personal alliance was solemnly realized in the ceremony of “homage” (*hominaticum*) in which one man acknowledged himself to be a lord’s man, or vassal. To seal the pact, the vassal took an oath of “fealty” (*fidelitas, affidamentum*) which was properly sanctified by having the oath-taker touch the Gospels or stand on an altar during the ceremony. Fod

By this ritual, the vassal, whether noble or not, formally promised to safeguard the life and limb of his lord, hold fiefs and castles granted by his master according to conditions acceptable to both parties, and finally to be the lord’s “helper, with righteous faith and without deceit.” The lord, for his part, swore to defend his vassal, maintain his rights and provide for his well-being. Fod

The most tangible and significant result of homage and fealty was [15] the lord’s investiture of his vassal with a fief. Up until the eleventh century, the *fevum* or *terra de feo* was a grant of fiscal land made to various types of vassals, including officials and castellans. Despite differences in terminology, the fief in Catalonia was considered by the 1050s the opposite of the *alod*.

The *fevum* personalized the relationship between lord and vassal.

The commendation of a fief gave the vassal only provisional “control” (*potestas*) over it. He promised orally and in the written “pact” (*convenientia*) that he would relinquish such custody whenever requested by the lord and would not usurp or legally contest ownership of the fief “whether at war or at peace with his lord” (*iratus et pacatus*). Fod

The fief, as the core of a relationship of mutual allegiance and duty, was fated to outlast the alliance that brought it into being. While the investiture of feudal land was initially only for the lifetime of the vassal, the bond formalized by the granting of such land did not normally expire with a vassal’s death, since his place could be taken by his son or nearest male relative. From this ongoing connection between lordly and vassallic families, the steps to the heritability and finally alienability of fiefs were short ones. Fod

The viability of the “system” was lessened as the feudal holding became more important than the feudal relationship. The drive to gain as many fiefs as possible often left a vassal with more than one lord. Even with the

emergence of “liege vassalage” (*solidancia*) in eleventh-century Catalonia, the temptation to garner a number of fiefs gave the same vassal more than one “liege lord” (*melior senior*) whom he was bound to honor above all others. The situation might be further complicated if his best lords were implacable enemies and thus he had to choose one over the [16] other for battle service. Fog

This constant fragmentation of fidelity perpetuated the kind of anarchy that had given rise to feudal forms in the first place. The regime of Catalan castles as well as the feudal relationships that tied castellans up to the old nobility and down to the peasantry was in sore need of ordering. This drive for a reestablishment of public authority came from two different directions. With the accession of Ramón Berenguer I in 1035, the count of Barcelona began consistently reasserting his role of public authority. His actual power, however, was often not great enough to suppress the rampant violence that held the Catalan countryside in its grip and so another institution of the old order, the Church, had to step in and try to regulate the society it served.

As the tyranny of castles over the Catalan rural districts deepened, two populations emerged – one skilled in the use of arms and the other largely unarmed. The “helpless” (*inermis*) group largely consisted of churchmen and peasants. Though both groups fell under the castle’s domination, the former had an authority and property base from which to operate while the latter did not. The personal status of the peasants did not always change, but the control over their own lives most assuredly did. They might remain free, but they were also weighed down with burdens onerous enough to pose a constant threat to their liberty. In addition to the growing number of services peasants owed to their immediate lord which, in time came to be known as the “evil customs” (*mals usos*), they suffered largely in silence from the depredations of the castle warriors. Fog

The second division of the largely unarmed population, the clergy, began to exercise a new influence in this changing society. Often large landowners who depended on peasant labor, the churchmen were not inclined to allow the destruction of public peace, especially when clerical institutions were engulfed in the unending waves of castellan violence. Though most [17] of the great churchmen sprang from the region’s old nobility, they did not turn to the path of arms to defend the “helpless”

population but fell back instead on Carolingian traditions of civil protection of church lands. Fod

When public authority could not contain a social violence which held nothing to be sacred, the Catalan clergy took matters in their own hands. Turning to the “peace of God” (*pax Dei*), a form that had developed in the southern French clerical circles in the tenth century, the Catalan churchmen adapted it to their homeland. At a number of small assemblies between 1027 and 1068, the prelates of the Catalan counties, led by Bishop Oliba of Ausona, established peace laws within their own dioceses. The statutes that emerged from these meetings declared the zones around churches, monastic sites, and cemeteries to be “circles of peace.” They also proclaimed protection for all of the unarmed people in their ecclesiastical zone of jurisdiction and their property. In a uniquely Catalan development, the clergy established a *treuga* or truce for the holiest periods of the ecclesiastical year. Though excommunication was threatened for those who violated the peace or truce, malefactors were perhaps slowed but not deterred by the fear that their actions might ultimately cost them salvation. Without armed force to bring violent criminals to justice, the *pax et treuga* constituted more of a moral impediment than a complete judicial response to the endemic violence of eleventh-century Catalonia. Fod

While the spread of feudal ties and the proclamation of the peace and truce were makeshift answers from the ranks of a Catalan society that was itself falling apart, the final response to the disintegration came from the count of Barcelona, whose weakness had initially allowed the localization of authority which centered on individual castles. By a slow process of [18] asserting his power and authority on the basis of his long-neglected roles as high judge and protector of his people, the count began to expand his power by virtue of his superior legal claim. A milestone in this journey was the creation of the *Usatges of Barcelona*.

Custom into Law in the High Middle Ages

From the late Empire of the fifth century to the rebirth of Roman legal studies in the twelfth century, written territorial laws and non-written local custom existed side by side in all the emerging societies of Europe. Fod With the withering of public authority in the tenth century, the place of royal statutory law was largely taken by feudal custom as well as by the

ecclesiastical peace and truce. As rulers began to reassert their claims to supremacy in the eleventh and twelfth centuries, they came to view the control of law in all of its aspects as a viable means of attaining a broadened base of allegiance. Legislation, which proclaimed the sovereign's "care over the commonwealth," also reasserted a lapsed public role that effectively cut across feudal and class lines. Fod

Though many great nobles contested this royal claim to a legal and judicial monopoly, the assertion of the rulers that they were the definers and administrators of law gave regnal power a base that solidified as these judicial and legislative functions increasingly were claimed to be the exclusive business of the Crown and its officials. Fod

Since most of Europe lived under unwritten legal usage, these customary norms passed into the realm of written law through the legislative efforts of the sovereign. In reality, the transformation of local usage into [19] a set of statutes binding on an entire territory constituted the most significant form of legislation by European rulers before the thirteenth century. Fod

The format and philosophy for such legislation, however, was provided by Rome's law. Though Roman legal studies never really died in isolated intellectual centers of southern France and Italy, the discovery of a near-complete copy of Justinian's *Digest* in the eleventh century re-awoke the investigation of Imperial jurisprudence across the Continent. Fod

Roman law, in fact, had a unifying effect on the perception and practice of law as students from across Europe came to Bologna and other centers to learn the "new law." The graduates of such schools attained brilliant careers as judges, notaries, advocates, and officials. Fod

The Roman legal training they brought to bear on these posts was of crucial importance in configuring and articulating the emerging administrative institutions they managed. The law of their homelands was also reshaped through their efforts. Thus from the raw material of custom came royal statutes with some of the scope and organization of the old Roman imperial codes. Nowhere are the changes wrought by the renewal of Roman legal studies more evident than among the corps of "civil servants" of the count of Barcelona who produced the *Usatges of Barcelona*.

The Barcelona Court and the Evolution of the *Usatges*

[20] In spite of the count of Barcelona's victories of the mid-eleventh century, he lived much as his great nobility did. Changing residences every

few days, the count was surrounded and served by an equally changeable household. Besides the barons who served as comital companions and advisers, the *curia comitis* was made up of a number of personal servants who increasingly exercised public functions. Fod

Clergymen, especially cathedral canons, wrote official documents and served as judges for the count's tribunals. Fod

While these men were almost entirely drawn from the region's clergy, many of them took only minor orders. In reality, they became as closely identified with their judicial or educational activities as with their clerical offices. Thus, more than one "grammarian" (*grammaticus*), "professor" (*doctor*), or "schoolmaster" (*caput schole*) served the count in rendering judgments and in drawing up important documents. Fod

In effect, a civil *cursus honorum* began to open up for such clerics at the same time as their ecclesiastical careers advanced. Fod

The count of Barcelona's court entered into a new phase of complexity and professionalism after the union of Catalonia and Aragon in 1137. Fod

The officials of this new [21] composite state were moving toward a professionalism that tied them to the sovereign as well as to the emerging institution that was his court. They were privy to a kind of group memory from court service and effectively constituted a living history of the dynasty they served. The traditions of the count of Barcelona's household were thus squarely in the hands of the officials who administered it. Fod

The *Usatges of Barcelona* is a clear case in point. Though the code is a reflection of the legal customs of the Catalan counties subject to the count of Barcelona, it is not an exact copy of these usages. Instead, the region's oral traditions were refashioned and rectified according to the dictates of its literate class. The clergymen in the service of the count employed the "technology of literacy" to glorify their master's political aspirations and to display their own legal erudition. Fod

These overriding aims are apparent throughout the *Usatges*.

If, as Alan Watson asserts, "the borrowing of another's law is a very potent means of legal growth," then the investigation of what elements were borrowed and how they were incorporated must reveal in some measure the minds behind the legislation. Fod

The legal works cited in the *Usatges of Barcelona* are especially instructive in this regard. To the customary feudal norms that comprise the core of the code, the curials of Ramón Berenguer IV added a sizeable collection of excerpts from other law codes. Since one of the avowed purposes of the

code was to complement Visigothic law, it is not surprising that a large number of *Usatges* articles are [22] citations or adaptations of the *Liber Judiciorum* (*Fuero Juzgo*). Fod

The work of Justinian, whether from the *Corpus Juris Civilis* itself or such later compilations or collections as the *Breviarium Alarici*, the *Petri Exceptiones*, or the *Epitome Aegidii*, was also cited on a number of occasions. Fod

Fragments from almost contemporaneous works of legal scholarship also appear in the code. Since its authors had recourse to the collections of canon law made by Ivo of Chartres and Gratian and the treatise on feudal law composed by Umberto de Orto. Fod

Because of its position as a compendium of all branches of knowledge in the Middle Ages, it is scarcely surprising that certain passages on the nature of law and custom in the *Etymologiae* by Isidore of Seville were also chosen for inclusion in the code. Fod

Though this set of excerpts from laws old and new might superficially seem little more than scholarly window dressing, none of the borrowings were made without reason and, in one way or another, they all demonstrate something of the authors' intentions. Extraneous material was ultimately gathered into the code: (1) to state general legal principles, (2) to clarify doubtful points in Catalan customary law, (3) to address problems which custom made no attempt to solve, and (4) to advance the power of the count of Barcelona by inserting passages from Justinian's *Digest* that asserted that the will of the Emperor was law. The men who brought the *Usatges* into being therefore sought far afield for materials and chose them with some discrimination. In the broader view, these appropriations from other legal systems, some of them of fairly recent vintage, show the erudition and resources of the lawyers who made the code.

The mere fact of so many extrinsic elements within the *Usatges* proves how quickly Catalonia had come under the influence of the study of Roman law and the idea of the learned [23] law. The new legal knowledge was brought into Catalonia by Catalans who had studied abroad and found careers as teachers, officials, and churchmen. Their influence is also reflected by the large influx of legal books into Catalan monastic and cathedral libraries in the first half of the twelfth century. The Visigothic sources were the closest to hand, since multiple copies of the *Liber Judiciorum* and the *Etymologiae* had long existed in the libraries of the region. Though a good number of Roman sources were available because

of the political and intellectual ties that bound Catalonia to Provence and Italy, Fod

excerpts of the same works were also accessible from the huge collections of canon law which circulated in eastern Spain throughout the later eleventh and twelfth centuries. The most important of these was the *Caesaraugustana*, a wide-ranging compendium of Visigothic, canon, and Roman law compiled in the early twelfth century. According to Carlo Guido Mor, this work was brought into being by “a canonist of eclectic tendency” and very well may have exerted the same kind of influence over the fashioning of the *Usatges* as it surely did for that of the *Exceptiones Petri*. Fod

After sifting through the work of the men who brought the *Usatges* project to completion, what can be said of them and the nature of their work? Since the code was not a uniform one that came into being at anyone time, but was rather, as Thomas Bisson says, “a compilation of compilations,” a number of minds brought it to completion. Fod

It is likely that [24] the court rules (referred to variously as *usatiki* and *usualia*) that surfaced during the reign of Ramón Berenguer “the Old” were written only in the most rudimentary or abbreviated form and then solely for courtroom use. The keepers of this body of customary legal precedent were thus presumably the judges who used it to render proper verdicts. The full breadth of their knowledge in the pronouncements of customary law came not from peering over legal tomes but rather from long years of experience in their masters’ tribunals. As the twelfth century passed, the “lawmen” visible in the Barcelona court increasingly became “bookmen” as well. Most of them were familiar with the new trends of legal scholarship, and at least one of them might have received part of his legal training at Bologna. This can be said with some certainty because of the inclusion of passages from the *Libri Feudorum* in the more finished versions of the *Usatges*. The “Book of Fiefs” had only come into use as a textbook at Bologna after 1130. Its insertion in the *Usatges* some two decades later thus points to one of two possibilities: (1) one of the code’s authors had studied and taken notes on the “Book of Fiefs” while attending lectures at Bologna, or (2) he used such summaries of the work made and brought back by another student. Fod

All in all, Balari’s discussion of the curials who brought the *Usatges* to completion can serve as a starting point for their description:

whoever redacted the code was not a warrior who clutched a sword and wore armor of steel. Its author, who had a very lofty idea of what it was to be a prince and then elevated the status of prince to a category of almost being a divine state, necessarily had to be an ecclesiastic very well versed in ...the Sacred Scriptures. Fod

The mere fact of so many churchmen trained in Roman and canon law sought careers in the count of Barcelona's service during the twelfth century enhances the possibility that one [25] or more of them turned his skills to the task of finishing the code. That they were extremely knowledgeable in biblical exegesis also seems certain when their scholarly lives are reviewed. Some, like Renallus, combined the activities of legist, theologian, and historian while serving as the chancellor of Ramon Berenguer III's court. Fod

The official documents such members of the court drafted and sometimes wrote out in a fine hand clearly indicate their opinion and understanding of the powers and obligations of the Crown. The ruler, in their view, was very much like an Old Testament patriarch or king. He was to rule with faith and justice, and if he failed to so act for all his people, he ran the risk of losing his throne- both from the backlash of his disgruntled subjects and through the efforts of an expansive papacy. In effect, the legitimacy of civil rulers depended on the moral tenor of their official and personal lives. As one comital instrument of 1151 expressed it:

it is specially granted to the dignity of the Prince particularly to look after the temporal goods which Divine Clemency temporarily conceded to him so he may honorably grant these to the Church of God. Fod

From the above, it can safely be concluded that the creators of the *Usatges* were both "Romanizing lawyers" (as d'Abadal i de Vinyals claims) Fod and churchmen who bore an idealized view of the monarch (as Balari asserts) . They were, in fact, one and the same. As members of the cathedral and monastic communities, their opinions of the king's relationship to his subjects and the law in general were reflections of the ecclesiastical mirror in which they themselves lived. As students of Roman jurisprudence, their perceptions of the Church and the monarchy in the

world, far from being drastically altered, were instead clarified. The authors of the *Usatges*, who had harmonized their offices as clergymen, public servants, and legists, were likewise able to [26]reconcile their own roles as churchmen and royal bureaucrats.

If a portrait of the authors of the *Usatges* can be gleaned from their own handiwork, can the same be done for a fuller understanding of the means employed to bring the code to a finished form? If Stanley Fish is to be believed, every statute contains the “interpretive assumptions” that brought it into being. Fod

To see how such assumptions created the *Usatges*, we must look to the workings of the Barcelona court. The mechanism of Alfonso II’s court of the early 1170s shows that his curials could summon up an “institutional memory” to recall some types of information about the dynasty and the court they served. When this “remembering” was called on to retrieve information from a time predating even the oldest surviving curial, the data could become tainted with unsubstantiated or garbled traditions. Bearing this in mind, how could “the wise, learned men and judges” of Ramón Berenguer IV have formed a code as rich in indigenous and advenient material as the *Usatges*?

For at least a provisional answer, the dual avocation of the code’s compilers must be considered. As judges, the erudite officials of Ramón Berenguer I’s court became true legists as they made judicial rulings based on the customary law of the count of Barcelona’s lands. By their decisions, the “court rules” became true legal precedents. There is little direct evidence

of these *usatfici* passing into an easily accessible written format during the eleventh century; if they were written at all, it seems that they seldom circulated beyond the circle of judges who kept them as an abbreviated casebook of Barcelona customary law. Fod

A fuller redaction of such customary legal norms in the period before the reign of Ramón Berenguer III is militated against by the fact that the Barcelona court did not normally maintain an archive of documents issued under its aegis before the reign of Alfonso II (1162-96). On the other hand, litigants, especially clerical ones, took great pains in maintaining the official papers which they received from comital tribunals. Fod

How, then, could the “court rules of customary law” of the eleventh century [27] become the written code which emerged as the *Usatges* of the

mid-twelfth century? The largely completed code of the early 1150s could not have developed except in a literate and stable environment. Ramón Berenguer IV's court, constantly on the move and occupied in one extensive campaign after another with Muslim *Hispania*, was hardly the place for the codification of laws on any scale. Instead, almost certainly, the count, flushed with the complete victories over his Muslim neighbors, capped his glorious military career by bringing the *Usatges* project to fulfillment. Though it seems certain that the eleventh-century customary norms were undergoing some type of editing during the early decades of the twelfth century, there are few demarcation points to determine the stages of this process. Fod

It is also clear that such an intricate development could not have come to completion in the count's court even though it was carried out by curials. Ramón Berenguer IV seems to have entrusted the completion of the code to his brightest, best educated judges who also happened to be clerics. The great libraries of the cathedrals of Barcelona and Gerona and those of the monasteries of Sant Cugat de Valles and Ripoll would have been open to the legists, and, in fact, these collections contained most of the legal works woven into the *Usatges*, along with large fonts of judicial records which had been issued to and preserved by each of these institutions. From such relatively stable centers, the *Usatges* were assuredly worked up into their first written form of a more or less official nature. This pattern of legal codification would be repeated on a number of occasions during the long reign of Jaime I (1213-76). This great legislator relied on the clerical legists of his court to draw up law codes and they consistently did so in the literate environment of their religious houses. Fod

The Path of *Usatges* Solidification:

From Court Usage to Code

The mapping of the journey of custom into the realm of written law is one fraught with [28] difficulties of terminology and interpretation of that terminology. As legal usage slowly hardens into law, it often comes into writing not as a verifiable, straightforward act of legislation, but rather as a reference to customary precedent inserted in the verdict arrived at by judges of a tri- bunal or within the body of many different types of grants

issued by rulers, nobles, and clergy. The variety of names given to the same body of customary law by judge, advocate, or notary only adds to the confusion of carefully monitoring the path custom follows in becoming law. Fod

With these considerations in mind, we may attempt to chart the slow emergence of a Barcelona customary law into a written legal form. Fod Unfortunately, the only ways for gauging this development do not come from the convenient vantage point of hindsight from which the intricate course of custom is seen in its totality. Instead, the only signposts that exist on the road of custom are the incomplete and sometimes conflicting clues left by its definers, the judges. By their decisions, the course of precedent was slowly laid out point by point until a direction of legal procedure and theory eventually turned away from the well-worn path of written, Visigothic law. Even the tide which eventually came to be associated with the first codification of the Catalan customary law, *usatici*, had a number of meanings, though each relates to a practice of long duration. Thus, a *usaticus* might be: (1) a customary due owed by a vassal to a lord, (2) a tax imposed by a civil or religious authority on the sale of merchandise, or (3) a legal custom. Fod

To confuse matters further, synonyms such as *consuetudo* and *mos* (each implying a legal practice of a long-established duration) were used in place of *usaticus* in all of its various meanings. With this potential for error in mind, the documentary signals of the evolution of the *Usatges* can be examined.

The great bank of references to the growth of the code are contained in judicial records and the *convenientia* that tied lords and vassals. During the period between Ramón Berenguer I's death in 1076 and the reign of his great-grandson, Ramón Berenguer IV, the distinction [29] between Visigothic law and the customs of the Barcelona court was constantly affirmed. Thus in 1070, foral laws were granted to the Pyrenean village of Gerri that were identical on several points to the "custom of the homeland" (*mos patriae*). Fod

In 1091, a boundary dispute of two Catalan monasteries was aired before a tribunal of clergymen and nobles headed by Berenguer Ramón II. It was settled "according to the authority of the Gothic law" (*secundum auctoritatem legis Gothicæ et secundum usaticos terre*) and "the usages of the land" (*usaticos terræ*). Fod

During the same period, the difference between the individual acts of municipal lawmaking and the more general customs of the Barcelona court also began to emerge. When, after 1116, Ramón Berenguer III finally honored a papal directive to reclaim Tarragona, one of his first concerns was the establishment of a legal basis for the new settlement. As an inducement for reclamation, all future inhabitants of the city and its environs were to be free and secure in their lives and property. They would be judged “according to the laws, customs, and decrees” (*secundum leges et mores et constitutiones*) set out by the first great archbishop of a restored Tarragona, Olaguer. The task of establishing such a legal infrastructure was a slow one; in 1129, the prelate, in conjunction with a Norman mercenary, Robert Burdet, who was granted half of the urban jurisdiction, promised that all city residents of Tarragona would be judged “according to the laws and good customs” (*secundum leges et bonas constitutiones*) that he would decree in conjunction with the town council. The optimum phrase of this document for understanding the subsequent growth of the *Usatges* was that which assured Tarragona settlers that they would “be neither judged nor punished” except by the statutes decreed for their city. Fod

Despite these assurances, the promised municipal laws were not fully forthcoming and, in the reign of Ramón Berenguer IV; the city was touched by general legislation originating from the Barcelona court. With the accession in 1148 of the next archbishop, Bernat de Tort, Robert Burdet, who also bore the title Prince of Tarragona, formally pledged to carry out the terms of all prior agreements concluded with Olaguer. Instead of upholding the rendering of justice in line with the city’s own laws, Robert swore that all suits in the city would be adjudicated by “the laws and [30] customs of the Barcelona court.” Fod

When the archbishop reciprocated in stating an official relationship with the Prince of Tarragona, he used much the same phraseology. Fod

Up to this point, the “court usages” and “court rules” of the Count of Barcelona were little more than technical guidelines for the adjudication of suits before the *curia comitis*. Now, with no steady line of precedence, the “good customs” of the Barcelona court were well enough known to be adopted by two public figures for the jurisdiction they shared. As Bastardas suggests, the only plausible explanation is that the *Usatges of Barcelona* had entered into some type of written format which was officially accepted by 1148 as the legal norm of the count of Barcelona’s court and, as such, the law of the lands over which he exercised authority. Fod

The indication of a written set of court usages demonstrable from

the Tarragona documents of 1148-49 is reinforced by the testimony of the next five decades. When Ramón Berenguer IV entered into litigation in 1151 with one of his retainers, Galceran de Sals, their dispute was adjudicated “legally and customarily” (*legaliter et usualiter*). The customary law on which the judges of the panel based their verdicts was, in fact, “a written law of custom” (*lex usuaria*). From the seven exact citations preserved in the proceedings of 1151, this law was none other than the *Usatges of Barcelona*. Fod

In a suit of 1157 with another of his court barons, Pere de Puigvert, the count again based his defense on portions of the new code which are referred to as the “customs of the Barcelona court” (*mores Barchinonensis curie*). Again, it is clear that these customs refer to the *Usatges* from the number of verbatim passages included within the tribunal’s verdict. Fod

In the decades which followed, the *Usatges* retained their adjudicative importance, even when the count was not a disputant. In 1160 when the monastery of Sant Cugat de Valles sued a neighboring noble over title to castle lands, the “legitimate possession” of the property in question was determined “according to the law and the customs of the court [31] of Barcelona.” Fod

When the same monastery in the same year disputed with one of its castellans over the control of the castle he held, the functionary made clear reference to one of the *Usatges* articles when he claimed that this custody had to be returned to him within ten days “just as it had been decreed in the Barcelona court.” Fod

If the *Usatges* had only been used for adjudication of suits, their spread as a true *leges patriae* would not have been accomplished as quickly as it was or it might have even been retarded completely. Fod

A number of factors, however, impelled the acceptance of the *Usatges* as the base law for most of the Catalan territory controlled by the count of Barcelona. At the heart of this transformation stood a formal comital act of legislation which was secured in writing. Though always a remarkably literate environment, the comital court placed an increased emphasis on the written record from the reign of Alfonso II. Important matters including verdicts, feudal pacts, and land sales or transfers were increasingly “committed to writing so they should not slip from memory to the rust of oblivion” Fod

and “so one may lay claim to this reference whenever doubt arises.” Fod

The upshot of such careful record keeping and accountability was the

emergence of true administrative organs within the court from the era of Alfonso II. Fod

At the forefront of this movement was the issuance of the *Usatges* in a written form. Though variants in the copies of the code surely existed in these first years of its graphic life, it attained a currency never possible when merely a set of judicial precedents retained in the memory or casebook of a small number of judges.

The establishment of the “court usages” in a written format was only one step toward the expanded sovereignty of the count of Barcelona. It is hardly unusual, then, that the count and his officials encouraged the prestige of the code by its continued judicial use and increasing [32] influence on legislation. Fod

As Alfonso issued foral laws for individual urban settlements, he was careful to either extend practices outlined in the *Usatges* into the municipal laws or declare that the code in full would act as an adjunct for the enforcement of law in the towns. Fod

On a broader scale, the *Usatges* were bound to the only true source of written, territorial law in the count of Barcelona’s lands – the *pax et treuga*. As Alfonso turned to the long-unused peace and truce and refashioned it as an administrative tool, he was careful to define its relationship with the *Usatges*. In the first of the sovereign’s territorial peaces, that of Fondarella in 1173, the “written custom” (*consuetudinem scriptum*) plays an important role in defining general feudal norms and then attaching them to the peace and truce. Thus the article of the code which dealt with a vassal’s treason against a lord was bolstered by calling for the ejection of the traitor from the protection of the peace. Fod

Despite the archaic tone of the Fondarella peace, the Catalan barony saw it as a threat to several articles of the *Usatges* and raised these objections when Alfonso convened an assembly at Gerona in 1188 to promulgate another set of peace statutes. Surrendering to the will of his great men, Alfonso reformulated the affiliation of the *pax et treuga* and the “written usage” (*scriptum usaticum*) on several points. Passages from the code which dealt with the murder or injury of the comital bailiffs, the mortgaging of the possessions of such officials, and terms of castle tenure and surrender by castellans and lords were incorporated fully into the peace. The most significant article of the Gerona assembly was that which made violation of any part of the *Usatges* an infraction of the peace and truce. Violators of the code could thus be ejected from the protection of the peace and attacked with impunity. Fod

Despite Alfonso’s efforts to assure the Catalan barons that the peace

statutes would not challenge the full jurisdictional base of the *Usatges*, they remained unconvinced, especially when he convened yet another assembly at Barcelona in 1192 for the express purpose of promulgating a “constitution of new peaces.” Though the barons initially acquiesced to the will of their sovereign as legislator, their fear of legal innovations that might put the *Usatges* at risk quickly surfaced. Thus, “at their earnest request and pressure,” Alfonso angrily gave in and issued a proclamation from Barbastro which declared that all Catalan peace and truces prior to 1192, [33] “which the very written law of the *Usatges* clearly proclaims,” would remain forever in force. Fod

It is significant that in the midst of a dispute between sovereign and nobility which would be reenacted time and again for the next two hundred years, the *Usatges* would serve as a guarantor of privileged position for both sides. Ruler and subject alike could appeal to and defend the same law, which from its heterogeneous nature gave something of great worth to each. As a result of its expanded acceptance on all levels, the code constituted a territorial standard of law within Catalonia and, to some extent, throughout Provence. Indeed, the rise of the “*fuero* and custom of Catalonia” was widespread enough in Provence to guarantee the preservation of a “volume of the Barcelona laws” (*volumen legum barchinonensium*) in one of the region’s clerical libraries before the end of twelfth century. Fod

Assessment of a Law Code

At the center of all the controversies the *Usatges* have engendered lies the code itself. At once an enigma and a mine of information that varies greatly in quality, the textual record of the code itself provides some of the most significant clues about its evolution.

The first assertion that can be drawn from the code focuses on the complexities of its early existence. If only the first three articles of the *Usatges* had survived, one would have to assume that it was a unified law code promulgated by Rarnón Berenguer I and his third wife Almodis before a group of “magnates of the land.” As these first articles proclaim, the reason for such a massive legislative undertaking was a straightforward

one: the *Liber Judiciorum* was no longer universally applicable to all legal situations of the Spanish March, and so the count, basing his lawmaking on certain passages of Visigothic law, acted to fill in the gaps of the old written law with judicial precedents based on the region's customary law.

Although not a good indicator of the code's exact date, the prologue of the *Usatges* is still a significant starting point for the study of the laws. Certain portions of the opening section refute the possibility of a single legislative origin for the code. Rarnón Berenguer I is referred to as "the Old" (*vetus*), a sobriquet not applied to the count until the reign of his great-grandson, Rarnón Berenguer IV. [34] An earlier variant of the same nickname, *vetulus*, was first cited in 1092. Fod

The list of great men who supposedly witnessed the decree of the *Usatges* is also a flawed one. All the nobles mentioned had served in Rarnón Berenguer I's court at one time or another, but the vast disparity in their ages makes their attendance at the same assembly highly unlikely. Two cases are instructive. The great legist, Guillem March, seems to have ended his career as comital judge as Rarnón Berenguer was commencing his reign in 1035. Fod

Guillem Rarnon [I] de Montcada, on the other hand, received his title as seneschal from 1068, but remained an important member of the comital court through three succeeding reigns and only ended his service at his death in 1120. Fod

Despite its inaccuracies and inconsistencies, the prologue of the *Usatges* is eloquent on several points. The author of this introduction, though perhaps not even alive in the time of Rarnón Berenguer "the Old," still had access to documents of this earlier era and a bank of traditions transmuted through curial channels. The reason he gives for the promulgation of the code accurately reflects the count of Barcelona's need for an adjudicative adaptation in the mid-eleventh century. Like so much of the code it introduces, then, the prologue seems either a mixture of eleventh- and twelfth-century elements or a conscious twelfth-century attempt to cast its work in the idiom of a much earlier era. In either case, the last legist who turned his hand to the *Usatges* project felt impelled to reinforce its validity by highlighting the code with a lengthy history of application and use.

As one of the first editors of the *Usatges* in the twentieth century, Rarnon d'Abadal i de Vinyals, has observed, the code is "an aggregate of legal texts of different epochs and varied sources." Fod
These legal strata can be seen within ranges of articles and in individual

articles themselves. Since such internal evidence is open to various interpretations, three major lines of chronological classification have been based on the clues the *Usatges* provide: the linguistic, structural, and comparative approaches. Following the linguistic method, around the end of the nineteenth century, such scholars as José Balari Jovany and Guillermo Maria de Broca y Montagut investigated the style and syntax of the code to determine which of its articles were original and which were later accretions. Passages in the first group read as if copied directly from eleventh-century decrees, with verbs in the initial clause cast in the present indicative [35] plural. In passages of the second group, a narrator intrudes and the initial verbs are expressed in the past indicative plural. By using such simple linguistic indicators, scholars of the *Usatges* hoped to delineate the various stages of the code's growth.

In the second means of code chronology, the focus of scholarly investigation was the accumulation of later materials in the *Usatges*. This added material, the work of later commentators and copyists, is not consistent with an eleventh-century environment. Fod

Though they shared some methodological bases with the earlier linguistic investigators of the *Usatges*, such twentieth-century investigators as Felipe Mateu i Llopis and Pierre Bonnassie focused not on language, but rather on the code's structural elements to at least partially determine which of its articles have an eleventh-century vintage. The principal indicator of such a textual baserock for Mateu i Llopis and Bonnassie was the mention in the code's articles of coins known to be in circulation throughout Christian and Muslim Spain in the eleventh century. For the practitioners of this second type of textual archaeology, the citation of so many different types of coinage in the body of the *Usatges* could only mean that the laws came into being during a long period during the mid-eleventh century. Fod

The culmination of the first two methods used to give the *Usatges* a verifiable date was the work of Ferran Valls i Taberner. This editor of the code in 1913 spent much of the next two decades in using the research of earlier scholars to posit a theory that the *Usatges* came into being in certain stages during Ramón Berenguer I's reign. Fod

In the most recent venue of study, which focused on the connections among the code's parts, such authorities as Guido Carlo Mor and Joan Bastardas i Parera have attempted to understand the whole by comparing all the earliest copies of the *Usatges* in Latin and Catalan to see which articles constituted an original version and which were later

additions or glosses. From this comparison of editions, Mor and Bastardas concluded that the *Usatges* had indeed evolved in stages. But rather than being a few years long, they declared that these stages bridged much of the later eleventh and twelfth centuries. Fod

None of these approaches are entirely satisfactory, since in one way or another they [36] portray the *Usatges* as a germ of original laws surrounded by layer after layer of supplementary material. This view is entirely too simplistic. Original, eleventh-century and secondary, twelfth-century elements clearly existed in the written code which emerged after 1149, but they may not have played a part in the primitive “court usages” which came into use in Barcelona tribunals from the reign of Ramón Berenguer I. Though a common set of *usatici* must have existed in the broadest sense, they were not passed from one generation of judges to the next unchanged. The variants undoubtedly made their way into the earliest compilations and even after the laws reached a more polished and rectified form, the anomalies of their early existence were preserved. Thus we see a number of sections in the code addressing the same problems but in somewhat different ways.

The most striking of these variants focus on penalties for murder and assault. In the first and presumably some of the oldest of the *Usatges* articles (4-11), a schedule of fines for violent crime is arranged in accordance with the status of the victim and the seriousness of the offense. While this set of penalties is rooted in Visigothic law, it seems to share much with the *wergeld* of the barbarian codes. Fod

Since these fines were payable in the gold coinage of Ramón Berenguer I and his sons, it seems likely they have a late eleventh-century pedigree. Another set of fines are also included in the code (articles 11-17). Though treating with the same kind of violent crime, the victims were to be compensated with types of silver coinage that circulated in the lands of the count of Barcelona throughout the eleventh and twelfth century. Fod

The different approaches of these two sections to the malefactor points to different authors working in distinct eras. In the “golden” articles, the victim's place in society determined the amercement, while in the “silver” articles the emendations were assessed solely according to the seriousness of the crime.

The inclusion of such similar and different statutes within the same corpus of law reveals something of how that corpus developed as an entity.

Rather than growing from a small core out to a great but regularly defined periphery, the earliest form of the *Usatges* in their earliest [37] form were rather a cluster of customary legal amoebas that slowly fused into even greater legal cells. Homogeneity was not always the result of such amalgamation. Anomalous approaches to the same problems might exist side by side since they all had the validating mark of being custom. The *Usatges* in their written form is thus not one code but a number of compilations linked together – sometimes successfully, sometimes less so – by passages of an explanatory nature. The author of these passages, who served as interlocutor for all other judges and legists involved in the long process of turning Barcelona usage into law, was not merely the final editor but also “a historian whose work was the fruit of his researches.” Fod

In spite of the unifying hand of its last editor, the earlier groupings of “court usages” could not be fused out of existence even in the name of textual efficiency. Since the “fundamental base” of the *Usatges* was an evolving set of curial precedents that stood as an adjunct to the *Liber]udiciorum*, it thus shared the inviolability and unchangeability of Visigothic law. Fod

A number of usage strains, which might have been defined in judgments rendered by the count of Barcelona’s tribunals, surely passed through several compilations that may have existed contemporaneously and then fed into the first official written version of the code. Fod

The illogicalities of the code are the logical result. Only by a thoroughgoing examination, assessment, and recasting of the different sets of “court usages” could a more systematic legal statement have been attained. Yet such “innovations” might have blocked acceptance of the laws on a wide scale. As it was, great changes had been appended to the “court usages,” which transformed them from simple proclamations of customary law to a clear-sighted statement of sovereignty for the count of Barcelona

Law of Prince, Law of Ruler

Regardless of the uncertainties of the *Usatges* before they left the path of custom and entered [38] on the high road of written law, the code’s

importance in Catalan life was quickly shown when both ruler and ruled claimed it as their own. The success of the laws in this regard must be attributed to the skillful weaving of comital assertions of public power with the acknowledged rights and duties of lords and vassals. The result was, in Thomas Bisson's words, a "grafting a custom of fiefs onto Roman-Visigothic principles of public order." Fod

With this in mind, the most efficient treatment of the jumbled mass of incongruities that comprise the *Usatges* is afforded by a focus on the code as a statement of the count of Barcelona's power and a legal ordering of Catalan society under the aegis of the same count's proclaimed authority.

Like all successful non-royal rulers to emerge from the ruins of the Carolingian empire, the count of Barcelona insisted he had kinglike authority while never assuming a royal title. The thirteenth-century chronicler, Bemat Desclot, fabricated the following speech for Ramón Berenguer IV to explain the lack of a kingship in Catalonia:

While I live I will not be called king. I am now one of the better counts of the world and if I were called king, I would certainly not be one of the best. Fod

Though fictional, this statement demonstrates with some clarity that ruling without a royal title could only be carried out from a secure base of authority. This foundation of ruling validity was brought about by the "intitulation" (*intitulatio*) of the non-royal ruler with political and ethical attributes. Fod

For the count of Barcelona, this development had effectively begun with Wifred I and reached its culmination with the *Usatges*. Interestingly, with the full inheritance of a royal title for Aragon by Alfonso II in 1162, the rulers of Catalonia felt less anxious about their claims to power and the terms of their intitulation were less and less used. Fod

Besides his titles of count, duke, and marquis, the most defensible aspect of sovereignty claimed by the ruler of Barcelona was that attached to the term *potestas*. In the framework of [39] Roman law, the word signified the right to dispose of property or the extensive control which the head of household or *paterfamilias* held over its members or the

extensive power a master exercised over a slave. In Roman political terms, *potestas* was often equated with *imperium*, the broad mandate the greatest magistrates possessed in order to carry out their duties. Fod

By the early Middle Ages, the term referred as much to the office as to the officeholder. In Carolingian political environment, a *potestas* was a “public person” or official with a broadly defined authority to rule sizeable territories in the name of the Emperor. Fod

In feudal terms, the word came to mean the invested jurisdiction or control possessed by a castellan or vassal over a castle or fief which had to be returned to the “eminent lord” whenever he requested it. Fod

Though the term could signify a suzerain, the count of Barcelona did not base his own authority on a position of overlordship but tied it firmly to the delegation of jurisdiction by Charlemagne and his successors.

Dominance over all the counties of the old Spanish March could hardly be claimed by the count of Barcelona, since several other counts, descendants of Wifred I’s brothers, also considered themselves *potestates*. Fod

The ascendance of the count of Barcelona could thus not be bound to the competence of any office but rather to the political idea that he was the best fitted to rule. As the fifteenth-century commentator on the *Usatges*, Jaume de Montjuich, observed:

All the counts of Catalonia were equal with the counts of Barcelona but because of the injustice of the land they conceded that the count of Barcelona was made more powerful and just than the others. Fod

At the center of the count’s claim to such a extensive authority was the title *princeps*. Just as the *Usatges* were the result of a complicated process of legal evolution, the term “prince” itself had followed a long and tortuous road. It had a long military and constitutional history in [40] Republic and Empire alike. Fod

In the period after Carolingian power had waned in the Spanish March, the greatest remaining indigenous authorities in the region, the counts and viscounts, were known as *principes*. The count of Barcelona in particular utilized the title and all the authority it implied throughout the eleventh century. Fod

In the rebellion of Mir Geribert and Ramón Berenguer I’s drive to suppress it, the claim to princely status was a significant weapon. Mir’s pretension to the title *princeps Olerdulae* was met by the strong counter

claim from the count for a broader supremacy in the “principate of his land.” Fod

This title was also one conferred anew along with feudal grants and posts of even more significance, as with Robert Burdet, who became the “Prince of Tarragona” in 1128, and Ramon Berenguer IV who, with his marriage to Petronilla, acceded to power in Aragon in 1137 but never bore a regal title there, being known instead as the *princeps Aragonensium*. Fod

As the count of Barcelona’s power grew during the twelfth century, the title of *princeps* began to symbolize his ambition for an ever broader horizon of sovereignty over Catalonia. This desire was shaped and reshaped in the half century after it was first stated in the *Usatges* until it became an effective doctrine of kingship that supported the count’s repeated assertions to sovereignty and validated his actions on behalf of the public weal. Though a “political ideal” – to use Udina Martorell’s words – , the concept of *princeps* provided a diagram for ruling to which each of Ramon Berenguer I’s successors added detail. Thus by the era of Pedro II (1196-1213), it was widely asserted and accepted in comital circles that

kings and princes of the land are to be useful to those subject to them, to love and cherish these people in many ways, to govern them with complete care in righteousness and justice and to entirely remove from them every oppression and [41] grievance whatsoever. Fod

While the titles *princeps* and *potestas* represented two distinct aspects of the count of Barcelona’s authority, they came to be used interchangeably in the *Usatges*, and this fact, according to d’Abadal i de Vinyals, is one of the major causes for the “characteristic imprecision” of the code. The confusion between the aspects of power represented by the two terms increased by their long period of evolution and mutual influence. The final compilers of the *Usatges* aided in the virtual merging of the two words into a single statement of political superiority for the count of Barcelona by indiscriminately applying “Roman legal qualifications” to both concepts. Fod

The princely and potestative functions now became a single reservoir of self-proclaimed authority which the Barcelona ruler could draw on to nourish his claims to sovereignty.

The regalist articles of the *Usatges*, though with some roots in Catalonia's customary legal past, were, as Balari suggests, largely a “spontaneous manifestation of the sovereign's will.” Fod

The only certifiable link to a longstanding legislative comital tradition was the peace and truce. This restricted role of eleventh-century pacification which the count shared with the bishops of Catalonia was amplified by the code in a way reminiscent of Visigothic and Frankish models. Fod

Thus the count of Barcelona's role as protector of the “helpless” was combined with a more general “protection” (*emperamentum*). As a result, the count as *princeps* was responsible for the “peace and security” of all his lands. Within this ambit of authority, the prince took as an obligation of his office and position the protection of all shipping coming to or leaving Barcelona, the region's canal network, and coinage. Fod

As *potestas* or ruler, the count formally offered his protection to any persons including his officials on route to or from [42] the comital court as well as to lords illegally attacked by vassals and vice versa. Fod

The amalgamation of feudal and non-feudal protection was thus attached to the person of the count, who himself represented the transmutation of prince and ruler into sovereign. Fod

Along with the protective role outlined in the *Usatges*, the position of judge was also firmly reinforced for the count of Barcelona. In feudal terms, the count, like any lord, settled the disputes of his vassals, and like any suzerain, was the final arbiter of grievances between other lords and their vassals. The focal point of the count's adjudicative activities in both feudal and non-feudal matters was the *curia comitis*. Verdicts rendered by a panel of judges appointed from the count's retainers was reinforced “by the approval and judgement” of the whole court. The acceptance of such sentences by the litigants and the land at large was considered crucial by the authors of the *Usatges* because whoever refused “the judgment of the court” was a madman who attacked its very “veracity” and that of the ruler himself. Fod

The count was also given a judicial, or more properly a punitive, role outside the court in carrying out corporal punishment for certain criminal acts including murder, theft, robbery, adultery, assault, and sorcery. Fod He was also given the sole responsibility for rendering judgments concerning situations not covered in customary or Visigothic law. Interestingly, such “royal discretion” set judicial precedent which

eventually passed into written, territorial law – the very process that had brought the *Usatges* themselves into being. Fod

The judicial powers attributed to the count of Barcelona by the *Usatges* were also another base of his sovereignty. Very much like Visigothic and Carolingian rulers before him, the count was placed at the apex of the civil judicature and made the only authority to punish infamous or criminal acts. The last stage of sovereignty expansion the *Usatges* proclaimed for the count of Barcelona centered on the extent of his public prerogatives. The laws openly and firmly declared that roads, highways, rivers, springs, pastureland, forests, crags, and other defensible sites were under the jurisdiction of the count who [43] held them for the realm at large. Fod

Though there was some basis for such comital claims, the assertion that only he had power over various types of lands mentioned in the code ran counter to the realities of land settlement since the time of the Spanish March. In allodial transfers and feudal grants from the tenth century onward, possession or custody of the types of land restricted to the count, were freely granted in every stratum of Catalan society without reference to comital authority. Fod

Even the comital involvement in the peace and truce did little until the late-twelfth century to further regalian rights over such “public” features of the Catalan landscape as the major road network. Fod

The most successfully implemented of the count’s claims based on *potestas* was that which restricted the building of any structure on high ground or the use of any type of siege equipment without the count’s permission. Fod

The princely ideal of the count of Barcelona is best expressed in the code’s articles which focus on a sovereignty emanating from the *curia comitis*. All the prerogatives he claimed for himself in his realm came to light in microcosm within the circle of his court. It was consistent with his princely honor to maintain a “great household” (*magna familia*) around him as both a stage for his ruling pretensions and a means of sharing the aura of his power with the great men of his lands. These retainers were to be fed and clothed in a lavish way as long as they sojourned with the monarch. While the sovereign’s drive for a fully-accepted basis of power and authority emanated from the self-conscious grandeur of his court, his validity as ruler was bound to the righteousness of his character. Thus, since many a realm had been ruined “by an evil prince who is without either truth or justice,” the ruler was bound by his office to maintain a

“sincere and perfect faith” as well as “truthful speech.” Fod

The difference between the state of attributed power or the possession of qualities which certified the right to such power and that actually held by the count of Barcelona demonstrates [44] with some clarity what the principal articles of the *Usatges* intend. From a real but often ill-defined foundation of authority, the count was endowed by the sanction of written law with a much richer language of dominion, which he learned to speak with growing fluency as the twelfth century ended.

Law of Lords, Law of Vassals

The *Usatges* justified its own existence in most primal terms: the Visigothic “Book of Judges” contained no section on feudal relations for judges to turn to in making their decisions and thus a new law was needed to address new social situations. The inapplicability of law codes of late antiquity to the evolving realities of feudalism was not unique to Catalonia but occurred in all the lands of the defunct Carolingian empire. After a period of legal gestation and adaptation in the tenth century, feudal practice was slowly “integrated” into systems of law in the eleventh and twelfth centuries. The legal implications of feudal bonds were addressed in urban statutes and imperial decrees. The most important of these legislative acts were imperial edicts which defined the rights and duties of lords and vassals. In 1037 at Milan, Emperor Conrad II (1024-39) laid out the legal framework in which Italian lords and vassals were to operate. Fod

In 1158 at Roncaglia, Emperor Frederick I Barbarossa (1152-90) formally unified the network of feudal relations under the aegis of his imperial power. In the latter set of edicts, the influence of Roman law is clearly discernible as disparate feudal practices were systematized and the power of the Emperor was proclaimed to supersede all the feudatories of his Italian lands. Fod

Even before Roncaglia, however, the new trends of Roman jurisprudence had turned to the welter of feudal practice and attempted to make some

legal sense of it in such books as the *Libri Feudorum* of Umberto de Orto which became a standard textbook at Bologna from the mid-twelfth century. In this political and academic milieu, the *Usatges* came into being. The influence of Roman law on the code's authors is easily demonstrable. Yet in the feudal articles [45] of their work, they did not attempt to fashion a full comital suzerainty, but rather aimed at forming a general custom which, as Bisson says, was "applicable to all lords, vassals, and fiefs." Fod

The main thrust of the feudal articles of the *Usatges* was an ordering of the myriad bonds which tied lords to vassals in Catalonia. The relations delineated in the code accurately reflect the terms of the pacts which proliferated during the reign of Ramón Berenguer "the Old." Fod Homage and fealty were so commonplace that they did not warrant lengthy description. As the delineation of a "hierarchy of commended men," the *Usatges* were much more concerned with practice than with theory. Fod

They sought to layout tenurial, judicial, and military standards common to all feudal relationships in the areas of Catalonia controlled by the count of Barcelona. Multiple feudal lords were discussed in ideal and real terms. Liege homage was defined at the simplest level: a liege vassal would theoretically have only one liege lord whom he promised to serve above all others. The code also reflects the real world of Catalan feudalism, since it allowed vassals to have more than one liege lord under certain conditions.

Fod

Regardless of the number of lords and vassals a person might have, it was the conditions of, service or protection that most interested the authors of the *Usatges*.

Vassalic dues and rights as they appear in the *Usatges* are much the same as as in the eleventh-century *convenientia*. Vassals held the custody of their fiefs or castles conditionally – they could not alienate their tenure without their lord's consent. Fod

The services owed by vassals to lords were both military and legal. As the bulk of his temporary seigneurial army, vassalic "aid" (*iuvamen*) included defense of the lord on the battlefield and; ransoming him if captured. Fod

[46] As "natural trustees of their lords," vassals could be required to "post sureties" (*firmare directum*) and "guaranties" (*pignora, plivios*) for their lords involved in litigation. Fod

The rights a vassal could claim from the *Usatges* were few but significant. If

a lord asked anything beyond the conventional terms that tied him to his man, the vassal could demand larger fiefs to support this greater level of service. Fod

The custody of fortresses redeemed by lords had to be given back to their men within a defined period – normally ten days. Fod

As members of seigneurial hosts, vassals could demand reimbursement of personal losses suffered on active duty. Fod

The most significant right bestowed on vassals by the *Usatges* was the establishment of the count of Barcelona as protector of men unjustly punished or deprived of their fiefs by their lords. Fod

The code's treatment of the lord's part of the feudal bargain concentrates almost completely on seigneurial rights over vassals. Lords had the same obligations to their men as did the count of Barcelona to his vassals; that is, "to grant redress, render justice, support the oppressed, and come to the aid of the besieged." Fod

What a lord could expect from a vassal was much more carefully defined in the code. The lord granted a fief in expectation of prescribed services from his vassal. If the vassal defaulted in any of these duties, the lord could confiscate the fief and retain it until the required service was carried out. Fod

Though fiefs in Catalonia were becoming heritable by the mid-twelfth century, a lord was allowed by the *Usatges* to grant the fief of a deceased, childless vassal to whomever he wished or to decide which child of an intestate vassal should accede to the paternal fief. Fod

A number of lordly rights discussed in the code were even more extensive. By the *exorquia*, the lord could claim a portion of a deceased [47] vassal's estate if no heirs survived him. By the *intestia*, the lord could gain a similar portion of a vassalic estate provided no will had been left. By the *cugucia*, a lord had rights to a part of the property of his vassal's wife who was a proven adulteress Fod

Though these rules would provide a basis for lordly dominance of the peasantry in Catalonia in centuries to come, the overall focus of the *Usatges* on lord-vassal relations was well within the pragmatic limits of the *convenientia*, which counseled a lord "not to demand more from his vassal than he could give." Fod

The *Usatges* spent as much detail on the dispute which could break master from man as they did on the connections of service which linked them. Though the relationship of lord and vassal was one of publicly declared friendship, the code recognized how such promises might end. While providing a peaceful means for severing feudal ties with their formal

negation, this formula, the *diffidamentum*, was eventually viewed as an open vassalic “declaration of war” against a lord. Fod

The vast majority of disputes between feudal parties centered on default of service. Interestingly, the code differentiates between premeditated dereliction and that engaged in during a fit of anger. In the first case, the offending vassal would lose his fief and could never regain it; in the second, the vassal might regain his master’s love by taking another oath of homage and posting a surety with his lord to guarantee future compliance of the terms of the pact. Fod

When disputes erupted into open war, the *Usatges* rules on treason came into play. The most serious forms of “treason” (*maxima bausia*) were the vassalic murder of a lord or his son, adultery with the lord’s wife, or usurpation of a lord’s castle. Lesser treason was caused by the vassal’s refusal to carry out his conventional duties. The first form of treason could not be emended by the vassal; the second was rectified by his posting of a surety and acceptance of lordly terms of reimbursement, no matter how galling. If the traitor or *bauzator* refused to accept these peace terms, he might claim judgment from the count of Barcelona’s court, where [48] the offender could clear himself by oath or judicial battle. Fod

The place of the count of Barcelona in this mesh of feudal ties was expressed in terms of feudal reality and princely aspiration. As one of the greatest feudal luminaries of the land, the count had all the rights and responsibilities of any other lord. As the result of his office and the prestige that accrued to it from Ramón Berenguer I’s victories over his rebellious nobility, the count possessed at least a symbolic superiority over the other Catalan counts and magnates. His court, constituted much like those of other lords, was the most important since it could at times include all the great lords of Catalonia, was the source of many “new knights” (*novellas milites*), and functioned as a last court of appeals for the settlement of feudal disputes. Fod

If a vassal was accused of treason but refused to have his “crimes” judged by his own lord, the case could be aired “before the prince and his court.” The count’s role as supreme judge also made him a legal protector not only of his own men but also of all other vassals of his lands who were “unjustly oppressed by their lords.” Fod

Beyond the affirmation of the judicial prestige of his court, the count was not endowed with the powers of a full-fledged suzerainty.

Instead, the creators of the *Usatges* attempted to order the nobility and feudal procedure by the authority of the count of Barcelona not as eminent lord but rather as prince. With the arrangement of emendations in article 4, one of the oldest sections of the code, a “noble hierarchy” is formally laid out from “viscount” (*vicecomes*) to “comitor” (*comitor*) to “vasvassor” (*vasvassor*) to “knight” (*miles*). At the apex of this status pyramid stood the count of Barcelona and, by implication, the other Catalan counts. Fod

Rather than claiming a feudal supremacy over his fellow counts which he could enforce only with the greatest of efforts, the Barcelona ruler and his legists opted to subordinate the entire network of feudal relations to a “regalian principate” which sought to bring all of Catalonia under its [49] authority. Fod

A broader territorial focus was asserted for the count of Barcelona’s dominion, which now touched all residents of both Old and New Catalonia, no matter what their feudal connection to the count. His self-affirmed sovereignty functioned in the protection of all his subjects and in his even-handed rendering of justice to them, no matter what their status. Princely power was also defined in a restrictive way, with the formulation of a public prerogative which claimed for itself and itself alone, the control of defensible sites, the building of castles, the possession or use of war machines or any advanced military technology, the declaration of war and peace with Spanish Islam and the judgment or punishment of any criminal act. The well-being of the ruler also far outweighed that of any feudal lord. If he was threatened with danger, all men, “knights and footmen alike” had to come to the aid of the sovereign under pain of being charged with dereliction of duty. Fod

As Thomas Bisson has observed, the *Usatges* is a “regalian code” which regulates feudal relations, property, rank, and national security.” Fod

The code, however, did not always function in this way. In the long series of Catalan baronial rebellions of the thirteenth century, rebel and sovereign both claimed the *Usatges* as the legal basis for litigation, breaking off relations, or even war. Fod

In spite of the intentions of its creators, the code would come to be a very different law to different people.

From Court Usage to Fundamental Law

The track of custom has no one author but rather came about “because many generations were passing that way.” Fod

The path which took the “court usages” of the count of Barcelona to the status as fundamental Catalan law was also unplanned and yet widened into a virtual [50] thoroughfare as more and more segments of Catalan society claimed the code as their own. Even after Catalonia had changed to such an extent that the *Usatges* were not readily applicable, the code still enjoyed “an indubitable observance” among the Catalans. As the autonomy of the Catalan people began to wane in the early modern period, it turned to its old laws as a validating mark of a distinct nationality. This guaranteed the significance of the *Usatges* from century to century as much in cultural as in legal terms.

A twelfth-century law code could hardly have attained a position of such prominence without the active sponsorship of the count of Barcelona. As his military prowess brought widening bands of territory under his jurisdiction, the count was careful to prescribe either full or partial use of the code in his new domains. The same judicial expansion was discernible in the Pyrenean counties that slowly came under the count’s political aegis through the twelfth and thirteenth centuries. In both forms of comital expansion, the *Usatges* were normally made an addition to local law without the removal of the latter code’s status as territorial law. Thus, at Lerida in 1149, Agramunt in 1163, Tortosa in 1229, and Majorca in 1231, any number of legal procedures outlined in the *Usatges* ranging from the punishment of assault to the posting of sureties were incorporated into the local administration of justice. In the Pyrenean counties of Roussillon, Cerdanya, arid, Conflent, the *Usatges* were introduced between the mid-twelfth and the early fourteenth centuries. Fod

Such influence for the *Usatges* was officially rendered impossible in Valencia, the last of the great Muslim domains conquered by the house of Barcelona, by Jaime I’s promulgation of a comprehensive law code, the *Furs*, for the kingdom in 1238. In spite of this, the northern half of the kingdom closest to Catalonia and filled with Catalan settlers informally claimed the *Usatges* as its law of choice. Fod

By and large, then, the set of statutes that emerged from the Barcelona court had now spread in influence and acceptance over a remarkably large

and varied territory bordered by the upland valleys of the Pyrenees over into [51] Provence down into the Valencian *huerta* and out to the Balearic chain.

Because of this support by the court of Barcelona, the *Usatges* were to emerge as a virtual fundamental law from the beginning of the thirteenth century. Catalans of all classes claimed the law as their own and would allow no tampering with it – even by the court of Barcelona. With the increasing importance of Roman law in the thirteenth century and the general perception among the Catalan people that such imperial codes were being utilized to advance the power of the Barcelona ruler past acceptable customary limits, the *Usatges* became the vortex of baronial storms which battered the entire realm of Jaime I. Time and again, the sovereign had to endure the vilification and rebellion of his great men; an enduring grievance of the disgruntled barony was the erosion of the “written usage” by the sovereign’s preference for Roman law and those trained in it. Eventually, the king could not ignore the mounting pressure against Roman law and had at least to seem to give in to it. In 1243, he decreed that only those advocates using the *Usatges* and other Catalan legal customs would be admitted to his courts. In 1251 and 1276 he patently outlawed the use of the Roman or Visigothic law in his tribunals and practice of Roman law by any Catalan advocate. He firmly ruled that all adjudication in his land of Catalonia would be based on the *Usatges* and all subsequent comital decrees – “the approved legislation of the land.” Fod

Though Jaime I was accused of undermining the written customary law his predecessors had largely nurtured into existence, his reign was crucial for the *Usatges* since he provided an intellectual environment conducive to legal scholarship in all his realms. Valencia received the *Furs*; Aragon the *Fueros de Aragón*; and Catalonia the *Commerationes* – all between 1238 and the Conqueror’s death in 1276. The author of the last treatise was Pere Albert, a cathedral canon of Barcelona who served as royal judge into the 1260s. The subtitle of his work, *Custom of Catalonia Between Lord and Vassal*, Fod

defined its purpose as an even fuller explanation of the feudal relationship than that afforded by the *Usatges*. The learned canon treated all the issues

raised in the *Usatges* but in much more detail. Some of the matters he focused on were the nature of the act of homage, the various implications of liege lordship and vassalage, the rights [52] and duties involved in the investiture of a fief, the powers and obligations of castellans, and the position of lord and vassal before the law. Surely, the most interesting question he posed was the relationship of the sovereignty of the Barcelona ruler to the feudal bond. Commenting on article 64, *Princeps namque*, Pere Albert plainly affirmed the superiority of the count of Barcelona's sovereignty over any feudal claim a lord might have over his own men. Vassals did not have to honor a seignorial command to wage war against the prince since this would involve *lèse majesté* and this far outweighed vassalian dereliction of duty. The maxim Pere Albert employs in this case is significant in gauging the advancement of the political position of the count of Barcelona since first delineated in the *Usatges*: "public utility must be preferred to that of the private sector." Fod

In addition to the work of Pere Albert, the *Usatges* also gave rise to another set of feudal norms, the *Customs de Catalunya*, attributed variously to the great canon himself and fourteenth-century commentator, Guillem de Vallseca. These laws lack the polish of the *Commemorationes* and seem to have been fashioned for courtroom use. The very format of the work is declaratory rather than investigative; in that, a schedule of precedents concerning all phases of the feudal relationship were clarified in "simple, pragmatic fashion." Fod

Besides its influence on legists, the *Usatges*, as the oldest statement of customary law associated with the count of Barcelona, acted as a legal rudder which steered all subsequent comital legislation along a traditional course. From the reign of Jaime I, the sovereign was formally bound to expect the expanding corpus of Catalan law that came to be known as the *Constitucions de Catalunya*. This body of law, which included the *Usatges*, the *Commemorationes*, all parliamentary statutes, and major comital decrees, was seen by Catalans as a legal birthright which each new count of Barcelona from Pedro II onward had to swear to uphold before he was crowned. Fod

Protection of rights and prerogatives often pitted count against people in the [53] last century-and-a-half of the Barcelona dynasty's existence. Each side found sustenance to carry out their fight in the *Constituciones*, most especially in the *Usatges*. The sovereign could rely on the principal articles to advance his authority while the people could measure the actions of the

ruler against the national law to determine if they were arbitrary and should be resisted. Fod

In some cases, the same articles were employed in very different ways within the various strata of Catalan society. The most pressing points of contention centered on the control of fiefs and the level of service they enforced on the tenant. The ruler insisted that all his people, both vassals and non-vassals alike, had to aid him militarily whenever he required it. The nobles, on the other hand, quoted their traditional laws to put limits on such service. Fod

The usual arena for the citing and reciting of an often-anachronistic law in support of present policies was the parliament. In opening addresses to the Catalan parliament (*Corts*), rulers from Jaime I to Martin I were always careful to emphasize that the measures laid before the assembly were “constitutional,” that is, in line with the fundamental law. Members of each estate used their assent to the present business laid before them by the Crown to air past “grievances” (*greujes*); such complaints had an evident connection to legal principles laid out in the *Usatges*. Fod

Even after the *Constitucions* attained the status of fundamental law, detailed knowledge of such a massive, ever-expanding legal edifice proved a formidable task. From the reign of Jaime II (1291-1327), the Crown attempted to disseminate such knowledge on several fronts. In 1300, the sovereign established a plan to see that Catalan law was kept up-to-date, widely known, and observed. He promised he would consult legal experts if laws needed modernizing and then lay the changes before the parliament for its approval. To assure all the laws were obeyed, a board composed of a knight, a townsman, and a lawyer would be designated in the jurisdiction of each royal vicar to monitor infractions of the law and inform the proper official. Fod

Jaime II’s efforts at extending the influence of Catalan law were extended in 1321 [54] when he appointed an investigative panel of prelates, barons, knights, and townsmen to aid in making the laws more relevant to the rapidly changing, Catalan society. Fod

This attempt at legal streamlining was slow to bear fruit, and in 1406 Jaime II’s successor, Martin I (1395-1410) renewed royal efforts to make the law of the Catalan land more useable by reconstituting the board of 1321 and its mandate. Fod

When a new sovereign, a Castilian prince of the Trastámara line, Ferran de Antequera, was installed in 1412, the Catalans, in a parliament of the next

year, petitioned him to allow the translation of Catalan law from Latin to the “vulgar Catalan tongue.” Fod

The huge undertaking required the use of all copies of the code, treatises, and law collections maintained in comital archive in the “greater palace of Barcelona.” A team of legists, headed by Jaime Callis and Narcis de Sant Dionis, completed the work and presented it to Ferran’s son, Alfonso V the Magnanimous, in 1422. Fod

This process of codification did not end there, and, by 1495, Catalan law was presented in another edition known as the *Constitucions y altres drets de Catalunya*. This collection, which consisted of the *Usatges*, peace and truce decrees, feudal laws such as the works of Pere Albert, parliamentary statutes, and royal decrees, was the work of Catalan legal experts who had not been commissioned by the Crown; it very quickly, however, attained an official character. Fod

Subsequent editions of the compilation in 1588-9 and 1704 incorporated parliamentary laws and royal decrees issued after 1495. These later editions were official expressions of Catalan law, having been suggested and approved by the Catalan parliament. Fod

While the cohesion of the Catalan law rested first with the approval and then the command of the ruler of Catalonia, none of the juridical collections, no matter how logically [55] presented, gave him the full measure of sovereignty he desired. From the era of Pedro IV the Ceremonious, the Crown turned with some regularity to the Castilian legal masterwork, the *Siete Partidas*, in an attempt to delineate a royalty with much broader powers than allowed in Catalan law. Fod

The populace of the region, at least that portion of it represented in the *Corts*, was not slow to recognize the implication of such actions by their ruler and repeatedly raised the alarm that the liberties defined in the *Constitucions* were at risk. The interregnum preceding the accession of the Trastámara dynasty convinced political authorities in all three realms of the Crown of Aragon that an expanded governing role for the parliament was not only possible but absolutely necessary. The second sovereign of the new dynasty, Alfonso V (1416-58), bore the brunt of the virtual parliamentary rebellion directed against a creeping Castilianization within the Catalan government. The remedies proposed to Alfonso by the Catalan *Corts* between 1419 and 1423 insisted that earlier statutes allowing only Catalans to serve as public servants in the Principate be honored fully and all royal actions that violated the body of Catalan law would be

considered invalid by the Catalan public. The king avoided the nagging problem of the Catalans and spent most of his reign in making good a claim to the Kingdom of Naples, while leaving his wife Maria of Castile to administer Catalonia as lieutenant general. Fod

Significantly, much of what the Catalans wanted from their new Trastámara rulers centered on a return to the traditional political compact between sovereign and people which had been worked out during the centuries of its rule by the Barcelona dynasty. The *Usatges* and *Constitucions* stood as the blueprint for this covenant of rule and thus had to be scrupulously followed by count and *Corts*. With the union of Castile and the Crown of Aragon in 1479, the Catalans would return time and again to their traditional laws to recall an era of lost glory and define their own aspirations of nationhood in the political orbit with Madrid at its center.

Catalonia's great potential for rebellion throughout the early modern era was often sparked by fervent attachment to its traditional laws. To mollify their troublesome Catalan subjects, the Catholic kings and their Hapsburg successors all came to Barcelona and, as counts of Barcelona, swore that all laws of the realm from the *Usatges* onward would be "inviolably [56] observed." Fod

Even when Spain fell under French dominance with the installation of the Bourbon dynasty, the first ruler of this line, Felipe V (1700-16) was quick to recognize that the Catalans were "restless and jealous of their privileges" and tried to pacify them whenever possible. Fod

This mainly consisted in declaring respect for their traditional laws. It was only when international stresses came into play with the War of Spanish Succession (1700-14) that the fate of Catalonia and all manifestations of her culture were sealed. When the Catalans formally abrogated their allegiance to Felipe in 1705, they were assured by their new Austrian, English, and Dutch allies that their "Laws and Privileges [would] be fully maintained and preserved." With a Bourbon victory in 1714, these promises proved to be worth nothing, and Catalonia went into the first of two eras of darkness which recent history has held in store for it. Furious at the Catalan rebels and anxious to install uniform laws in all of his lands, Felipe V enacted his *Decreto de Nueva Planta* or "Decree of the New Foundation" in 1716 by which the use of the Catalan language was forbidden and the "fueros, usages, and customs" of Catalonia were replaced by a standard, Spanish code. Fod

In the two centuries after the passage of this decree, the *Usatges* and all the indigenous laws of Catalonia were kept alive as cultural symbols which reminded the region of its lost autonomy. The suppressed codes, rather than disappearing from Catalan public memory, spurred intensive research and textual criticism throughout the nineteenth century. Political reformers, such as Pi y Margall and Prat de la Riba, peered below the Castilian domination imposed on the formerly autonomous regions of the Peninsula and saw that the potential for de-stabilization was truly explosive. To defuse this dangerous situation, both thinkers argued for a federal arrangement not unlike that of Switzerland or the United States in which each of the Peninsula's regions would retain their long-held laws but would have them upgraded in line [57] with general Spanish law. Fod

By 1871, the ideologues had their chance to form a new Spain, one fashioned on the "principle of unity in variety," with the proclamation of the first Republic, but this confused experiment in liberal rule was overthrown by a military coup that quickly restored the monarchy. Fod

It was not until the abdication of Alfonso XIII in 1931 and the issuance of the *Catalan Statute* in September, 1932, however, that the dream of a Catalonia with control over its internal affairs could be realized. One of the first acts of the restored parliamentary ruling committee, the *Generalitat*, was the formal restoration of the region's long-suppressed corpus of law.

Yet with the final victory of Francisco Franco in 1939, all such gains were erased and a Bourbon-like repression fell over northeastern Spain once more. Long before the death of the *Caudillo* in 1971, however, Catalonia had slowly begun to recover its importance first in economic terms but finally in the spheres of politics and culture. Fod

This thawing of centralist constraint would bring Catalonia's fundamental laws back into their own with the enactment of the *Compilación del Derecho Civil* in 1960. The circle from law to cultural icon and back again had thus been completed. As a bellwether of Catalan nationalism, then, the *Usatges* had presaged the course of the Catalan state from the unifying suppression by Castile to a broadbased autonomy within the Spanish state.

Trends of *Usatges* Scholarship

The unique place of *Usatges* in Catalan society is mirrored by the long history of study and controversy the laws have engendered. Because of the anomalies of the code and uncertainties concerning its authorship and date of composition, scholarship concerning the *Usatges* has led [58] to many variant conclusions about its very development. The headwaters of all *Usatges* research is a passage in Catalonia's first great chronicle, the late twelfth-century *Gesta Comitum Barchinonensium*, which claimed that Ramón Berenguer I,

wishing to distinguish his rule, before the Cardinal and Roman Legate Ugo [Candidus] and very many magnates within the Palace of Barcelona and, with the counsel and assent of the aforesaid, decreed certain of his own laws which we call the *Usatges* of Barcelona. Fod

This passage seems to support article 3 of the code which asserts that it came into being at a meeting of Ramón Berenguer I, his wife, and eighteen court barons. Fod

Although none of the extant records of the Count's assemblies fit the *Gesta* model, this "historical" reference, coupled with the code's prologue, has formed the basis for the work of a group of legists and historians who assumed that the *Usatges* became a written code in the mid-eleventh century. The first proponents of this view were a series of Catalan glossators and commentators including Pere Albert and Jaume de Montjuich in the thirteenth century; Guillem and Jaume de Vallseca and Jaume Callis in the fourteenth century; and Jaume de Marquilles in the fifteenth. Fod

To all of these legists, the *Usatges* was not a spent force in the legal life of Catalonia but rather the fundament of the region's law. As such, the code deserved exhaustive study and research. Though they could not agree on the exact date of the work's composition, they agreed that it was in the last half of Ramón Berenguer I's reign. Dating of the code, however, was only one of their tasks for by their exhaustive commentaries, they traced the influence of the *Usatges* on the legal practices of their own day. The influence of the code in the Pyrenean counties and into Occitania was

likewise explored by antiquaries such as Andreu Bosch and historians as J. Massot-Reynier and Jean-Auguste Brutails. Fod

[59] The nineteenth century ushered in a more thorough and scientific investigation of the *Usatges*. Through the researches of such scholars as Pedro Nolasco in 1868 Fod and Fidel Fita y Colomé and Bienvenido Oliver y Esteller in 1897, Fod a rectified text of the *Constitucions* was established in Latin and a Castilian translation of the same body of law also came into being. In both editions, the laws were arranged according to subject. Several important monographs and articles concerning the *Usatges* appeared in the latter half of the century. Three Spanish scholars, José Botet y Sisó, Fod Fidel Fita y Colomé, Fod and José Coroleu i Pella, Fod each created a topical apparatus for the laws and then produced lengthy commentaries on various articles of the code. As far as the date of composition and authorship of the *Usatges*, they each followed the general assumption of the Catalan legists. These widely accepted points were soon challenged and from far afield. In 1886, a German legal historian, Julius Ficker, systematically demolished the idea that the code was the work of a single legislator and showed it to be the product of a number of compilers, at least one of whom was familiar with the revival of Roman jurisprudence which took place in southern France and Italy during the twelfth century. He did this by showing that many of the code's articles were borrowed from Isidore of Seville, the *Liber Judiciorum*, and the *Exceptiones Legum Romanorum* (an Occitanian legal manual of the twelfth century). Fod An element of controversy – the first of many – had been dispassionately placed in the midst of *Usatges* research but would not alter its course until eighty [60] years and a civil war had passed.

The first years of the twentieth century saw the drive for better *Usatges* texts continuing unabated. In 1907, Arturo Corbella y Pascual Fod attempted to perfect the 1897 edition with a concordance of two fifteenth-century Latin texts, while Mossen Josep Gudiol Fod published the first edition of a thirteenth-century Catalan translation of the laws. What was long considered the definitive edition of the code appeared in 1913 when two of Catalonia's greatest historians, Ramon d'Abadal i de Vinyals and Ferran Valls Taberner, collaborated to produce a Latin and Catalan version based on several early texts. Fod The ghost of Ficker's work had to be laid to rest, however, and thus a whole array of scholars set out to explain the anomalies of the code. Their

principal task was the admission that the *Usatges* was not a monolithic work and came into existence over some years. The great Catalan antiquarian, José Balari Jovany, concluded that this era had to be the years of Ramon Berenguer I's ascendancy (1053-71). Fod

The Spanish legal historian, Guillermo Maria de Broca y Montagut, following Ficker, disagreed and claimed that the code was in the making from the mid-eleventh to the thirteenth century. Fod

The conundrum of the code's origin was seemingly unraveled by one of its many editors, Valls Taberner. Agreeing with Ficker that the laws were not the work of a single legislative session, he violently disagreed with the German scholar's contention and that of his colleague d'Abadal i de Vinyals that the redaction of some sections of the code took place in the twelfth century or even later. He set out his views in a series of articles which appeared in Spanish and Catalan scholarly journals before the Spanish Civil War. In these studies, he proposed that the *Usatges* were promulgated in four stages between 1058 and 1068 as the result of small assemblies summoned by Ramon Berenguer I. These laws were then edited into a unified entity at some [61] time before the count's death in 1076. Fod

Valls Taberner had apparently solved the *Usatges* puzzle and his views became a point of Catalan academic orthodoxy on the subject for the next quarter century. His work provided the chronological framework for the popular celebration of the code's existence which began in 1958. The date was heralded by the popular articles of Antoni Borell Macia Fod and José Maria Font Rius Fod

which disseminated the accepted views on the code to the general Catalan reading public and readied it for the promulgation of a new set of laws for Catalonia which were drawn from her medieval past. Ironically, it was during the conferences which accompanied the enactment of the *Compilación* in July of 1960 that the fissures in the traditional view of the *Usatges'* formation outlined in the Valls Taberner thesis became increasingly evident.

The fragmentation of the historical theory which had all but attained the status of dogma really began in 1913 when Ramón d'Abadal i Vinyals asserted that no exact dating could be posited for the code because it was composed of different sources from different eras. Fod

In the wake of the Catalan glorification of its first law code in 1958, the Italian scholar Guido Carlo Mor made a close comparison of the earliest Latin and Catalan texts of the laws in order to determine which parts of the code belonged to the original written version and which were glosses

or interpolations. From this analysis, he concluded that some of the *Usatges* articles were indeed of an eleventh-century vintage but that the first finished form of the laws appeared in the mid-twelfth century. Fod

Mor's resuscitation of a venue of research originating with Julius Ficker gave rise to what Thomas Bisson has characterized as "one of the most important [62] revisions in medieval Hispanic studies." Fod

Though Mor's theory was widely ignored or violently opposed, it was accepted by one very influential adherent in the decade after its appearance; for, from 1963, the dean of Catalan historians, Ramón d'Abadal i de Vinyals, reiterated his belief that the *Usatges* were heterogenous in structure or authorship. In 1966, he publicly broke with the view of his colleague Valls Taberner on the subject by writing:

It is necessary to surrender oneself to the acceptance that the compilation of the *Usatges* is not the work of Ramón Berenguer I nor of his immediate successors but the creation of the Romanizing legists of the court of Ramón Berenguer IV. Fod

Though d'Abadal i de Vinyals died shortly after this statement was made, the weight of his reputation guaranteed that the views of Valls Taberner would no longer monopolize *Usatges* research. Within a decade, new studies expanding on d'Abadal i de Vinyals' premise had begun to appear. In 1975-76, the French historian, Pierre Bonnassie, turned his attention to the "problem of the *Usatges of Barcelona*" in the course of his monumental two-volume study of early medieval Catalonia. He attempted to determine whether a small core of the code may indeed have been issued during the reign of Ramón Berenguer I, but the principal evidence he used to bolster this contention was the citation of five of the code's articles in which eleventh-century coinage systems are mentioned. More significant for the traditional argument concerning the code's origins was his examination of Catalan juridical records between 1060 and 1075. These clearly showed that "a legal usage of Barcelona" (*usum de Barchinona*) had really begun to evolve during the reign of Ramón Berenguer "the Old." Fod

Following closely on Bonnassie's researches came what must be considered the most cogent explanation to date of the *Usatges*' formation. It was presented in 1977 at a Catalan academic conclave by the Catalan

philologist Joan Bastardas i Parera. Fod

Resolving to strip away the textual detritus of the code's many editions and get at its core, Bastardas i Parera, like Mor, [63] isolated its earliest Latin and Catalan editions – all from the mid-thirteenth century. By a “rigorous criticism” of these texts, he was able to determine which of the articles were original and which had been appended to the text in the process of copying and recopying. Delineating the relationship between the parts of the code, Bastardas i Parera then set its emergence within a definite time framework by reviewing twelfth-century references to Catalonia’s customary law to discover when this *consuetudo Barchinone* actually referred to the *Usatges*. By reinterpreting evidence that had long been available to investigators of the code, in one stroke he seemed to resolve the “enigma of the *Usatges*” and in 1984 published his rectified Catalan and Latin edition of the laws which has formed the basis of this English translation. Fod

One of the other participants of the 1977 conference, José María Font Rius, portrayed Bastardas i Parera’s work as a “brilliant manifestation of the possibilities philology may offer to the study of a medieval juridical text.” Fod

He was also quick to add that this new solution should not hamper but rather spur further research on the code. This call was quickly heeded in 1977 as Aquilino Iglesia Ferreirós published the first installment of his essay on the history of Catalan law. He traced the “death-agony” of Visigothic law from the eighth to the eleventh century and its gradual replacement by Catalan customary law. As far as the composition and dating of the *Usatges* go, Iglesia Ferreirós accepted the Bastardas i Parera thesis in its entirety. Fod

The same can be said of the American scholar Bisson who in two seminal articles of 1978 and 1980 dealt with the *Usatges* in the context of studies on the emerging political and social systems in the Crown of Aragon in the twelfth and thirteenth centuries. Authorship and dating of the code were not Bisson’s prime concern, since these questions seemed suitably answered by Bastardas i Parera. Fod

Instead, he focused on the place of the *Usatges* in regard to Catalan law, kingship, and feudalism.

The Bastardas i Parera thesis has proved the dominant theory of *Usatges* research in the past decade. However, it has not won over all elements of the Spanish academic world, as is evidenced by a reissue in

1984 of Valls Taberner's articles on the code as well as the 1913 edition [64] of the code. Fod

A year later, the entire issue of Catalan feudalism was addressed in an important conference at the University of Gerona. The published edition of the proceedings, entitled *La formació i expansió del feudalisme català*, appeared in 1986. It included discussions of various aspects of Catalan feudalism and its influence on such neighboring regions as Majorca, Valencia, Castile, and Provence. The most significant of these articles in regard to *Usatges* scholarship is that of Frederic Udina Martorell and his son Antoni Maria Udina i Abelló. Reviewing the work of earlier scholars from Julius Ficker onward concerning the nature of the *Usatges*, the two authors concluded from several lines of eleventh-century evidence that over twenty of the articles included in the first redaction of the code had indeed been issued during the reign of Ramón Berenguer I. Besides their theory about the extent and nature of the *Usatici Barchinonae*, the Udinas provide an invaluable chart which details the research of Ficker, Broca, Valls Taberner, d'Abadal, Mor, Bonnassie, and Bastardas i Parera concerning the "court usages." Fod

While helpful to the student of the *Usatges*, this appendix also graphically displays the difficulties associated with understanding the origins of the code and shows how many different solutions this same mystery has spawned in the last century.

Conclusion

The law code known as the *Usatges of Barcelona* holds a paramount place in the legal development of Catalonia; its cultural significance for the region cannot be overstated. It epitomizes a heritage which is distinctly Catalan. This position of preeminence for a medieval collection of laws may have faded as Catalonia advanced into the industrial era but for the centralizing efforts of a Madrid government which the Catalans looked on as an agency of foreign oppression. Their law, language, and all other marks of cultural individuality were long suppressed by the national government, and yet they did not die. The career of the *Usatges* in the contemporary [65] world should be taken as an example of a fundamental political paradigm for the

aging modern world in which we live. As evident from recent events in Eastern Europe and the Middle and Far East, suppression of the legal and cultural norms of once-independent domains by a national government acting in the name of centralization does not eradicate these forms but may instead make of them cultural exemplars, which are revered by generation after generation until called on as a rallying cry for independence or at least greater autonomy within the framework of the nation state. With these considerations in mind, the *Usatges of Barcelona* still has and presumably always will have a place in the Catalan world.

Manuscripts and Editions

Texts of the *Usatges of Barcelona* have survived in both Latin and Catalan versions in a number of European libraries. Understandably, the majority of these are in the Iberian Peninsula. The most important of these copies, published between the thirteenth and fifteenth century, are:

(1) Ms. Z,78 i, 3; Z, ii, 4; Z, ii, 16; and Ms. Z, iii, 14 of the Real biblioteca de San Lorenzo de Escorial

(2) Ms. 9-9-7/2005 of the Academia de la història, Madrid.

(3) Ms. Vitr. II, 20.A2119 of the Col·legi d'advocats de Barcelona.

(4) Ms. 12.691 of the Biblioteca nacional, Madrid.

(5) Cancillería real, Papeles a incorporar, Legislación, caja 1, num. 1 of Archivo de la corona de Aragón.

The most important manuscripts of the *Usatges* in foreign libraries are:

(1) Mss. 4673 and 4792 of the Bibliotheque Nationale de Paris

(2) Ms. 3058 of the Collectio ottobonica, Vatican Library

Printed editions of the Usatges have appeared in large collections of Catalan law and in specific redactions, commentaries, and translations. The most important of the first category are:

(1) *Constitucions de Catalunya y altres drets de Catalunya* Barcelona: Pere Michel and Diego [66] Gumiel, 1495.

(2) *Constitutiones y Altres Drets de Catalunya Compilats en Virtut de Capitol de Cort LXXXII de las Cortes del Rey Don Philip IV Nostre Senyor Celebradas en la Ciutat de Barcelona Any MDCCII*
Barcelona: Joan Pau Marti y Joseph Llopis, Estampers, 1704. Reprint. Barcelona: Editorial Base, 1973.

In the second category, the most important works are:

(1) *Antiquiores barchinoensium leges, quos vulgas usaticos appellat cum comentariis supremorum jurisconsultorum Jacobi a monte Judaica, Jacobi et Guillermi Vallesicca et Jacobi Calicii*, Barcelona: NP, 1594.

(2) Pedro Nolasco Vives y Cebria, *Traducción al castellano de los usajes y demas derechos de Cataluna*, 4 vols. Barcelona: Libreria NePlus Ultra, 1861; Reprint, Madrid: Libreria Emilio Font, 1861; Barcelona: Generalitat de Barcelona, Departament de Justicia, 1988.

(3) Fidel Fita y Colomé and Bienvenido Oliver y Esteller eds. *Usatges de Barcelona*, in *CAVC*, I, pt. 1: 3-46.

(4) Mossen Josep Gudiol, "Traducció del Usatges, les mes antiques constitucions de Catalunya y costumes de Pere Albert," *Anuari*, I (1907): 285-334.

5) Ramon d'Abadal i de Vinyals and Ferran Valls Taberner eds. *Usatges de Barcelona, Texts de dret català*, 1. Barcelona: Diputació Provincial, 1913.

(6) Josep Rovira i Ermengol ed. *Los Usatges de Barcelona y els Commemoracions de Pere Albert*, Barcelona: Editorial Barcino, 1933.

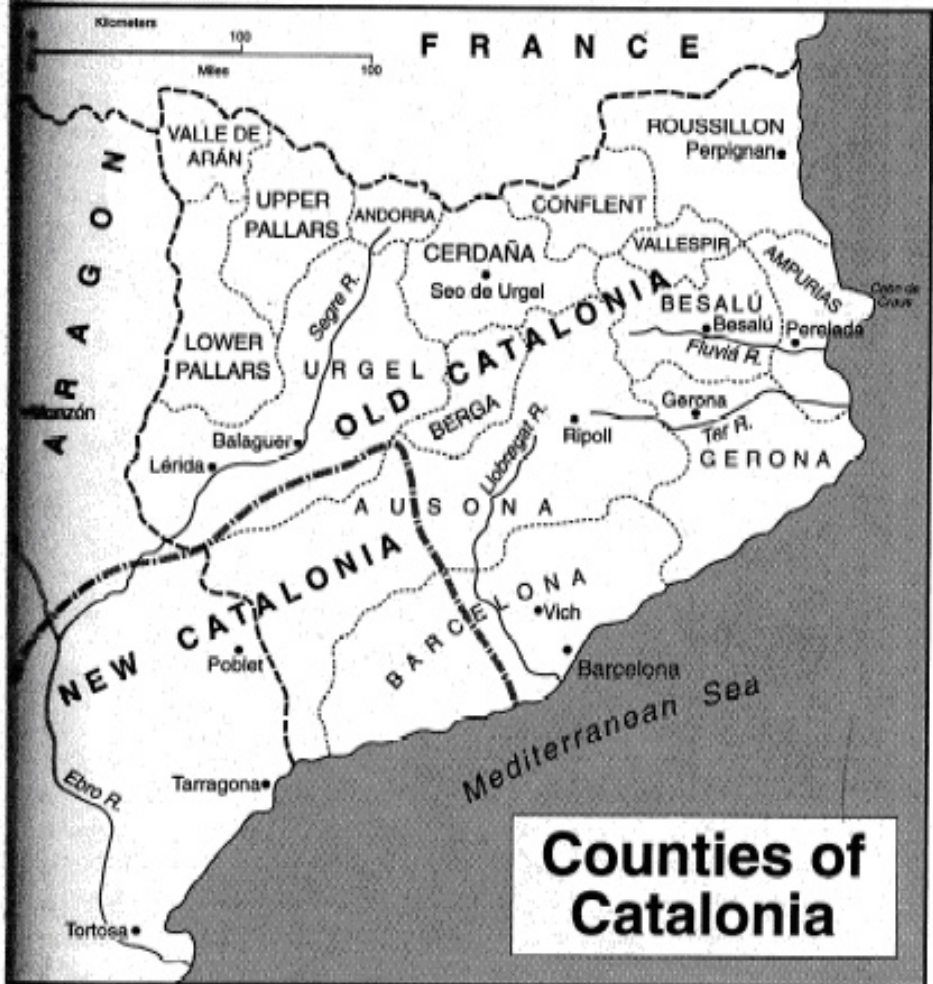
(7) Joan Bastardas i Parera ed. *Usatges de Barcelona. El codi a mitjan*

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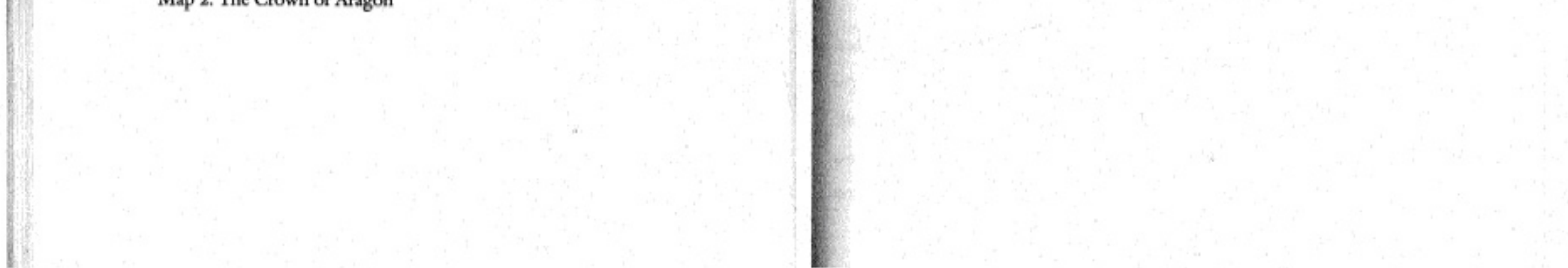
Though the trend of American scholars of eastern Spain has been to convert all personal and place names into Catalan. I feel that this removes them from their American audience which is much more familiar with English or Spanish forms. In regard to the sovereigns under consideration in this study, I have used the Aragonese names and regnal numbers rather than including the Catalan numeration since the former method is better known. On the other hand, [67] the names of Catalan nationals are reproduced in Catalan. I have followed the place-name usages of Joseph O'Callaghan's *History of Medieval Spain* except in the appendix notes where I have used the Catalan form of the region's modern provinces and lesser-known towns and villages.



Map 2. The Crown of Aragon



Map 1. The Counties of Catalonia




*The Usatges of
Barcelona :*
*The Fundamental Law
of Catalonia*
Donald J. Kagay


[69]

The Usatges of Barcelona

1



Before the rules of customary law were decreed, judges customarily ruled that all offenses, if they could not be overlooked, had to be settled for all time by oath, judicial battle, or ordeal of boiling or freezing water with the utterance of the following words: "I swear to you by God and these Holy Gospels that these offenses which I have committed against you, I thus did within my rights and by your negligence." And then he would undergo the judicial battle or one of the aforesaid judgements; namely, that of freezing or boiling water.


Homicide or adultery 


which could not be overlooked were judged, settled, or punished according to the laws and customs. 


2


When Lord Ramon Berenguer the Old 

Count and Marquis of Barcelona and the subjugator of Spain 
held dominion, 

he saw and acknowledged that the Gothic laws could not be observed in all the claims and lawsuits of this land. He also saw that these laws did not specifically adjudicate many disputes and offenses. With the approval and counsel of his good men, along with his very prudent and wise wife Almodis, he issued and decreed the rules of customary law by which all disputes and offenses 

inserted therein were to be submitted to judgement, pleaded, judged, decreed, compensated, and punished. Indeed, the Count did this on the authority of the *Book of Judges* which says: “Surely royal judgement will have the [70] prerogative to add laws if truly new situations in suits demand it,” 

, “so it may be disposed of at the discretion of royal power that once a suit is decided it should be inserted in the laws,” 

and “indeed only the royal power will be free in everything to enforce in suits whatever penalty it deems fit.” 

And the rules of customary law which he issued so begin.

3

These are the customary legal rules of court usages which Lord Ramon the Old, Count of Barcelona and his wife Almodis decreed binding on their land forever with the assent and acclamation of the magnates of their land; namely,

Ponç, Viscount of Gerona

Ramon, Viscount of Cardona

Ulait, Viscount of Barcelona, as well as

Gombau de Besora

Mir Gilabert

Alaman de Cerveló

Bernat Amat de Claramunt

Ramon de Montcada


Amat Eneas


Guillem Bernat de Queralt


Arnau Mir de Sent Martí

Guillem Senescalch
Jofre Bastó [71]
Renalt Guillem
Gicbert Guitart
Umbert de les Agudes
Guillem March
Bonfil March
Guillem Borrell, judges

4

Thus whoever kills, wounds, or dishonors a viscount in any way, let him make compensation to him as for two *comitores* 



. If a *comitor*, as for two *vasvassores*. 

Concerning a *vasvassor* who has five knights, let a compensation of sixty ounces of seared gold 


and thirty lashes be made for his death. And if he has more knights, let the compensation increase according to the number of knights.

Indeed let whoever kills a knight give twelve ounces of seared gold in compensation. Indeed, let whoever wounds one make a compensation to him of six ounces for one blow or many.

5


If anyone sets an ambush,  premeditatedly assaults a knight, beats him with a club, and pulls his hair, let him make compensation to him as for his death since this a serious dishonor. If, on the other hand, anyone in anger strikes a knight with any blow whatsoever with [72] fist or stone, rock or club but without drawing blood 

, let three ounces be given him. But if there is bloodshed from the body, let four ounces be given him; from the head, five; and from the face, six.

But if one strikes a knight in his limbs so he appears incapacitated, let him be compensated as for his death. Indeed if he is taken prisoner and put in shackles or leg irons 


, let him be compensated for half of the value of his death. 

If he is attacked, beaten, wounded, put in an underground cell, or held for ransom, let the compensation be made as for his death.

If he was only taken prisoner and held under guard, suffered no insult or disgrace, and was not confined for a long time, let compensation be made through a penalty of submission  and homage or by the captive's retaliation if he appears to be of equal rank. If the captor is of higher rank than the captive, let him provide him a knight of equal rank who shall carry out the penalty of submission and homage and homage or undergo the captive's retaliation.


Moreover, for a knight who has two knights as his vassals settled on his fiefs and maintains one of them in his household, let all this abovesaid compensation be made to him or, in place of him, let it be made twice over.

6

Let ambush and armed pursuit  of a mounted horseman or attack of a castle be compensated by homage and the penalty of submission as it seems right to he who judges this case.

[73] Let the son of a knight up to the age thirty be compensated as his father is. After this, let him be compensated as a peasant if he has not been made a knight.

7

Indeed if a knight abandons knighthood while able to observe it, let him not in any way be judged or compensated as a knight. It is sufficient for one to lose knighthood if he does not have a horse and weapons, does not hold a knight's fee, and does not takes part in hosts and cavalcades  or come to tribunals and courts as a knight unless old age prevents him.

8

Moreover, let townsmen and burghers litigate among themselves, be judged, and compensated as knights are. Moreover, let them be compensated by the ruler as *vasvassores* are.

9

Let Jews who are beaten, wounded, captured, incapacitated, and even killed be compensated according to the ruler's will.

10

If a bailiff who is a noble, eats wheaten bread daily, and rides a horse is killed, incapacitated, beaten, or held captive, let him be compensated as a knight is. Moreover, let an ignoble bailiff have half of this compensation.

11

Let the murder of a peasant or any other man who holds no rank besides being a Christian be compensated by six ounces; his wounding, by two ounces. Let his incapacitation and beating be compensated according to the law in copper sous. 🗨️

12

[74] Indeed after one has compensated another for the wrong done him when he took him prisoner, let the imprisonment be compensated in this way: if the captive was released on the day of his capture or on the next day, let the captor give him a suitable amount from his own property and swear an oath by a man of the captive's own rank that he need not compensate him further for the insult and dishonor done him. Yet if he is held longer in leg irons or shackles, placed in an underground cell, kept fettered or under guard in any way, let him receive six sous 🗨️ in compensation for each day and night. Let ten sous be given him for having his hand and feet bound.

13

If one strikes another in the face, let five sous be given for a slap; ten sous, for a blow with a fist or stone, rock. or club; and if there is bloodshed from the face, twenty sous. If one pulls another's hair with one hand, let him give him five sous; with two hands, ten sous. If he throws

him to the ground; fifteen sous. If he pulls him by the beard, twenty; for the shaving of his hair, forty sous.

14

If one, in anger, strikes any type of blow to another's body, let him give a single sou for each blow which does not show[leave a bruise]. For those which do, let him give two sous apiece. And if there is bloodshed from these, five sous; for the breaking of a bone in the body, fifty sous. If in angrily assaulting and dragging down another, one makes blood flow from mouth or nostrils, let him give to him twenty sous in compensation.


15

If one shoves another with one hand, let him give one sou to him; with two hands, two sous. If he throws him to the ground, let him give three sous to him.

16

If one spits in another's face, let him make compensation of twenty sous to him or suffer his retaliation.

17

[75] If one criminally slanders  another and does not want to or cannot prove this about him, either let him swear an oath to him that he uttered this slander in anger and not from the truth which he then knew or let him make as much compensation to him [the victim] as he lost by this slander as if it had been the truth if the slandered wished that the slanderer should purge himself on oath concerning it.

18





Let offenses against Saracen captives be compensated as to masters for their slaves. Therefore, let their deaths be compensated

according to their value. It says this since there are many of a great ransom price while others are skilled and instructed in different types of crafts.

19

Let every woman be compensated according to the rank of her husband. If she never had or does not currently have a husband, let her be compensated according to the rank of her father or brother.

20

All men must post a surety  for their lords wherever their lords demand it in their land. His viscounts and *comitores* must also do so for the ruler with a hundred golden ounces of Valencia  for each castle with its fief. Indeed, each knight must do so with ten golden ounces [76] of Valencia for every knight's fee ; for a castle with its revenues  and for other holdings, ten; for smaller fiefs, according to their value, and indeed for an act of homage in regard to a half a knight's fee of land, concerning that which pertains to the fealty. Moreover, a peasant must do so with five sous.

21

Let a tribunal be announced among both magnates and knights for the first time up to ten days in advance; then let it be announced eight days in advance. Indeed let a tribunal be announced among peasants on the fourth or fifth day before.

Indeed his viscounts, *comitores*, *vasvassores*, and knights must attend a plea with the Count wherever he commands them within his county. But if they cannot return home on this day, let him give them a safe conduct. This must be done in the same way between viscounts, *comitores*, *vasvassores*, and other knights so that each of these must attend a plea with his liege lord from whom he holds the largest fief within the entrance of his lord's estate if the lord agrees to this. But if he does not, let each one attend pleas with him wherever in his lands he wishes. Moreover, if he

cannot return on this day, let the lord give him a safe conduct.



22

In a suit judged between a vassal and a lord, and a judgement approved and sanctioned by both parties and well secured under the lord's authority so that it would be rendered to him, let the lord first indemnify his vassal for everything he owes him in any way whatsoever, and afterwards let him receive from his vassal everything adjudged him.

23

Before a judgement by battle may be sworn to, let it be secured through a surety of two hundred golden ounces of Valencia if it must be carried out by horsemen and by one of a hundred if by foot champions so that the victor shall be compensated for the damage which [77] he received in the duel both to his body, horse, or weapons and obtain that for which the duel is fought as well as all expenses he incurs in it and the defeated shall accept this matter as settled.

24

Indeed it is not fitting concerning common pleas  that there be more than four judicial sessions: first, in which sureties should be suitably posted by guaranties or pledges  as it is necessary before the arguments of both litigants are heard; second, in which the arguments should be stated and responded to, and judgements given by judges chosen by both litigants; third, in which arguments and judgements should be reviewed by the judges and, if necessary, the judgements altered, then afterwards these should be approved, sanctioned, and well secured with the approval of the judges by pledges as they had already been; and fourth, in which the lord of the suit should actually take possession of the pledges. And while he holds them, justice should be done and judgements carried out exactly as they were adjudged and sanctioned by both litigants.

25

If magnates or knights refuse to post sureties for their lords

as they must do for them and, for this reason, the lords seize control of their castles or confiscate their fiefs from them, the lords need not return to them either castles or fiefs until they have posted the surety and made restitution for all expenses which the lord incurs in the capture and garrisoning of the castle as well as in the confiscation of the fiefs. On the other hand, if the vassals give control of these, let them not post a surety with the lords until they shall recover the castle unless the lords have a war for which they need the castle or claimed lodging in the castle. 🗨️

26

[78] If one refuses to give control of his castle to his lord as he is bound to give it to him and suffers a public accusation 🗨️ for this reason and if the lord can capture the castle, let him be permitted to hold the castle along with the fiefs which the vassal holds from the castle until the rebel shall make compensation to the lord for all expenses and losses which he has incurred in the capture of the castle and its garrisoning, and promise swearing with his own hands 🗨️ and by a written oath that control of the castle shall no longer be refused in any way.


27

If anyone, from viscounts to lower knights, dies without legal provision for their fiefs, it is permissible for their lords to bestow their fiefs on whichever of the deceased's children they wish.


28

Castellans in castles which they hold for their lords must not appoint other castellans subordinate to them without the consent of their lords. But if they do so while the lords are aware of it and do not object, these appointed castellans, who are known of and not objected to, must remain. If the lords know and object, then let those [castellans] who appointed the others there dismiss them.

29

If one grants, mortgages, or alienates his fief  without the consent of his lord and if the lord knows and objects, he can confiscate the fief whenever he wishes. If he knows and [79] does not object, he cannot confiscate the fief but can seek service for it from whichever he wishes – either from the donor or the recipient. And if the service for this fief is refused him, it is permissible for him to confiscate and hold the fief under his lordship until the refused service shall be restored twice over and securities well made to the lord so the service shall not be refused him any longer.

30

Let whoever fails to serve in the hosts and cavalcades of his lord, for whom he must perform these duties, make double restitution to his lord for all damage, expenses, and losses which he caused by his dereliction of duty. Likewise, if knights on hosts or cavalcades or in the service of their lords lose anything of theirs, let their lords compensate them in so far as the knights can verify their losses. 

31

Whoever sees his lord in need and fails to give him the support and service which he must render him and, because of this, pays an indemnity to him, he [the vassal] must in no way recover or retain this indemnity.

32

But if the lord wishes that his vassal increase his service to him, let him enlarge his fief. But if a vassal should have what it is customary for him to have, let him serve his lord as he agreed to serve him.

33


Whoever is a liege vassal of a lord must serve him either according to the best of his ability or according to their pact. And the lord must be bound to him against all men and none against him. Moreover, no

one must make liege homage except to one lord only unless he who was his first liege lord consents.

34 

[80] Whoever deserts his lord while alive in battle when he could have helped him or, with evil intent, deserts him in combat must lose everything he holds from him.



35

When one driven by anger breaks ties  with his lord or abandons his fief to him, let his lord confiscate all which the vassal holds for him and retain it until the vassal shall return to the terms of the homage, post a surety with him, and make compensation to him with an oath for the dishonor which he has done him. After this, let him recover the fief which he has abandoned.

36

Whoever refuses to obey his lord and deliberately breaks ties with him out of haughtiness must lose forever everything he holds from him and return it to him, even if it contains some of his own property for which he has performed no service to his lord.

37

Whoever premeditatedly kills his lord or his lord's legitimate son by hand or tongue , commits adultery with his lord's wife, usurps his castle from him and only returns it to him after diminishing its value or commits an offense against him for which he cannot make restitution or compensation – and if he is convicted of one of these acts – must come under [81] the control of his lord along with everything he holds from him so his lord may do with him as he wishes since this is the greatest treason. 

38

Indeed, concerning other treasons and offenses for which

compensation and restitution can be made, let him post a surety with his lord in accordance with the custom of his own land and let him carry out for his lord exactly what the lord rules he should.

39

Let no vassal in any way refuse to give control of his castle or post a surety for his lord just as he is bound to give control of the castle to or post a surety for his lord since as long as he refuses, he is a traitor to his lord. And if because of this, he suffers any wrong, let no compensation be made him in any way. And if the lord suffers damage or incurs expenses, let compensation be made by his vassal.

40

If anyone is accused of treason by his lord at court in the presence of the prince, he must clear himself of this treason by the judgement or approval of the prince's court. But if he refuses to do so, then the prince must compel him to submit to judgement.

41

And likewise if a lord wishes to unjustly oppress his knight or take away his fief, the ruler then must defend and come to the aid of the knight.

42


And if one is publicly accused by the ruler, he must put himself in his custody and make restitution and compensation according to the judgement of his court for the damage, wrong, and dishonor which he has done him or clear himself of treason by oath and judicial [82] battle with one of similar rank whose fief is of the same value, bearing the loss and gain which he must incur by this duel.

We therefore say loss and gain so he shall receive as much if he wins as he shall lose if he is defeated.

43

This must be done in the same way between magnates and their knights, except that the judicial battle may not be carried out by their own hands [in person] but only through that of a vassal chosen by each party.

44

Every offense which a vassal commits against his lord or a lord against his vassal without a lodgement of complaint  and rupture of ties must be emended by both parties.


45

All vassals from viscounts to the lower knights holding the ruler's fief must swear fealty to him for his fief by a written oath; namely, for those things which the ruler wishes from him.

46

Let an oath always be sworn on a consecrated altar or on the Holy Gospel. And he who swears must take every oath, except those taken in treason or sedition, "according to his knowledge" and "by God and this Holy Gospel."


47

[83] Let all vassals, knights, and peasants alike, swear to  their lords just as these lords act to judge them fairly in tribunals. Yet lords should never swear to their vassals.



48

Let Jews swear to Christians but Christian never swear to them.

49

The oaths of peasants who possess a homestead and work it with a yoke of oxen  shall be believed up to the amount of seven silver sous.

50

 But concerning the other peasants who are called *bachalarii*, let their oaths be believed up to the amount of four golden mancuses of Valencia. 
Above this amount, let them prove anything which they swear by the ordeal of boiling water.

51

Let an old knight who cannot defend himself on his own or a poor one who cannot equip himself for judicial battle be believed on oath up to the amount of five golden ounces of Valencia.

52

Let other knights from age twenty to sixty who swear anything about which they [84] are accused of being perjurers defend themselves [in judicial battle] with their own hands against one of equal rank.

53

Let the oaths of burghers be believed as those of knights up to the amount of five golden ounces. Above that amount, let them defend anything they swear by judicial battle; namely, by foot champion.

54

If, in regard to the fiefs which knights hold, their lords deny that they had invested them with these, let the knights show the fiefs to be theirs through oath and judicial battle, and retain possession of them. Let those knights, who do not hold the fiefs and who do not legally claim

them, prove either by witnesses or documents that they had acquired these from their lords or else abandon them.



55

If anyone hurls at another a lance, arrow, or any type of weapon, let him make compensation for the wrong done the other person if he wounds him in any way. But if he could not hit him, for the sheer effrontery of having thrown at him. let him await the other person's retaliation under the same fear or make half of the compensation to him as if he had struck him. And if one while armed seeks out another and does not wound him but only cuts through the shield or armor or makes him dismount or fall to the ground, let him in the same way make half of the compensation as if he had struck him.

56


If anyone kills a horse or any other animal while a man is sitting on it or while holding it with his hand, let him make double compensation for the animal with twice its value and for the dishonor to the rider with an oath.






57

Indeed, let all ships coming to and then returning from Barcelona day and night [85] be under the peace and truce and protection of the prince of Barcelona from Cap de Creus  to the port of Salou. 

And if anyone damages these vessels in any way, let him make double restitution to them through the command of the prince and make amends for his dishonor to the prince with an oath.

58

Likewise, they ruled that all men, noble and ignoble alike, even though they might be mortal enemies, shall be safe for all time day and night and observe a sound truce and true peace from Montcada 

to Castelldefels 
from the hill of Finistrel 
to that of Gavara 
and from the hill of Erola 
to the valley of Vitraria 

and within twelve leagues out to sea. And if anyone disobeys this order in any way, let him make double compensation for the wrong and dishonor which he has done and pay the prince a hundred golden ounces for the violation of his ban.

59

Roads and thoroughfares on land and sea are the ruler's and, for their protection, must be included in the peace and truce for all days and nights so that all men, both on horseback and on foot, merchants and traders, going and returning on these thoroughfares, may go and return securely and undisturbed without any fear with all their possessions. And if [86] anyone attacks, strikes, wounds, or dishonors them in any way or steals any of their possessions, let him make double compensation to them according to their rank for the wrong and dishonor he has done to their persons; and for what he steals from them, let him make compensation eleven times over. And likewise, let him give the ruler the same amount from his property or fief so, swearing on oath on a holy altar, let him declare that he must make no further compensation for the dishonor he did him.



60

Since a land and its inhabitants are ruined for all time by an evil prince who is without both truth and justice, therefore we the oft-mentioned princes R[amón Berenguer] and A[lmodis], with the counsel and aid of our nobles, decree and command that all princes who will succeed us in this princely office shall have a sincere and perfect faith and truthful speech for all men, noble and ignoble, kings and princes, magnates and knights, peasants and rustics, traders and merchants, pilgrims and wayfarers, friends and enemies, Christians and Saracens, Jews and heretics,

might trust and believe in the princes without any fear or evil suspicion for their persons but also for their cities and castles, fiefs and property, wives and children, and for anything they possess. And all men, noble and ignoble, magnates, knights, and footmen, sailors, privateers, and minters, who are remaining in their land or coming from elsewhere, should help the aforesaid princes maintain, guard, and govern their faith and true speech in all cases great and small with a righteous faith and without deceit, evil intent or bad counsel. And among other matters, let the peace and promise not to take violent action which the princes should give to Spain and the Saracens on land and sea be maintained by them.

61

In the same way, let the truce and promise not to take violent action which the princes have ordered to be in effect between enemies be rigorously observed, even though these enemies have not confirmed to him the approval of the same truce.

Let no one dare violate the protection  which the prince makes in person, through his [87] messenger, *sagio* , or by his seal unless he first prefers charges with the prince in accordance with the custom of his court.

62

Moreover, let both golden and silver coinage be diligently maintained so that it shall in no way increase in copper or decrease in gold or silver nor in weight.

Indeed, whoever infringes, violates, or falsifies all or one of these – namely, the peace and truce, protection, or coinage – cannot make restitution or compensation to the prince since this is such a great wrong and dishonor. Thus to establish this, we order that their persons along with all of their fiefs and property shall come into the ruler's custody for him to do with them as he wishes in accordance with the counsel and approval of his court. Since the faith and justice, peace and truth of the prince, by which all of his realm is ruled, is as strong as the realm and stronger, therefore no one can or must think that restitution or

compensation can be made for this by any sum whatsoever. Whoever infringes these abovesaid things cannot make restitution or compensation to the prince unless, as we have ruled above, he shall come into the prince's custody.


63


Likewise, we rule that if anyone shall swear anything to his lord and does not take care to fulfill it, let him make double compensation for any damage which happens to his lord due to the violation of the oath. And if by this payment, he can be in compliance with the oath, thereafter let him observe it and fulfill and complete everything which he had agreed to his lord under oath. However, if he is later found to be a perjurer either let him lose his hand, redeem this penalty with a hundred sous, or lose a fourth of his patrimony, which will come into the possession of the party against whom the perjury was committed. And afterwards let him not testify in court or be believed on oath.

64

[88] Indeed if in any case the prince should be besieged, holds his enemies under siege, or hears that a certain king or prince is coming against him to wage war and he warns his land by both letters and messengers or by the usual customs of warning the land – namely, by bonfires – that it must come to his aid, then let all men, knights and footmen alike, who are old and strong enough to fight come to his aid as quickly as they can immediately after they hear or see the signal. And if one is derelict in giving the prince which he might render him in this regard, he must lose everything which he holds from him. And he who does not hold a fief from him must make compensation to him for this dereliction of duty and dishonor which he committed against him with his own property and by swearing an oath with his own hands since no man must fail the ruler in such a great matter and crisis.

65

The aforesaid princes further ruled that the holders of *exorchiae* 

– namely, of the nobles and magnates as well as of the knights and burghers and in all their freeholds – shall come under the control of the princes since that which pleases the prince has the force of law. 

Moreover, concerning their chattels, let these holders of *exorchiae* do whatever they wish and bequeath them to relatives, churches, or for their souls.

66

Associations 

and pacts which knights and footmen mutually make, while wishing to go on a military or hunting expeditions, must be rigorously observed by those who hear and sanction them. Concerning those who hear them, remain quiet, and do not oppose them, let them thus have as much profit or loss as was agreed among the others.

67

[89] By a good rule of customary law which was well-sanctioned by all of their vassals, the oft-mentioned princes decreed that no vassals, having lords, for any trick or reason – neither because of a renunciation of fealty, a rupture of ties, nor by the abandonment of their fiefs – shall ambush, pursue, attack, wound, capture, or hold prisoner the persons of their lords. Indeed, if, God forbid!, anyone does this to his lord, let him come under his lord's custody and remain a prisoner until he shall make compensation in accordance with the judgement of the prince and his court to him for the wrong and dishonor committed against him; that is, concerning that wrong which he has committed against the person of his lord.

68 

Highways and public roads, flowing water and fresh water springs, meadows and pastures, forests, coppices, and crags existing in this land are the rulers', not so they may have them as a freehold or hold them in lordship but so for all time these shall be for the use of all their people

without any hindrance or encroachment and the establishment of any tribute.

Let the rulers hold the crags in such dominion that whoever has them in his fief or freehold shall not build any fortification, castle, church or monastery on top of or near these without the permission and counsel of the prince. But if anyone who has sworn his fief to the prince and does this, he is to be considered a perjurer in this matter until he should abandon this building.

69


We command that the canal of water for the mill which flows to Barcelona shall be intact for all time. And let whoever presumptuously breaks it pay the prince a fine of a hundred golden ounces of Valencia for each instance and let whoever does this secretly for irrigation pay the prince a fine of three of the aforesaid golden ounces for each instance.

70 

[90] If anyone lures a baptized Jew or Saracen back to their religion or calls him either “turncoat” or “renegade” or if anyone within our city walls or burghs is the first to draw a sword against another or calls him a “cuckold,” let him pay a fine of twenty golden ounces of Valencia to the prince because of his ban. And if he hears or suffers any wrong there, let no compensation be made him for this and afterwards let him await the law and justice of his adversary.

71


By the authority and request of all their nobles, the oft-mentioned princes R[amón Berenguer] and A[lmodis] decreed that all men, noble and ignoble alike, going to, staying with, or returning from the ruler shall have the [protection] of the peace and truce for the whole time, day and night. They shall be unmolested by all their enemies, along with all their fiefs and property as well as all men holding their fiefs, residing on

them, or laboring in their service, along with everything which these persons hold and possess, continually until they return to their homes. And if anyone harms anything of theirs or inflicts any damage or commits a crime against them, from that day, he may consider his ties to the ruler broken. And if he suffers any wrong because of this, let no compensation be made him in any way. And let he who disobeys the prince's commands and, for any reason, does any wrong to those placed under this protection or to their possessions, make restitution eleven times over  under the constraint of the ruler for all the wrongs which he has committed and everything he has stolen or carried off to those persons against whom he committed these violent acts and afterwards let him make compensation to the ruler for the dishonor he has done him with his own property and by the swearing of an oath with his own hands.

72

[91] They also ruled that, once complaints were made by both sides, if the parties involved in a case afterwards enter into homage, an oath of fealty, or even a pact of friendship by an exchange of good faith and if the aforesaid suits were not maintained, they shall be perpetually null and void and considered terminated.

73

Indeed, let none of the magnates – namely, the viscounts, *comitores*, or *vasvassores* – hereafter presume in any way to either punish criminals (that is, to hang them for justice) or to build a new castle against the prince, or hold his fortification under siege or wage war with siege engines which are vulgarly called *fundibula*, *goza*, and *gata*  since this is a great dishonor to the rulers. But if a person does this, let him abandon or destroy the castle or give it back to the prince without any lessening of its value if he had captured it, immediately after being so demanded by the prince. And by the restraint of the prince, let him make double compensation for all offenses he has committed there to the person against whom he committed them. And if he captures knights and other vassals there, let him release and return them to the prince. Indeed, let him afterwards make compensation to him for the dishonor which he has done

him in this matter with his property or fief by swearing an oath with his own hands but he is not bound to make any further compensation to him. Thus the exercise of this distraint is conceded to none but the rulers.

Since the rendering of justice in regard to criminals – namely, concerning murderers, adulterers, sorcerers, robbers, rapists, traitors, and other men – is granted only to the rulers, thus let them render justice as it seems fit to them: by cutting off hands and feet, putting out eyes, keeping men in prison for a long time and, ultimately, in hanging their bodies if necessary

In regard to women, let the rulers render justice: by cutting off their noses, lips, ears, and breasts, and by burning them at the stake if necessary, And since a land cannot live without justice, therefore it is granted to the rulers to render justice. And just as it is granted to them to render justice, thus it is permissible for them to release and pardon whomever they please.

74 

[92] Let all offenses committed during the truce of the Lord always be doubly compensated, except for those persons who are ejected from the peace and truce of the Lord.

75

Let a truce given between friends and enemies be observed and maintained without deceit for all time. Indeed, if, God forbid!, it is violated in any way, let simple restitution be made.

76

The oft-mentioned princes ruled concerning all men except knights – that is, burghers, bailiffs, and peasants – that their lords, in whose fiefs they were when they were killed or suffered any wrong or affront to their persons, fiefs, or property, shall receive a third of the compensation if because of this their lord comes to their aid. Nevertheless, with the approval and counsel of the good men or through the judgement of the ruler and his land, let them make a judicial settlement with those from

whom they receive the compensation.


77

If one suffers any wrong, and, before he seeks vengeance for it, consequently seeks justice and if the malefactor promises to render justice to him and he [the victim], refusing it, afterwards commits another crime, first let him make compensation for the wrong which he has committed and afterwards let him then receive justice from the malefactor from whom justice must then be rendered him. But if the malefactor resists justice and he afterwards suffers any wrong, let no compensation be made him in any way.

78

Likewise, the aforesaid princes decreed that rulers shall confirm and maintain for all time the peace and truce of the Lord, and act to have it confirmed and maintained by the magnates and knights of the land, as well as all men living in their country. And if anyone [93] violates the peace and truce of the Lord in any way, he must make restitution according to the judgement of the bishops.

79


If anyone has vassals who, without his order or consent, commit any wrong to another and he promises to render justice between them and the other parties and he wishes to post a surety so that he should act to render justice and if he who has suffered the crime does not want to receive justice and thereafter commits some crime does not want to receive justice and thereafter commits some crime to any of the vassals, first, let him make restitution just as it was judged for the crime he has committed and then let him receive justice from the lord for his vassals just as a lord is bound to render it for them. Thus just as a reprisal committed because of a deprivation of justice  must in no way remain in effect so compensation shall not be made.

If a person has any grievance against another and summons him to render justice, and he, for the fear of God, nor by an order of a judge, nor by the advice of relatives and friends, wants to render justice to the plaintiff and the plaintiff, moved by anger, steals his chattels, burns down his houses, destroys his standing crops, vines, and trees, and then at any times afterwards the defendant comes to justice, first, let him make restitution for any damage he has done to the plaintiff and for the profit which he might have garnered from the plaintiff's possessions and, then let the plaintiff give back any of the defendant's possessions he might have. But indeed if any of these possessions were consumed, let him restore as much profit as he garnered to the present time and afterwards let the defendant render justice to the plaintiff, as is obligatory and fitting for him to do.

81

[94] If anyone is proven guilty and convicted of homicide, let him come into the custody of the deceased next-of kin and their lord. If he does not want to or cannot render justice, they can do what they wish with him, short of his death.

82


Concerning the compensation for all men who were killed, their sons or relatives, from whom a legitimate succession is fitting for the claim of inheritance, could charge the defendant or murderer, and undoubtedly have the right to take vengeance on him. But if they do this, let them have the compensation for homicide just as it was decreed to be done concerning defendants or murderers according to the laws  or the customs of their land.

83


Concerning bailiffs of whatever sort, they must be legally

answerable for their lords and their rights by the ordeal of boiling water, even in matters not involving judgements. Indeed let no bailiff grant his bailiwicks to his heirs without his lord's consent.

84

If a peasant takes back that which was rightfully confiscated from him , let him give five sous for the sheer effrontery. And if he takes anything except within his rights, let him make double restitution in this case. Let a knight who takes such things pay back and restore exactly what he has taken along with an oath.

85

If anyone violently rapes a virgin, either let him marry her if she and her parents [95] are willing and let them give her dowry  to him or let him give her a husband equal to his rank. If one violently ravishes a woman who is not a virgin and makes her pregnant, let him do the same.

86

Concerning the possessions and patrimony of childless peasants or holder (*exorchii*) who have departed from this world, let their lords have the same portion which the sons would have if any sons procreated by the *exorchii* had survived.

87

Likewise concerning the possessions and property of adulteresses if the adultery is committed against the husband's will, let them and their lords have equal portions of all the adulterous wives' property. But if, God forbid!, this adultery is committed with the will, order, or assent of the husbands, let their lords have full right and jurisdiction in such cases.

88

However, if the women do not carry this out by their free will but from the fear or order of their husbands, let them be exempt from the actions of their husbands and their [husbands'] lords and not subject to the loss of any of their own property. And if these same women desire it, they may separate from their husbands and yet nevertheless let them not lose their dowry or wedding gift.

89 

Husbands can accuse their wives of adultery or even of the suspicion of it and then they must clear themselves by their affirmation on oath and by judicial battle if there are clear indications and evident signs in these. Moreover, wives of knights should do so by oath [96] and likewise by judicial battle between knights. Wives of townsmen and burghers and noble bailiffs, by judicial battle between foot champions. Wives of peasants, by their own hands through the ordeal of boiling water. If the wife is victorious, let her husband honorably keep her and make compensation to her for all expenses which her retainers have incurred in this suit and judicial battle. But if she was defeated, let her come into the custody of her husband with everything she has.

90

A true informer will not be so considered unless that which he informs about he demonstrates as true by oath, judicial battle, or judgement by boiling or freezing water.

91

No one can encumber, defend, or retain as his own jurisdiction that which is under the jurisdiction of sanctuaries or is owned by the rulers or is within the boundaries of castles, even if possessed for a period of two hundred years.

92

Let guardians and bailiffs be legally answerable for their


wards if these are willing. But if, however, they are not, this must wait until the ward shall come of age; that is, twenty years old, so they may engage in litigation with plaintiffs. But if these plaintiffs can prove that they were deprived of justice by the wards' fathers, from then on the guardians must be legally answerable and engage in litigation for the wards without any delay. However, when a father thus dies, let his vassals immediately come before his son even if he is a small child, become his vassals by commending themselves with their own hands, accept from his hand the castles and fiefs which they held by the grant of his father, and give him control of these castles. Then let them go with him to the lord under whose authority he must hold his fief and commend himself to him and accept from his hand the fief which his father held for him. Let the vassals with the guardian, and the guardian with them serve the Lord. So indeed the ward should not lose his fief, let the guardian's vassals make a sure act of fealty to the lord. Yet indeed if the guardian wishes to diminish the ward's fief or keep it longer than the usual period, let these vassals help their lord without deceit. In the meanwhile, let the guardian truly take charge of the [97] boy and his fief and raise him well and honorably, make him a knight when he reaches a fitting age and return his fief to him. But if, however, the ward is a girl, let the guardian provide her with a husband with the advise and counsel of the good men, and likewise return her fief to her without diminution. Let peasants from age fifteen recover their fiefs and chattels.

93 

After Saracens have run away, let whoever finds and keeps them in custody before they should cross the Llobregat return them to their masters and have as his reward one mancus for each. From the Llobregat to the Francoli, three-and-a-half mancuses. Past that, one ounce as well as their chains and clothing.

94

If a peasant finds either gold or silver, which in the

vernacular is called *bonas*, 

a horse or mule, a Saracen or goshawk, let him immediately notify his lord, show and return it to him, and then receive whatever reward his lord wishes to give him.

95

When a peasant suffers injury to the body or damage to his property or fief, let him in no way dare take vengeance or settle the dispute but as soon as he suffers the wrong, then let him make an end to this matter in accordance with his lord's command.


96

At times, we have ordered that the sous to be used for the payment of the fine for cutting down trees be golden as the law prescribes



and at other times, in dinars. Since just as all trees do not have the same value, thus they must not bear an equal fine [for the felling of them]. And we allow that this fine may increase or decrease according to the ruling of a judge. [98] Indeed, let this fine be made according to the value of the trees and the damage and dishonor to their owners.

97

In a bailiwick or castle guardianship for which one has done homage or paid tribute, if one guards and defends this to the best of his ability, he must have judicial rights 

and a moderate utilization – namely, of grass, straw, gardens, and fruits of trees – nor must any wrong come to him there for any reason. But if it does, let the lord of the freehold make compensation to him, and, if he has a suit or war because of this bailiwick or castle guardianship, likewise let the lord help him. Concerning a bailiwick or castle guardianship for which one has not done homage or tribute, he will not have judicial rights but will have all the rest.

98

If anyone claims he was deprived of justice from the prince, a bishop, his lord, or his adversary in a legal suit, or alleges that he was

ejected from the peace and truce of the Lord by one of them, or says that his lord has broken feudal ties with him, and cannot prove it, let him make compensation for all offenses which he has committed in this case.

Afterwards, let him file suit, seek justice, demand adjudication and thus do so publicly so often that it cannot be denied him.

99

Let all vassals maintain the peace and truce with the rulers for thirty days after they have broken feudal ties with them; let the rulers maintain it with their viscounts and *comitores* for fifteen days; and with the *vasvassores* and other knights, for ten days.

100

[99] Let Christians not sell weapons to the Saracens except with the consent of the prince. But if they do so, let them reclaim the weapons which they have sold, no matter how difficult for them. And unless they do so, let them pay the ruler a fine of a hundred golden ounces.

101


Let them pay the same fine if they sell food to them contrary to the prince's wishes.

102

Let a person who informs the Saracens concerning a military expedition or strategy of the ruler or who betrays his plans or secrets pay the same fine, after he had made compensation for any wrong which takes place because of this.

103

Indeed, the above-mentioned princes issued another noble, honorable, and useful rule of customary law which they observed and commanded their successors to perpetually observe – namely, that they

shall maintain a court and a great household, form a band of retainers, give them soldier's fees 

, grant redress, render justice, judge according to the law, support the oppressed, and come to the aid of the besieged. And that whenever the princes want to eat, they should have the horn blown so the nobles and commoners will come to dine and there the princes should distribute fine garments which they have among the magnates and within their own household, and there summon military expeditions with whom they set out to destroy Spain, and there make new knights.

104

Likewise, the oft-mentioned princes ruled that if anyone in person or through messenger wishes to break feudal ties with his lord, he may be secure in doing this; secure while [100] he comes, secure while he stays, and secure until he returns home. But, in the meanwhile, if he knows of damage to his lord, he should prevent it if he can. But if he cannot, he should notify his lord about it and, unless he does so, he will bear the fault for the damage done by the malefactor.

105

They also ruled that if parents with sons or sons with parents have a legal dispute or lawsuit, let the fathers be judged as lords and the sons as vassals who have commended themselves with their own hands.

106

But if sons commit any crime against the lord of their fathers, let the fathers force their sons to make restitution and compensation to their lords for this crime or let the fathers themselves make compensation for them. But if they do not want to do this, let the fathers totally disinherit their sons and abandon their support of them without deceit.

107

Likewise, they ruled that if any son of a magnate of the land,

whether of greater or lesser status, did any wrong to any vassal of his father's castle or his fief or with his own vassals, the father should himself force his son or his vassals holding his land to make restitution for the wrong they have done or he should make restitution for them. Yet if the son besides does any wrong to another person from other places and not from his father's castle or from his fiefs nor with his father's vassal, neither should he return to the paternal castle or fief nor should his father or mother do him any favor nor protect him in anything. But if they do, they should make compensation for the wrong their son and the vassals he leads with him have committed.

108

Indeed, the aforesaid princes also decreed that if a dispute occurs or a lawsuit arises between Christians and Jews, two witnesses from both parties – namely, one from the Christian and the other from the Jew – shall suffice to prove their cases. Thus nevertheless if [101] the case is to be proved for the Christians, both witnesses should testify and the Jew swear an oath. And if it is to be proved for the Jew, likewise they should both testify and the Christian should swear an oath.

109

The aforesaid princes ruled and acknowledged it to be good faith that no men, after they have greeted or kissed each other, shall commit any crime against the other person on that day. But if, God forbid!, they did this, they should make restitution and compensation without any interdict to the person against whom they have committed this crime.

110

Indeed, they likewise established and approved as sound judgement that if anyone enjoys another's hospitality and dines with him, he shall completely abstain from doing any damage whatsoever to him for the next seven days nor, by any kind of artifice, commit any crime against

him in any way or for any reason either through his lord, retainer, or in person. But if it happens that he should do this, he shall make restitution and compensation against the one who has done this.


111

Therefore they ruled that if anyone traveled with another, or was with him either on the road, in his home, a field or in any other place and if another person then attacks him or wants to take any of his things from him, his companion should help him against all men as best as he can without deceit, even against his own lords; and he shall fear no official charge because of this. And his lord may not then file suit in any way against him concerning any part of his homage or for the violation of his oath, unless he was warned beforehand by his lord or his lord's retainer that he should not guide nor accompany the person.

112 

Then the aforesaid princes, being at Barcelona at the Church of the Holy Cross [102] and Saint Eulalia the Martyr, with the counsel and aid of their bishops – namely, B[erenguer] of Barcelona, G[uillem] of Ausona, and B[erenguer] of Gerona, as well as the abbots and the monastic clergy of different orders and with the assent and acclamation of the magnates of their land and other God-fearing Christians – confirmed the peace and truce of the Lord and decreed that it be observed in their land for all time. And if it was violated in any way, restitution and compensation shall be made as it has been committed to writing at this time in each see and bishopric of their land.

113

If a person who has posted a guaranty refuses to carry out the obligation  he agreed to, it is permissible for the person against whom the obligation was broken to compel and distrain him within the limits of the peace and truce forever. But he nevertheless should practice a moderate distraint and make a fitting guaranty since it is not just to take great guaranties for

moderate debts. Yet if the person who posted the guaranty carries out his obligation and pays the debt from his own funds and the person who imposed this guaranty on him does not want to release him from it, let him be forced to pay this debt twice over to the guarantor for all the damage which has happened to him because of this guaranty.

114

If anyone slights his lord, basely answers him and lies in an accusation against him and therefore the vassals suffers any wrong because of this, let no compensation be made him in any way if the lord was telling the truth concerning this. But, however, if the lord was lying concerning this, let him therefore compensate his vassal for the wrong and dishonor which has then happened to him in this matter.


115

Indeed, after a knight is accused of treason by his lord, he must not be legally answerable for his lord in other suits until he shall be cleared of this accusation unless the lord releases him of the accusation beforehand.

116


[103] The oft-mentioned princes also ruled that if persons of greater rank have a suit with those of lesser rank and an oath was directed to be taken between them, let the greater swear in person with the lesser if the lesser can have men of rank equal to the greater to swear for them. But if not, however, the lesser shall swear with the greater and the greater provide them men of equal rank and these shall swear to them what the men of greater rank have to swear. But if all of this is impossible for them, let oaths be made from each party by individuals who are Christians and their vassals, having commended themselves with their own hands. They likewise decreed this for common suits, in which no one holds lordship or suzerainty.

Concerning those who depart this world intestate, if they leave wives and children, let their lords accede to a third of their patrimony. And if they leave children and no wives, let the aforesaid lords accede to a half. If wives and no children, let the aforesaid lords accede to half and the relatives of the deceased, the other, to half. But if the relatives are dead, after the rights of the wives have been observed in all places, let it all be given to the lords. Thus exactly what is proclaimed above for men shall be in effect concerning intestate wives.


By the authority and request of all their noble and magnates, the oft-mentioned princes R[amón Berenguer] and A[lmodis] ruled that every grant shall remain permanently unrepealed and in effect. In addition, if anyone wants to grant his castle, fief, or any possession to his son or daughter, nephew or niece, indeed he shall do so under the following condition: that he shall retain possession of everything he has granted for all the days of his life, and, after his death, everything shall revert to the person to whom he had granted it. And he agrees to abide by the following stipulation: that he may in no way change his will – namely, that he shall receive the heir as a vassal commended by his own hands, or grant him control of a castle, or commend the castellan of the castle as well as those who hold the fief which he has granted him [104] as vassals or make him establish lawful possession of the aforesaid castle and fief from the lord from whose authority the granter holds the same castle or fief. But if he does all or one of the aforementioned things, then he cannot change his will if this grant was justly made or no other legal cause impedes it. For the laws and decrees allow a father to endow his son or nephew, granting to or benefitting him from his own estate. 

And it is sometimes customary to do this openly and sometimes secretly due to the fear from other sons, lords, or even from relatives and retainers. Therefore, the aforesaid princes and all of their court approved with a wholesome intent and, with this approval, ruled that the aforesaid mode of tenure [namely; homage, control of a castle, commendation of a castellan,

or establishment of lawful possession from a lord] attain such a validity that this cannot be subverted or changed by any fraudulence and trickery or through any deceit. In this way and manner, a father and grandfather can endow his son or daughter or even his nephew or niece.


119 

The aforesaid forbears, however, can disinherit their sons or daughters, nephews or nieces if they act with such effrontery as to seriously strike or dishonor their fathers, mothers, grandfathers or grandmothers, accuse them of a crime before a tribunal, or if the sons become traitors, the daughters do not want to marry husbands but live shamefully, or if the sons become Saracens and do not want to recant. If indeed they have been clearly proven guilty of such things, they must be expelled from their inheritance from the abovementioned persons, if the grandfathers or grandmothers, fathers or mothers are willing.

120 

If anyone wishes to disinherit his son or daughter, nephew or niece, let him do so by name and state the wrongful act for which he is disinheriting him, establish another heir [105] in this place, and let the case of disinheritance be proven by the person established as the true heir. If any of these things are not done, a person can in no way disinherit his son or daughter, nephew or niece. And if he presumes to do so, this action will be null and void.

121


Princes, magnates, and knights can likewise give their fiefs to whomever they wish – namely, in regard to that fief to which they should expect to accede by an act of reversion  after the death of any possessor [of the fief]. But afterwards they cannot change their decision if the recipient was already one of their vassals commended with their own hands or, because of this grant, they received him as a vassal. If this tenure is such for him and his lord denies that he had given him this fief, a formal verification shall be sufficient for him to act as if he had already held the fief. Therefore, very often this grant was found

to have been done in secret. Moreover, the oft-mentioned princes gave verification to such a grant for all times.

122

Let a judgement rendered in court by a judge chosen from the court be accepted by all and be in force for all time. Let no one by any artifice or trickery dare to refuse to obey it. But whoever does this or wishes to do so shall come personally, along with everything he is considered to own, into the custody of the prince so he may do as he wishes with him since he who refuses the judgement of the court, attacks the veracity of the court; and he who attacks the veracity of the court, harms the prince. And he who wishes to harm the prince should be punished and condemned for all time along with his progeny since one is demented and senseless who wishes to resist or stand in opposition to the wisdom and experience of the court in which there are princes, bishops, counts, viscounts, *comitores*, *vasvassores*, learned and wise men, and judges.


123

[106] The judgements of the court and the rules of customary law must be freely accepted and in force since they were not issued but for the severity of the [Gothic] law since all can file suit though all cannot carry out a compensation in accordance with the laws  which judge that homicide is to be compensated by three hundred golden *solidi* which is worth four thousand fine silver *sous*; the putting out of an eye, by a hundred; the cutting off a hand, by a hundred; of a foot, by a hundred; and the same for other members of body. Of course, they judge all men equally and indeed rule noting [of relations] between vassal and lord since these things must be done or were done in accordance with the rules of customary law, the aforesaid princes ruled that all judgements shall be rendered according to the rules of customary law, and when the rules of customary law are not sufficient, let the laws, the ruling of the prince, and the judgement of his court be reverted to.

124

If anyone lays in ambush during the truce of the Lord is over

or sets an ambush within the fief or the boundaries of his adversary's castle and commits a crime through this ambush out of doors on the day after the truce ends, he therefore must make compensation as if he had done it during the truce of the Lord.


125 

The above-mentioned princes ruled that everyone shall wait for his adversary until the third hour of the day[nine A.M.]. Indeed, then if he so wishes, let him take possession of the pledges and consider this failure to appear to be a deprivation of justice if the adversary himself who has failed to come to the tribunal does not consider himself to be without deceit. And if he does retain them, he may not demand the suits's adjudication through his advocate. This is not so between vassals and their lords – it seems fitting that vassals wait for their lords until the ninth hour [three P.M.].

[107]

Text Appendix One

A1

Let no one taken prisoner by a court and put in a castle as a sentence then leave it without permission. But if he presumes to do so, except perhaps for fear of death, he will pay the penalty for assault;  that is, thirty sous, which he will give to the court. Then after he has returned to the castle, let him make compensation for the guilt he has incurred as the court judges.

A2

The oft-mentioned princes also ruled and ordered that all men living in their country shall for all time make peace and war by sea and land with the Saracens according to the princes' orders.

A3

The oft-mentioned princes R[amón Berenguer] and A

[lmodis], along with their magnates, also approved and sanctioned that bishops, in their chapters or synods, also in their councils or communities, shall investigate, judicially intercede, punish, and judge churches and clerics as well as their rights and jurisdictions, along with all infractions of the peace and sacrilege committed in their bishoprics.

Text Appendix Two

B1

Let whoever kills a subdeacon pay a fine of three hundred sous; a deacon, four hundred sous; a priest, six hundred sous. Let whoever is judged guilty of killing a monk pay a fine of four hundred sous; a bishop, nine hundred sous.

B2

[108] We command that in order to have perjury prevented, witnesses shall not be admitted to take an oath before they have been interrogated. And if they cannot be interrogated otherwise, they shall be isolated and individually questioned. And it shall not be permissible for a plaintiff to summon witnesses when the defendant is absent. And generally no one except those who have been isolated shall be admitted to take an oath or give testimony. And if one is admitted to give testimony and is refused, let the person who refuses him say so and demonstrate why he does not want to admit him. Let witnesses be selected from this territory and from none other, unless the case must be investigated farther than the boundaries of the County. And if one was convicted of perjury, let him lose his land or redeem it with a hundred sous.

B3

And before witnesses may be interrogated concerning a case, let them be constrained to swear an oath that they would say nothing other than the truth. We also order that more honorable [of higher status] witnesses shall be given more credibility than that of less honorable ones.

The testimony of one person, no matter how well-placed and worthy of belief, must in no way be considered.

B4 

If when an unjust appeal was proven of anyone, let him be constrained to reimburse the expenses which his adversary had to bear for the appeal not simply but four times over. Two or three credible witnesses are sufficient to prove all suits; the testimony of only one is condemned by the laws and canons.

B5 

[109] Let no one ever presume to be plaintiff, judge, and witness at the same time since it is necessary for four persons to always be present in every tribunal; that is, the chosen judges, credible plaintiffs, fit defendants, and witnesses worthy of belief. Moreover, judges must act with fairness; plaintiffs, with the intention of amplifying the case; the defendants, with the intention of narrowing the case by putting limits on it; and witnesses must prove the truth.

B6 

Those who were enemies the day before or shortly before cannot be plaintiffs or witnesses so that they, in anger, should not desire to cause harm or take vengeance. There an unobstructed, uninfluenced, and believable will of the plaintiffs and witnesses must be sought. Let those who seem capable of being commanded by the parties for whom they appear as witnesses not be considered credible witnesses.

B7 

Let no accusation be lodged against anyone in writing, but let one make an accusation in his own voice if he is to be a credible and fit plaintiff; clearly, let the person he had wished to accuse be present since no one can accuse or be accused while absent.

Text Appendix Three

C1

We indeed command that if any freeholder, knight, or peasant wishes to grant or sell his freehold to a church, monastery, or any person, let him – except for bailiffs of nobles – have permission to do so and be in as full a possession of the freehold as the men living then [110] or in the future.

C2

The said princes ruled that if a lord confiscates from a bailiff his bailiwick because of his failure to render justice and the bailiff in any way usurps this jurisdiction from his lord, he shall lose the bailiwick and make compensation from his own funds to his lord for this dishonor if he remained with his lord in any other office. And after he made a reimbursal from his own funds if his lord can prove in any tribunal how much was embezzled by him, let him make compensation nine times over and then he should not cross through the bailiwick unless his lord wished it.

C3

If anyone produces in a tribunal a document or charter validated on oath concerning any lawsuit in court and the case of the other party cannot be proven either by witnesses or validated documents, let the judge rule what seems right to him and let each party observe his verdict.

C4

If a widow lives honorably and chastely after the death of her husband in his fief in raising her children well, let her possess her husband's estate as long as she remains without a husband. But if she commits adultery and violates her husband's marriage bed, let her lose the fief and let all the property of her husband come under the control of her sons if they are of age or under the control of their relatives. Thus, nevertheless, let her not lose her own property [if it currently seems to be

hers] or her dowry as long as she shall live and afterwards let it revert to her sons or relatives.

C5

If anyone mortgages the bailiwick or fief of his lord without his consent, the lord [111] can rightfully confiscate it whenever he wishes. Indeed if he knows about this and does not oppose it, he may not confiscate it but the bailiff shall post a surety with him according to the value of the bailiwick or fief and make compensation since he did not take action with the lord's advice but by having contempt for it.

C6

If after a lord, who is in need for any reason, has demanded service or any aid from his bailiff or a vassal holding his fief and is refused, and if after once, twice, and again repeating [his demand], he[the bailiff or vassal] refuses to carry out the service or aid, let him post a surety to the best of his ability to his lord, make double compensation for the first demanded compensation for the first demanded service which the lord sought, and not refuse his aid any longer.

C7

If anyone accepts another's vassal giving him any soldier's pay for defense, he[the soldier] is not obliged to come to his aid in the customary way vassals are to do for their lord.

C8

The ancients customarily called a castle, a fortress situated on a very high place, as if it were a high house. Its plural is castra and diminutive castellum.

Text Appendix Four

D1

Each nation chooses its own law from custom. Indeed, a long-established custom arises in place of law. Law, however, is a species of justice. Indeed usage and long-established custom are equally derived from usages. However, custom is a certain right founded on usages which arises in place of law. Indeed, what a king or emperor decrees is therefore called a decree [112] or edict. Moreover, all justice is established from laws and usages, Indeed, a usage is a custom approved by long duration. The establishment of equity is twofold: at times in the laws and at others in the usages.

D2

Moreover, privileges are laws of individuals just as if they are private laws; for, a privilege is likewise so called because it exists on a private level.

*The Usatges of
Barcelona :
The Fundamental Law
of Catalonia*

Donald J. Kagay

[113]

APPENDIX I: CATALAN
PEACE AND TRUCE

LAWS PRIOR TO THE *Usatges*

I: Comital Peace Assembly of Barcelona-1064 

In the year of our Lord 1064, a confirmation of the peace or pact of the

Lord was made by the bishops, namely, Berenguer of Barcelona, Guillem of Ausona, and Berenguer of Gerona as well as the abbots, the religious clerics of each order at Barcelona in the church of the see of the Holy Cross by the order of the princes, the Lord Ramon and Lady Almodis of Barcelona, with the assent and acclamation of the magnates of their land and other God-fearing Christians.

1. Indeed by the constitution of the aforesaid bishops and princes, it was enacted that from this day hereafter no person of either sex shall violate or invade either a church or dwellings which are or will be within a circle of thirty paces [one-hundred-and-fifty feet] around the church except the bishop or canons to whom this church is subject on account of its rent or to eject an excommunicated person from it. Yet we do not place under this protection those churches in which fortifications are built. Indeed, we order that those churches in which robbers or thieves put booty or stolen goods or from which they leave or to which they return while committing offenses, shall be unmolested until charges concerning the offense are preferred before the church's own bishop or before the see of Barcelona. If however, these robbers or thieves do not want to undergo justice according to the order of the bishop or canons of the see of Barcelona or postpone it, then by the authority of the bishop of the aforesaid see and the canons, let this church be considered without immunity. Moreover, let one who otherwise violates a church or attacks whatever is within a circle of thirty paces around it make restitution with the sum of six-hundred solidi for the sacrilege and let him be subject to excommunication until he shall suitably make compensation.

2. Likewise it was resolved that no person shall assault clerks who are not bearing arms, monks, nuns, and other women or those traveling with bishops if they are not bearing arms. Indeed, let no person violate a community of canons or monks or steal anything from there.

[114] 3. Likewise the aforesaid bishops and princes confirmed that no person in this bishopric of Barcelona shall make plunder of horses or their foals, male or female mules, cattle, male or female asses, sheep, or goats. Indeed, let no man burn or destroy the dwellings of peasants or

clergy who are not bearing arms except for those properties in which knights live. Let no person dare seize or distrain a male or female villager or extort money from them. Let no one burn or cut standing crops, cut down an olive tree, or remove their fruits. Indeed let no one pour out another's wine.

4. Moreover, whoever violates this peace which we have proclaimed and does not make compensation with the sum of the fine within fifteen days to the person against whom he violated it, let him make double compensation if the fifteen days have passed.

5. Moreover, the aforesaid bishops strongly confirmed the pact of the Lord, which the people call *treuga* (truce); namely, from the first day of the Advent of the Lord to the octave of the Epiphany of the Lord and from the Monday preceding Ash Wednesday to the first Monday after the octave of Pentecost Sunday and in the three vigils as well as the feasts of Holy Mary, Fod

indeed the vigils and feasts of the Twelve Apostles and also the vigils and feasts of the martyrs Saint Eulalia and Saint Cugat of Barcelona and also the vigils of the two feasts of Christmas and the Holy Cross. We also placed these feasts with their vigils; namely, those of Saint John the Baptist, Saint Lawrence, Saint Michael the Archangel, Saint Martin and All Saints Day under this observance of religion. Fod

And they similarly placed under such an observance the vigils of the same [All Saints Day] and fast days of the four seasons.

6. The aforesaid bishops not only confirmed that the aforesaid feast days are in the truce of the Lord but also they ordered all the following [days] to be observed until the rising of the sun of the next day.

7. If, however, anyone commits a crime against another during the aforesaid truce, let him make double compensation and then let him amend the truce of the Lord by the judgement of cold water in the see of the Holy Cross.

[115] 8. Moreover, if anyone deliberately kills a man during this truce, it was resolved by the consent of all Christians that after making the compensation for homicide he shall be condemned to exile for all the days of his life or confined in a monastery after having assumed the monastic habit.

9. The aforesaid bishops and princes ruled that the aforesaid pact of the Lord shall be rigorously kept and observed by all accompanying them in the upcoming expedition Fod or by those remaining here in this land during the entire period of this expedition until thirty days after their return. Thus it was established that none of these persons, whether those going or remaining shall dare to wrong any other faithful person or in any of his possessions. But if he does so, let him pay double compensation for the wrongdoing and be deprived forever of Christian communion until suitable compensation shall be made by him.

10. Moreover, the aforesaid bishops and princes thus ejected from the communion of the Church and Christianity those perverse men who capture Christians to sell them to pagans [Muslims] or act for the damage of Christianity so if anyone should come upon them, he need not consider them under the [protection of] the truce of the Lord.

II: Peace Laws of Two Urgelese Villages (April 1, 1076) Fod

Agreement of Villages of Bar and Toloriu Fod

Under the sacred name of the holy and indivisible Trinity, we all the people living in the village of Bar and in the village of Toloriu wish to bring to the knowledge of all people, both present and future, that a great discord has broken out between the Count of Urgel Fod and the Count of Cerdanya. Fod

Therefore, fearful and anxious concerning their war so that we, as nearby inhabitants, may not be thrown into disorder and deprived of nearly everything we have, we are providing as best we can in such a way that all of us and our successors shall always be safe and [116] free from all fears and undisturbed by the Urgelese host. And coming down to the Church Holy Mary the Mother of God, we have come before the lord Count of Urgel, namely Ermengol, and before the Lord Bishop Bernat who had come there with many of their best men. We asked them to grant to us and to all our posterity a peace and truce so that from then on they would commit no wrong against us. And because of this peace and truce we will build this bridge of Bar Fod and we will level all the road from the post of Aristot to the river which is

called Riutort. Fod

Moreover, when they heard our petition and considered our promise, it was so carried out by the will of God that they freely and truly conceded to us and God in accordance with what we have asked and we, the aforementioned men of the aforementioned villages[3 names]...along with all other men great or small living in the village of Bar and we[2 names]... along with all other men great or small living in the village of Toloriu, grant and agree to the lord God and his holy mother of the see of Vich and to Count Ermengol, Bishop Bernat and all the college of canons that we and all our progeny from this hour hereafter shall make the above-written bridge of Bar over the River Segre Fod

and level the above-written road between each of the aforewritten limits so that all passing through by a straight route who should wish to travel by the road and cross the bridge may do so without any offense as long as humankind inhabits the world.

III: Peace and Truce Included in the Grant of Privileges to the Inhabitants of the Castle of Olerdola Made by Count Ramon Berenguer III [November 26, 1108] Fod

We also decree and command that a peace and truce be maintained by all people---by the inhabitants of this very castle and by those coming to its defense – and we place all their property under the [protection] of the truce of the Lord and the peace for all their days when they are within these boundaries [six boundary points surrounding castle]...so that after they are within these boundaries, it shall not be permissible for any person to capture them, do any [117] wrong to them, or violate this truce and peace. And if anyone violates it and does not make compensation within thirty days, let him be distrained by my castellans until he makes double compensation.

IV: Charter of the Peace Established in the County of Cerdanya and Conflent – 1118 Fod

Let it be clear to all seeing or hearing this document that I Ramon by the grace of God Count of Barcelona and Marquess of Provence and the Lord

Pere Bishop of Elna, Fog

with the counsel and command of the magnates and knights of the whole county of Cerdanya and Conflent, issue a peace in the aforesaid county concerning oxen and other plowing animals and all persons touching them or plowing so that no man or woman of whatever rank, should dare to steal or take them in any way or for any reason whatsoever. But let he who does this, restore the oxen to the person from whom he stole them and likewise make compensation of sixty *solidi* of the count's money to the aforementioned Count. Meanwhile, let him remain under episcopal interdict until he has fully made this restitution. Therefore the aforesaid Count, with the counsel of all the aforementioned, issues his money which he has confirmed with his own hand in the aforesaid county as he has also done in his other counties for so that all the time so long as he is alive, he shall not alter or diminish the metal ratio or weight of the aforesaid coinage with the stipulation that all men and women of the aforesaid County give twelve *dinars* per yoke of oxen, six *dinars* for each man, and three *dinars* for ploughing equipment. Indeed the aforesaid Count promises to God and to all persons of the aforesaid county that after the aforesaid *dinars* are given to the...aforesaid Count, he would never again claim the... aforesaid *dinars* from the aforesaid men but let the aforesaid always remain undiminished and secure and it shall not be violated by any living man or woman or through a war which the Count or the aforesaid prince or knights have among themselves. Indeed from the aforesaid fine of sixty *solidi*, let the aforementioned bishop have a third.

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V: These Are the Securities of Churches and Clerics, Monks and Feast Days, Merchants and Plowmen Established by the Bishops and the Count[1131] Fog

In the one-hundred-and-thirtieth year of the Incarnation after the millennium on March 10, there gathered the venerable man O(leguer) Archbishop of Tarragona and the bishops R(amon Gaufred) of Ausona and B(erenguer Dalmau) of Gerona, abbots of the land and very many magnates in the palace of Barcelona in the presence of lord Ramon Count of Barcelona and Marquess [of Provence] and his son Ramon in order to discuss the common utility of his land.

1.-2. [Shortened version of #1 and #2 from assembly of 1064].

3. Likewise, the aforesaid bishops and princes confirmed that no person in this bishopric should rob horses or their foals and ordained that all traders who travel through the land to go to market or to court and all who go to a mill to have their flour ground, along with all their possessions, beasts, and property are under the security of the peace. They also included within the same peace oxen and other plowing animals with all their plowing equipment and the man who plows with them or leads them to pastures or guards them, and the one who plants them.

4. Let no man dare burn a house or possession of another unless just as it was specified by reason of justice and with the counsel of the bishop. But if one presumes to do otherwise, let him be subject to the decree which was promulgated by the Roman Pontiff concerning this. And until he does so, let him be excommunicate and avoided by all the Faithful.

5. [#4 of 1064 assembly on peace-infraction penalties].

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APPENDIX II

CATALAN ADJUDICATION DURING THE
PERIOD OF THE USATGES FORMATION

I. Judgement by Battle Between Count Ramon IV of Pallars and
Theobald for Determining Control of the Castle of Orcau (1088) Fod

Judgement of the suit which was rendered between Count Ramon Fod and
Countess Valencia, and Theobald concerning the castle of Orcau Fod is as
follows. If Theobald can prove that the said Count and Countess by their
free will and without coercion had issued to him the charter which he
presents concerning the control of Orcau and the aforesaid Count and
Countess cannot rebut this by a knight and their knight is then defeated,
let this aforesaid castle with all its appurtenances be proclaimed to be

Theobald's. If however Theobald's knight is defeated, then let Theobald similarly proclaim this castle with all its appurtenances to be the Count's and Countess's. If however Teobald cannot prove this, then let the said Count and Countess show by the oath of one knight that they had not issued this charter with free will and without coercion. And if Theobald cannot rebut this by one knight and his knight is defeated, let him proclaim the aforesaid castle with its appurtenances to be the Count's and Countess's. And if the Count's knight is defeated, let him and the Countess proclaim this castle with its appurtenances to be Theobald's. And let this be done without fraud by both parties.

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II. A Violent Reaction to the Judgement Rendered for a Suit Between the Count of Roussillon and the Bishop of Elna

(March 24, 1100) Fod

In the name of the Lord. Let it be known to all those present and future who read or hear this charter that Arnau Guillem de Sals, overcome by an illness from which he died, for the salvation of his soul and those of his parents, made a gift to God and blessed Eulalia and made her heir with a testamentary right of a third of the village of Texneres Fod with its appurtenances and the Church of Saint Genesius with all its freeholds, tithes, first fruits, and offerings. But when Count Guislabert Fod heard this, he bore it ill because he had already seized the aforesaid village in a disgraceful spirit of avariciousness, coming to the Church of Elna, he there complained very much that Bishop-Elect Ermengol wished to take the aforementioned village from him, and he [Guislabert] began a suit against him on a certain day. After many nobles and non-noblemen as well as judges gathered from different regions, although there was manly talk among them and discussion in various ways, nothing was determined. Ramon Guillem of Empuries and Peralta and judge of the region of Roussillon, at the order and request of the aforesaid Count Guislabert,

taking the judgement to himself according to the Gothic law, and inviolably, the other judges not having anything against this, ruled that Count Guislabert had no right in all those things which he was claiming to have. Indeed after this judgement was rendered according to law, the aforesaid Count and his son Guirard, Fod not acquiescing at all, invaded the aforesaid village, and burning down houses, cutting down trees, and even wounding men, evilly and unjustly committed many adverse and disgraceful things in the capture of Santa Eulalia de Texneres and in certain other sites of the same region. At length on the counsel of noble and prudent men, the good Count Guislabert and his son, after being rebuked for their injustice and returning to their accustomed piety and receiving seventy *solidi* from the Bishop-Elect Ermengol for the possessions of Santa Eulalia, returned free and clear everything Arnau Guillem gave in [121] a grant or left in his will to God and Santa Eulalia....But if...any person of any sort should contrive to act against this present proclamation or confirmation, let him gain nothing. But for the mere effrontery, let him make double compensation for all the aforementioned things while this proclamation and confirmation shall remain in force forever. And let the one who attempts this, incur the wrath of God, undergo judgement with Datan and Hebron and let him share the lot of Judas the traitor.

III. Feudal Disputes Between Count Arnau Mir of Pallars and His Liege Vassal(mid-twelfth Century) Fod

These are the disputes Count Arnau of Pallars Fod has with Ramon de Eril. Fod

Berenguer de Benevent and his fief were under the protection of the Count and this very Berenguer placed himself under the authority and command of the Count so that he would post a surety for Arnau and Ramon de Eril at the command of the Count. And the Count issued a charter so that none should commit any offense against him and Ramon de Eril captured this shield bearer, held him captive and did 995 golden

florins' damage to him.

Ramon de Eril holds Fraga Fod for the Count and made a foray there and within the boundaries of Fraga captured 990 sheep from the men of the Count of Pallars and the King, from whom the Count holds Fraga.

Count Arnau was captured and the King of Navarre was holding him prisoner and the Count placed all his patrimony and vassals under the protection of Ramon de Eril and gave the truce of his own vassals to the vassals of the Count and the Count gave it for his vassals to Ramon's vassals. And during this truce, they [Ramon's vassals] did 900 solidi's worth of damage to the Count and his vassals.

Pere de Bardet is a vassal of the Count and Ramon de Eril did not want him to be accepted by the Count and put him under constraint and he was made a vassal of Ramon.

[122] Ramon de Eril is a liege vassal of the Count and the Count and his son sought fief service from him and he did not render it.

He owes debts to the vassals of the Count and has not paid them.

In Vallebona and Bonausa, he unjustly confiscated fiefs valued at 990 solidi.

He sent a guarantor, R. de Valsegne, to the Count so he would not take Aran Fod from him, which he [R. de Valsegne] held as a pledge for 1000 solidi. He took Aran from him and he did not pay the 1000 solidi and the damage to the count is 990 solidi

He accepted a pledge at Lerida and Agramunt Fod which he did not repay and Ermenguadus, Count of Urgel, gained by judgement from him and the Count that the Count must not restrain him to repay it and that the men of the Count must not dare to go to Lerida or Agramunt.

Berivizio wounded Pere de Castellnou, liege vassal and nephew of the Count and unjustly killed a certain man of Montanyana Fod named Ros.

R. de San Saturnino unjustly took twenty mules and asses from Sanc de Lirio.

The vassals of R. de Eril did damage to men of Val Benasc amounting to 994 solidi.

The Count had set up and confirmed at Casteglo a fair with Ramon de Eril's counsel, but Ramon set up another fair and forbade his own vassals and others from coming to the [Count's] fair.

This is the memorandum of those hostages which Ramon de Eril sent to the Count of Pallars for the posting of sureties or judgements: Ponç de Eril is hostage for 2000 solidi; Arnau de Eril is hostage for 2000 solidi; Roger de Eril is hostage for 2000 solidi; Bertran de Eramont is hostage for 1000 solidi and Guillem de Perver the elder is hostage for 1000 solidi.

Guarantors for pledges for Ramon de Eril were Ponc de Eril, 1000 solidi; Pere de Vilamur, 1000 solidi; Alaman, 1000 solidi; Guillem de Perves, 1000 solidi; Bertran de Eramont, 1000 solidi.

{An incomplete record of the *iuditium* between these two parties survives which dealt with [123] the infractions during the peace and truce. Ramon de Eril's confiscation of property outside Fraga, his illegal activity while the Count was a prisoner in Navarre, and his devastation of B. de Benevent's land}.

IV. Peace Settlement Between Count Ramon Berenguer IV and Count Ponc Hug I of Ampurias (March 5, 1137) Fod

In the one hundred-and-thirty-seventh year of the Incarnation of the Lord

after the millennium, a spontaneous peace and amicable settlement was made between the venerable Count Ramon of Barcelona and Count Ponç Hug of Empuries Fod concerning the very many disputes, offenses, and infractions of the truce and peace and fealty on account of which they often complained to one another. Indeed first the aforesaid Count Ponç agreed to serve faithfully his lord Count Ramon and maintain the charter of agreement and abandonment of claims which his father Count Hug[II] of Empuries Fod made to the church of Gerona and its bishops and canons concerning the fief which the church of Gerona has or ought to have in Castilion and within its boundaries. And he agreed to the same count along with the parishioners of each sex of the church of Castilion that they shall not prevent the provost of the church of Gerona in any way from working, holding, or exchanging these lands whenever and wherever he wishes. Likewise, the aforementioned Count Ponç, with a spontaneous assent and voluntary decision, agreed with him[Ramon] that he would totally destroy, eradicate, and remove settlers from the castle of Charmez. And the aforementioned Count of Barcelona agreed to remove settlers from and to totally destroy the castle of Rocaberti under the aforesaid voluntary decision and spontaneous assent of the Count of Empuries, and that the aforesaid Count Ponç on no occasion or for no reason shall be annoyed with the aforesaid Count of Barcelona because of the destruction of the aforesaid castles. Further that the aforesaid castles shall in no way be rebuilt by the aforesaid Count Ponç or by any counsel or deceit of his without the voluntary permission of the aforementioned Count Ponç. Let there be a secure peace without deceit between Ramon de [124] Peralta and his brother Aimeric and the aforesaid Count Ponç. And let render homage to him[Ponç] and draw out his coinage in Peralta and let them conserve the coinage in Peralta Fod and let this circulate at six *dinars* for each *libra* for the fief of the aforesaid Count Ponç Concerning the disputes of the Viscount of Castellnou Fod and the aforementioned Count Ponç, it was decreed that after a pledge was redeemed, the Count of Barcelona shall place such peaceful men [arbiters] there as to make a firm peace between them... Moreover, I the aforesaid Count Ponç agrees to maintain, observe, and fulfill all the things written above under homage and fealty to you Count

[Ramon] as my lord and to put an end to all those things by which I harmed you in word or deed; and attend to all this by faith without deceit.

{There follows a pact by which Ramon Berenguer IV grants castles and revenues held by Ponç Hug I's father in return for his homage and fealty}.

V: Judgement by Comital Curia Between Ramon Berenguer IV and Galceran De Sals (Mid-Twelfth Century) Fod

This is a judgement given legally and customarily concerning charges and defenses made by the lord Count of Barcelona and Galceran de Sals. Therefore, having heard and discussed the cases of both parties, the aforesaid court judged that if the Count could provide by suitable witnesses that Galceran had been derelict in his duty to him in his hosts, cavalcades, and services which the Count had commanded in person or by his messenger Fod and the Count could prove that he summoned the host of Lorca with his barons for the purpose of battle and Galceran knew of this, let Galceran make double compensation to him. But if he could not prove this, let Galceran clear himself through an oath by his own hand that the Count in person or by his messenger did not summon him to this nor did he know that the Count had summoned his barons to it. It secondly judged for all the wrong and damage which Arnau de Sals with Galceran's vassals [125] committed to Ramon de Vilamuls at the castle of Toraies or in its sanctuary (since the aforesaid Ramon was with their common lord), Galceran should make double compensation to him and amend this dishonor to the ruler with his possessions and an oath taken by a liege vassal of this foray. Fod

Likewise it judged concerning the wrong which Arnau de Sals committed against a vassal of Santa Eulalia who the Count claimed to be his and then preferred charges concerning it against Arnau de Sals and Galceran, removing from them the right of a vassal since they seemed to

have done this for the dishonor of the Count that Galceran shall make compensation twice over for this dishonor to his lord, the Count, and the aforesaid vassal, except that done within his rights. Likewise it judged that if the Count could prove that Arnau de Sals or his vassals removed anything from this estate of the aforesaid vassals and the Count could prove the aforesaid estate to be his, then Galceran shall give back and restore to him twice over anything usurped from this estate and for the unlawful seizure from the Count just as it is contained in the law Fod. Afterwards let it be determined under whose jurisdiction the aforesaid vassal is, whether of the Count's or Galceran's, and let each party show this by witnesses or by a charter.

The court judged that the new fortification which Galceran made at Pol without the permission of the Count be destroyed or allowed to stand according to the Count's will, Fod as is contained in the customary law. Likewise it is judged that the castle of Cornella Fod after the death of Bernat Joan without legitimate descendant must come under the control of the Count without any implement in accordance with customary law which orders that all freeholds of an exorchia holder shall come under the authority of the prince, Fod except for the rights of the heirs. And it judged that since the Count had postponed litigation to Galceran concerning the aforesaid castle of Cornella before he would turn over to Guillem de Cornella who claimed it was under his jurisdiction, and before Guillem de Cornella would turn over to Ramon Vilamuls [126] his rights in the aforesaid castle with the Count's counsel and since Galceran did not want to receive justice from the Count for all the wrongs which Galceran and his vassals afterwards committed against the vassals of the Count on this occasion, let him make compensation for the dishonor to the Count and suffer his own dishonor with an oath since just as the offense done through a deprivation of justice must in no way be compensated, thus that which was done for the delay of justice must in no way remain undone so that it may not be compensated. Fod It also judged that the Count shall reimburse Galceran for all expenses and losses which Galceran and his vassals incurred in the service of the Count by the command of the Count and his

men as far as Galceran can verify these. Fod It also judged that Bernat de Bestrecan shall make compensation for the wrong which he committed in the benefice of San Miquel de Cuxa Fod and let the abbot of San Miquel distrain according to his power Ramon de Ribes to render justice to the aforesaid Bertran de Bestrecan. It judged that Galceran shall restore to the Abbot and Provost of Comprodon all the tolls and exactions which Arnau de Sals and Galceran's vassals exacted in the village of Romanio which are not contained in the pact which is in effect between Galceran and San Pere de Comprodon Fod (which Galceran claimed had been approved and confirmed) nor shall any similar exactions be made by Galceran or his vassals. It judged that if the Prior of Santa Maria de Besalú could prove that Galceran, his father or grandfather had given or donated the fief of Dan after Galceran's father and his grandfather had fixed the aforesaid fief with the aforementioned charter of Santa Maria, let the aforementioned Galceran destroy and remove this pact and let the aforesaid fief of Dan be restored freely and in full ownership to the authority of the prior and canons of Santa Maria de Besalú. But if he fails in this proof according to the terms of this charter, let Galceran or his vassals not have any domination or lordship in the aforesaid fief. And let the knight either leave this fief to the prior or then place it under the prior's jurisdiction. The court than judged that [127] if the Count could prove that a vassal or vassals of Galceran lessened or shorted the measures of the market of Besalú since it is a shame to the ruler and detriment of the land, Fod those who were arrested shall come under the control of the Count with their property. But if the Count fails in this proof that Galceran acknowledged to his vassals that the aforementioned measures shall be done away with on goods which circulated as is apparent by the decree of the comital suit, let the aforesaid vassals of Galceran clear themselves by oath, judgement of boiling water, or judicial battle that they knowingly had done no fraud or deceit there.

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Appendix III: Feudal Documents

I: Naming of Guarantors to Assure Completion of Castle
Construction

(April 28, 1061) Fod

In the first year of King Philippe Fod on the fourth of the kalends of May, Ricart Altemir gave to Lord Ramon, Count of Barcelona, and Lady Almodis, Countess, the guarantors Miron Riculf for a thousand *solidi*; Ramon Remon, for another thousand; and Ramon Sanç, for another thousand that the aforesaid Ricart shall have made at Tarrega Fod two of the finest towers a hundred palms in height and a hundred in width by the next Feast of Saint Andrew Fod and from this coming Feast of Saint Andrew to the next Feast of Saint Andrew, he shall have made at Tarrega two twin towers, each fifty palms in height and fifty in width; and the keep which must be next to the aforesaid towers and twin towers, and this shall be

done without deceit to the aforesaid Count and Countess. And let the aforesaid towers, twin towers, and keep be exactly as they were specified in this pact which the aforesaid Ricart has just made with the aforesaid Count and Countess. And these three thousand *solidi* shall be worth sixty onzas of Barcelona. And if that written above is not done by the second of the two feasts of Saint Andrew, let each of the aforesaid guarantors give to the aforesaid Count and Countess, the thousand *solidi* worth twenty golden onzas of Barcelona within fifteen days after the aforesaid Count and Countess demand the aforesaid three thousand *sous* from them.

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II. Feudal Pact by Which Count Ramón of Pallars Transfers Control of the Castle of Orcau to Ramón Miron in Exchange for His Recognition of the Count's Liege Lordship (February 4, 1072)

Fod

In the name of God. This is a pact made between Count Ramon of Pallars Fod and his wife Countess Valencia and Ramon Miron de Orcau. The aforesaid Ramon agrees to the aforesaid Count and Countess from this hour that he will maintain himself in their homage and fealty just as a vassal ought do for his better and liege lord; and that he will not take on or keep any other lord without the counsel and will of the aforesaid Count and Countess and that he would swear fealty and the oath of homage to them only with their permission. And the aforesaid Ramon also agrees to the aforesaid Count and Countess that for all time they would have and hold in this castle of Orcau and in all of its boundaries and appurtenances that lordship which his father ever had and ought to have there forever from the aforesaid Count, except for control of this castle. And the aforesaid agrees to the aforesaid Ramon that neither he nor his aforesaid wife or son will not demand control of the aforesaid castle; and the aforesaid count will swear an oath to the aforesaid Ramon for his life and fief. And if they demand control of the aforesaid castle if they should do such to them which they do not wish to or cannot amend, let the Count or Countess or their son not give it to them; nor may the aforesaid Ramon,

his wife, or son grant it away; if they should commit such an offense against them [the Count and his family] for which they [the latter] should not wish nor they [the former] cannot make amends. Likewise, the aforesaid Ramon Miron agrees that he, his wife, and their children will observe and maintain the abovesaid pact to those men or women to whom the Count and Countess may cede and grant the castle of Orcau in the same way as they agreed to carry out and observe it to the aforesaid Count and Countess. And the Count and Countess and their son likewise will hold and maintain the aforesaid pact just as they agreed to do so to him. And if Ramon Miron loses the demesne of Cubeas, let the Count restore it to him within forty days. And the aforesaid Ramon agrees that from the next coming Easter onward that he will break feudal ties with the Count and Countess of Urgel unless they could not extend this any longer by the will of the [130] aforesaid Count and Countess [of Pallars].

III. Transfer of Castle by Lord to Son of Deceased Vassal

(May 15, 1086) Fod

This is a pact in commemoration of an agreement which Count Bernat of Besalú Fod made with Bernat Terron. The aforesaid Count gives to aforesaid Bernat the castle of Fenollet and commends to him all of his father's fief after his father's death. And because of this, he is his vassal who shall be faithful to him for all time and post the sureties for him which he must just as his other liege vassals do and must do for him. And Bernat after the death of his father must grant freely, faithfully, and without diminution to lord God and San Paulo de Vallsol all the village of Mauri Fod with all of its appurtenances so that he shall be a vassal for all these things to lord God and Saint Paul and the aforesaid Count and his son who will be the Count of Besalú and his inhabitants of San Paulo without any deceit to him or theirs.

IV: Pact Concerning Holding of Multiple Fiefs

(August 26, 1086) Fod

This is a pact made between Lord Ramon, Count of Pallars and Rafart Guitard and his brothers Guillem and Theobald. Indeed, the abovementioned brothers agree to the aforementioned Count Ramon that if their brother Ficapal comes they would at once post a surety for him concerning the quarrels which the aforesaid Count has with them...However, in the meantime, in respect of this pact the Count gives them his fief just as he had given it to their aforesaid brother and let one of them be a liege vassal to him because of this fief and let the others be his commended vassals and serve him with horsemen and footsoldiers for the portions which fall to them from the fief. However, if the aforesaid brother comes and does not post a surety with the Count or does not want to in any way, let the aforesaid Rafard be the liegemen of the aforesaid Count for [131] the fief and let him serve him in hosts, expeditions and services with horsemen and footsoldiers just as a vassal must do without deceit for his liege lord. And let the other brothers render to the aforesaid Count as much as it may be rightfully judged to them from the aforesaid fief. And they agree in turn to carry out this pact without deceit to Count Ramon. However, if the Count dies, they likewise agree to carry out the pact to his son Pere Fod and if he dies, to his [the Count's] other children to whom he leaves or bequeathes his County of Pallars.

V: Notarial Formula for Fealty Oath Current in the Chancellery of Ramon Berenguer III Fod

I, son of the woman, without fraud or evil intent or any deception, with righteous faith and without deceit, swear to you Ramon Count of Barcelona and Marquess of Besalú and Cerdanya, son of the woman

Matilde, and to your son to whom you may leave by word or testament your realm, that from this hour on I will be your vassal for your life, for the limbs which are joined to your body, for your castles or fortresses, crags and hills, cultivated or wild land, alods or fiefs which you hold today or ought to hold or you will acquire in the future with my counsel and I will not take them from you. I, the aforesaid vassal, nor any man or woman of mine, acting on my counsel, deceit, or assent will not take them from there nor hinder you nor contest you for them; and I will be your helper, with righteous faith and without deceit, in having, holding, and defending this against all men and women.

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Barcelona :*
*The Fundamental Law
of Catalonia*
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Catalonia

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Glossary

| | |
|--------------------------------|---------------|
| ademperamentum | common land |
| affidamentum of feudal ties | establishment |
| aguait | ambush |
| aliscara of submission | a formal act |
| apercio holding | vacant feudal |
| ardimentum strategy | a military |
| assalt | armed pursuit |
| averamentum | verification |

of a fact on oath

bachallarius
peasant

wealthy

bauzia
treason

vassalic

calumpnia:

a legal charge

captio

imprisonment

cavalleria terre:
fee”; a land measure

“knight’s

cechia
canal

irrigation

comitor:
middling rank

noble of

comunia
association

sworn

condirectum

construction

conductum
a soldier’s fee

safe conduct;

convenientia
mutual aid between lord and vassal

charter of

desemperamentum
fief held in guaranty

violation of a

diffidamentum

breaking of

| | |
|---|-----------------|
| feudal ties | |
| emperamentum guaranty or protecting a fief | holding in |
| encalz | armed pursuit |
| echaza | leg irons |
| exovar | dowry |
| fallimentum default of service | vassalic |
| fatigatum de directo legal complaint | lodgement of |
| firmamentum de directo surety | posting of a |
| follia slander | criminal |
| [143] forisfactum | crime |
| guarda | castle garrison |
| iuvamen | vassalic aid |
| neglectum infringement of personal rights | damage by |
| peioramentum thing's value | lessening of a |
| potestas | overlord or |

ruler; custody of feudal tenure

princeps:
sovereign

prince;

proferimentum de directo
judicial proceedings

delay of

reptamentum
accusation

public

staticum
lodging of lord

vassalic

tavega
prison or cell

underground

vasvassor
noble; vassal of a vassal

middle grade