

THE BIRTH OF THE *USATICI*

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ABSTRACT

The “usatges” of the county of Barcelona constituted the feudal regulations of Catalonia. On account of their very importance, their origins have remained somewhat obscure, hindering our understanding of both the chronology of their origins and the original contents and their later development. A comparative study of the different editions of the ‘usatges’ throws some overdue light on these key aspects.

KEY WORDS

“Usatges”, Law, Feudalism, Catalonia.

CAPITALIA VERBA

Vsus, Lex, Feudorum servitutes, Catalaunia.

1. Introduction

By combining all the known versions of the *Usatici* from all the manuscripts believed to contain these, I have compiled an ideal version made up of 304 articles.¹ Thus, together with a legislative identification of a version of the *Usatici* made up of 174 articles—really 173—that followed the purported order of the commentators, a new version of the *Usatici* appears which, as happens with the commentators' version, is not found in any of the known manuscripts. However, all its articles are found in one or another of these.

2. First thought

The divergent number of articles in these two versions leads one to think that the difference between both cannot be due only to an alternative division of its articles. This greater number of articles is not only due to a different division and order of the articles but also to articles not found in the commentators' version being included in the ideal version.

Moreover, not all the articles in the commentators' version form part of the ideal one. *Us.* 171, 172, 173 and 174 in the order of the commentators were never copied into any of the surviving versions of the *Usatici* and the same can be said of *Us.* 133. This could perhaps be extended to *Us.* 170, but its appearance in two manuscripts means that the same conclusion cannot be reached. These are not the only articles identified later as *usaticus* that have not been included in the mentioned surviving versions. There is also a *usaticus*, which was even mentioned by Marquilles, which is not found in any of the known versions. This could simply be an accident of its simple textual tradition. However, unless new documentation is found, this article does not appear in any manuscript version of the *Usatici*, nor is it included in the commentators' version, although it was mentioned by Marquilles and was also, for example, cited by Jacobus de Vallesicca.

As mentioned above, a version that is the result of copying all the articles from all the known versions of the *Usatici* and arranging them according to their habitual appearance in the manuscripts is what I call the ideal redaction. This definition implies two things: in first place, the different articles of the *Usatici* are identified by their inclusion in what is presented as a version of the *Usatici*; in second place, no manuscript contains this version. This same circumstance emphasises the differences between the various surviving versions and thus forces us to question the origin of the *Usatici*.

This ideal version is made up of the articles found in all the known versions of the *Usatici* and others found in some of these. If, in principle, there is a common nucleus and a non-common nucleus, in line with an old tradition, a hypothesis can

1. Iglesia Ferreirós, Aquilino. "Una redaction recuperada de los *Usatici*". *Initium* 15 (2010): 3-213, (forthcoming). I use the numeration from this edition under preparation. Readers should bear in mind the tables published in Iglesia Ferreirós, Aquilino. "Contenido y ordenation de los *Usatici*. Cuadros sinópticos". *Initium*, 13 (2008): 707-914.



be proposed of an original nucleus in the *Usatici* that was gradually enriched with the independent addition of new articles.

Thirty-four surviving versions of the *Usatici* in thirty-three manuscripts are known. They are all different, although these differences are often minimal, with two exceptions that reduce the known versions to thirty-two. *Ms. B 3* and *B 4* conserve the same version of the *Usatici*, probably from being copied from a common model.² The same can be said of *ms. L 1* and *P 2*, but with an essential difference, as they currently conserve, one might say two different versions: after the last article, which is the same in both manuscripts, new articles were added to *ms. P 2*. The novelty is in this addition, not in its antiquity.

This transformation of *ms. P 2* seems to confirm the above statement that the *Usatici* are made up of an original nucleus enriched by the addition of new articles after the original final article. If this intuition were correct, the problem would to a great extent be resolved, as it would be limited to identifying this original final article. Unfortunately, this intuition must be qualified because while the versions of the *Usatici* are typically enriched with the addition of new articles after this final article —whichever this is, there is no shortage of evidence to show that the versions of the *Usatici* could also have been enriched by adding new articles to a supposedly old order. Thus, identifying a final article does not mean that a version of the *Usatici* that ends with this is the original version, if new articles not in the original version have been included within this, presumably old, order. Was there an original version of the *Usatici*? Is it possible to identify it?

3. Second thought

Talking of an original version of the *Usatici* implies recognising that, independently of the origin of its articles, it is possible to identify a version known by the name of *Usatici Barchinone*. The commentators' order established in the official 1588-1589 Compilation allows a version of *Usatici* 174 to be identified, with some doubts; the manuscript tradition means that numerous versions of the *Usatici* can be identified that differ from each other to a greater or lesser extent. Is it possible to find an original among this variety?

Thus the focus is on the problem of the origins of the *Usatici*.³ Reading what the jurists call the prologues of the *Usatici* explains the first response: the *Usatici* were a set of laws given by Ramón Berenguer the Elder and his wife Almodis identifiable with the 174 *Usatici* enumerated according to the commentators' order.

Common opinions usually dominate the historiography. The *Usatici* were long considered the result of a legislative act by Ramon Berenguer the Elder and his wife

2. See the list of the manuscripts in Iglesia Ferreirós, Aquilino. *Cataluña Medieval*. Barcelona: Associació catalana d'Història del Dret "Jaume de Montjuïc", 2008 (2 volumes). Also Iglesia Ferreirós, Aquilino. "Comentarios a unos cuadros sinópticos". *Initium*, 13 (2008): 73-76.

3. Iglesia Ferreirós, Aquilino. "De usaticis quomodo inventi fuerunt". *Initium*, 6 (2001): 25-212.



Almoidis, which would mean that it dated from their mandate, before Almoidis was assassinated by her stepson. The use of the so-called *Exceptiones Petri* confirmed this idea, given Fitting's interest in demonstrating the pre-Bologna character of that collection which added to the interest in defending the antiquity of the *Usatici*.⁴

The authors do not agree on the dating because they do not agree about the meeting at which the *Usatici* were approved. When this failed as a result of the acceptance of a later chronology for the *Exceptiones Petri*, the old view of the origin of the *Usatici* began to break up. As they were known, the *Usatici* could not be the result of a legislative act by the aforementioned counts. This legislative intervention by Ramón Berenguer the Elder and his wife could still be maintained, but at the expense of reducing the number of *Usatici* attributable to them. Although there are still those who defend the promulgation of the *Usatici* by the above-mentioned count and countess limited to a few articles,⁵ they have been unable to establish a sure link between these few articles and an intervention by Ramon Berenguer I. There is no evidence of a law given by Ramon Berenguer I that can be identified with the original nucleus of the historical *Usatici*.

The traditions surrounding the founding of the *Usatici* by Ramón Berenguer I are full of confusion and the final version of the *Gesta Comitum* attempts to maintain the authorship of Ramon Berenguer I, but at a later moment.

The oldest tradition about the origins of the *Usatici* is found in the *Usatici* themselves. However, the *Usatici* contain a double tradition; on one hand, it is stated that Ramon Berenguer I, *laudo et consilio suorum proborum hominum*, in company with his wife, "constituit et misit usaticos". On the other hand, the so-called *usualia* are identified as follows: "Hec sunt usualia de curialibus usibus, quos constituerunt tenere in omni eorum patria tempore dominus Raymundus Barchinone vetus comes et Adalmodis ejus conjux, assencione et clamore illorum terre magnatum, videlicet", then mentioning their names; that is, Ramon Berenguer the Elder constituted certain *usualia*, that arose from curial uses.

Moreover, these two narrations fall within the exposition of a theory of law, preserved in these first articles that are usually identified by the jurists as the Prologues of the *Usatici*, that attribute power to the Count of Barcelona to establish and modify it based on the authority of the *Liber Iudiciorum*. The prince in the *Usatici* is not the prince of the Justinian compilation, but rather the prince of the *Liber c*. By linking the count with the *Liber*, the one, or more, anonymous jurists convert the count of Barcelona into the *conditor legum* and emphasise his independence from the Pope, emperor and kings. If the versions of the *Usatici* contain a statement, this owes its origins to a well-known text by Ulpiano -*quod principi placuit legis habet vigorem*, as far as is known this same principle was first used in the documentation of Alfonso I in 1192.

If the ideas that lie behind the *Usatici* are the expression of an epoch that began with Bologna, the narration of its formation underlines the difficulties of recovering

4. Iglesia Ferreirós, Aquilino. "Giraud, d'Abadal y Valls, Mor y los Usatges". *Initium*, 7 (2002): 3-78; Iglesia Ferreirós, Aquilino. "Introducción a una edición ideal de Usatici y glosas". *Initium*, 14 (2009): 15-194.

5. Bonnassie, Pierre. *Catalunya mil anys enrera (segles X-XI)*. 2. *Economia i societat feudal*. Barcelona: Edicions 62, 1981: 162.



an original version, because the *Usatici* were written on the basis of an ancient law, transmitted around Catalonia during the High Middle Ages.

It does not seem that the *probi homines* can be identified with the *terre magnates*. Nor is it easy to identify the meetings mentioned in the prologues and specify their characteristics, especially if attention is paid to the silence about church dignities.

The distinction established between *usatici* and *usualia* is easily understandable, but the difficulties arise precisely when attempting to separate these. It is not easy to separate what can be called *usatici* (laws) from what can be identified as *usualia*. If the *Usatici* are identified with the laws, as Jot states, it again raises the origin of these constitutions given by the forefather as mentioned in article 202 of the *Usatici*, probably by Alfonso I, precisely when this notion of the law was recovered.

The final version of the *Gesta Barchinonensium* is dated after the death of James I. In this latter version, Ramon Berenguer I's authorship of the *Usatici* is confirmed, and developments not found in the *Usatici* are maintained: the granting of the law is set in the royal palace in the presence of the papal legate Hugo Cándido although, it now adds "ac suis plurimis magnatibus". Moreover, this was not only done in the presence of those mentioned, but was also done in this definitive version "supradictorum consilio et assensu". The terminology also changes: the first version mentions *iura et sanctiones*, now it talks about *iura*, called *Usatici*, identified with *constitutiones*.⁶

It is possible that a new version of a legislative act by Ramon Berenguer I appeared at around the same time. There is a constitution of peace and truce that appears in the old manuscripts independently, which, over time, was converted into *us*. 133 in the commentators' order and, added to other constitutions, ended up as *us*. 174 in this same order. Anyone interested in examining some of the variations that this article underwent with use can read chaps. 128, 176,1-3 and 178 of an ideal first edition of the *Usatici*.⁷

Chap. 128 mentions a meeting held in the church of the Holy Cross and Saint Eulalia in Barcelona in 1163, where the peace and truce for churchmen was confirmed by order of Count Ramon Berenguer I and his wife Almoidis with acclamation by the magnates and all Christians. If the date is exact, the counts cannot be the same, which would justify Besta's belief that this version of the *Usatici* dated from 1163. Some versions conserve the typical variants introduced by *alias*—some date the meeting to 1063, but disagree on the dating, which can vary according to the manuscripts.⁸

In chap. 176, 1-3 the date and the mention of Ramon Berenguer the Elder and his wife disappear and it is stated that the "pax confirmata ab episcopis et abbatibus et comitibus necnon vicecomitibus in episcopatu Ausonensi".

Finally, chap. 178 (*Denique*) combines two different articles: this is apparently a version of chap. 128,1 and a modification of chap. 93.⁹ This combination of both

6. Iglesia Ferreirós, Aquilino. "De Usaticis" 26; (n. 3) "Frangullas ou migallas (13)". *Initium*, 14 (2009): 655-656. The first redaction is dated between 1162-1184 and it includes the Palace of Barcelona and the presence of the legate Hugo Cándido.

7. Iglesia Ferreirós, Aquilino. *Cataluña Medieval...*: II, 448-449, 481, 483 (note 2).

8. Iglesia Ferreirós, Aquilino. *Cataluña Medieval...*: II.

9. One could also mention chap. 92, but this refers to the *malefacta*. The question is complex but has an easy and superficial explanation if one bears in mind that breach of the peace was considered a civil and



articles seems to end a collection of articles —after this point the counts become the “sepedicti principes”— and contains a modification of the penalty for breach of the peace —in contrast with the simple penalty established in chap. 92. Chap. 178 combines what was written in each of the dioceses; the city (Barcelona) and the church are the same, but the date has disappeared.

If one trusts the incipits, chaps. 128 (now dated 1160), 171 and 176 were independent and considered distinct constitutions. The latter two dated from the same year as the first and the second, also given by those mentioned in the first. This is the first step for approaching them.¹⁰ Chap. 128, this time dated 1064, combined with articles 176, 177 and 171 of the mentioned ideal edition gives rise, with some modifications and additions, to a constitution of peace and truce that, together with other constitutions, also later used to form the *us*. 174 of the commentators’ redaction, form a collection of constitutions of peace and truce attributed to Ramón Berenguer the Elder, both in the general heading —*Berengarii Veteris comitis Constitutiones pacis et tregue*— and in the rubric of the first constitution: *Raymundus vetus comes Barchinone Provincie Marchio et Ispanie subjugator et Almoydes ejus karissima consors universo populo Cathalonie de treuga et pace domini Constitutio prima. Rubrica*.¹¹ One has only to read this rubric to realise the manipulation that had taken place.

Finally, this first compilation linked to the name of Ramon Berenguer I, with some of its components moved and some other variants, begins a version of articles under the following rubric: “Constitutiones edite per dominum R. Berengarii, comitem Barchinone in ecclesia Sancte Eulalie Barchinone super pacibus et treugis et pluribus aliis” and with the following explicit: “Explicit pax domini Raimundi Berengarii et caetera”.¹²

In this meeting, dated 1163 in the text, although the observation —*alias 1063*— was added by hand, together with the constitutions of peace and truce, others were also approved that did not pertain to these. Thus, this reflects the novelty from the meeting in Barcelona in 1228 when, together with the constitutions of peace and truce, others that did not pertain to this field were approved.¹³ And thus, after the copy of the first constitution of that aforementioned collection attributed to Ramon Berenguer I, the one known nowadays as chap. 159 of the *Usatici* was copied, that is, *Liber 8,3,1*, followed by a group of articles, to which I will refer below as appendix A of *ms. P 7* of the *Usatici*, and others of varied origin, but closely linked to the Visigothic tradition.¹⁴

not a criminal question and that the intervention by the *veguer* in the seigniorial jurisdictions is linked, in any case, to crimes committed within the peace and truce.

10. Iglesia Ferreirós, Aquilino. “Frangullas ou migallas (13)...”: 655-656.

11. Iglesia Ferreirós, Aquilino. “Frangullas ou migallas (13)...”: 651-663; 669-686 nota 10.

12. Iglesia Ferreirós, Aquilino. “Redacciones leridanas de derecho”, *El Dret comú i Catalunya. Actes del XI. Simposi Internacional. Barcelona, 20-22 de maig de 2004* (=Hom. Campitelli), Aquilino Iglesia Ferreirós, ed. Barcelona: Associació Catalana d’Història del Dret “Jaume de Montjuïc”, 2005: 415-563.

13. *Cortes de Barcelona de 1228, 17: Corte de los Antiguos Reinos de Aragón y Valencia y el Principado de Cataluña*. Madrid: Real Academia de la Historia, 1896: I, 112-122.

14. Iglesia Ferreirós, Aquilino. *Cataluña Medieval... : II*, 448-449, 481, 483; Iglesia Ferreirós, Aquilino “Redacciones leridanas...”: 415-563.



This distinction might explain that the constitutions not belonging to the peace and truce had a new independent life, although nowadays there are some objections to this distinction. Thus, the version occasionally called *Statuta seu Usatici domini Raimundi Berengarii comitis Barchinone* arose. Its composition can generate some doubts when linked to, or merged with, the so-called *Usatici Barchinone* because its first articles coincide with chaps. 194-195, 197-201 (appendix A), that is, those that were added as an appendix to the *Usatici comitis* in *ms. P 7*, with the exception of the final article (chap. 42).¹⁵

4. Third thought

This way, the problems seem to be limited. There is no historical data, apart from these attributions that show their character through the way they are reconstructed, that states that Ramon Berenguer I handed down any laws that became either the *Usatici Barchinone* or the *Statuta comitis*. And as we approach the epoch in which these works are mentioned, the possibility that these works are laws decreases because no historical data refers to the count of Barcelona giving these *Usatici Barchinone* or *Statuta Comitis*.

If one ignores these old constitutions of peace and truce, whose haphazard history shows their own textual tradition, their conversion into the king's constitutions of peace and truce also seems to lead us to the reign of Alfonso I, while we must wait for the reign of James I to see the constitutions of peace and truce separated from the other constitutions regarding other issues, to the good condition, one might say, of the count's subjects.

The first mention of a written version of the *Usatici* is from 1173, from the meeting in Fontdaldara, with possible discussions about the terminology used. The oldest known manuscript—probably from no later than 1251, but which is dated from around 1200 without any known justification, earlier rather than later—is *ms. P 7*, which has a version of the *Usatici* that ends with chap. 190, followed by an explicit: “Hic explicitunt usatici to sepe dicto comite instituti”. To simplify, a version of the *Usatici comitis* is identified.¹⁶ After this explicit, there is a copy of a small appendix made up of chaps. 194-195, 197-210 and chap. 42 (Appendix A), as the last article, that are included in the index as the final articles of the so-called *Liber Usatici*. It also includes articles 220-221 (as a glossa or article) after the index and before the copy of the version.

Identifying its final article with chap. 190, I will mention a version with 190 articles (I disregard appendix A). The first time that this version is presented, it is called the *Usatici comitis* in the explicit. This explicit appears in other manuscripts, but there are also manuscripts that conserve this 190-article version but without the explicit. In some of these versions, new articles have been added after chap. 190, some of those

15. Iglesia Ferreirós, Aquilino. *Cataluña Medieval...* : II, 448-449, 481, 483; Iglesia Ferreirós, Aquilino “Redacciones leridanas...”: 415-563.

16. The commentators' order of an article, which is concerned with the law and privilege, makes two articles. There is no single tradition on this point; it is the same to mention articles 189-190 or chap. 190 because they always appear together.



copied after *us.* 140 in the commentators' version. Others include some articles that can, for the time being, be considered adventitious among their 190 articles.¹⁷

This 190-article version is copied in two manuscripts each with its own characteristics. *Ms. B 1* (dated around 1300) copies it without chap. 97-118. It is also copied in *ms. B 2*, from the first half of the 14th century, during the reign of James II, but without articles 107 or 110-118.¹⁸

Ms. B 5 is the only one that places the explicit after chap. 188, but then adds numerous articles that are thus formed out of the version of 188 articles, among which are some of those that form the actual articles 97-118. To simplify this as much as possible, although the reality is more complex, articles 97-109 form a group — Group *A*,¹⁹ while articles 110-118 comprise a different group — Group *B* — as the result of a progressive approximation of articles that ends with the merging of both groups to be incorporated between articles 96 and 119-121 in the 190-article version.

Together with the version of 190 articles one can now talk about a 188-article version. The essential difference between both would be the position of the articles in groups *A* and *B* and articles 189 and 190. While the 190-article version ends with articles 189-190 and places groups *A* and *B* between chap. 96 and articles 119-121, the version with 188 articles copies the mentioned articles outside its version of the *Usatici*. These articles did not form part of the 188 —article version nor did the articles in appendix *A* form part of the *Usatici comitis* — the first evidence of the version with 190 articles. However, while this appendix did not form part of the *Usatici comitis*, it was incorporated into the *Liber Usatici*. If the version with 188 articles had maintained its own characteristics it would not have generated new problems. The disappearance of the explicit, the addition of some articles from after chap. 188 among its first articles and, finally, the placing of articles 189-190 immediately after chap. 188 and the copy thereafter of the articles from group *A* and *B* and appendix *A* complicate the task of separating the version with 188 articles from the 190-article one.

Without elaborating on this issue, if we accept the existence of an old nucleus, it might be said that almost all the articles among the first 190 can be dated from before Ramón Berenguer I. However, there are some that can be dated with a certain degree of confidence, that signal the epoch of the beginning of the creation of Catalonia —that can for the moment be placed around 1128— and others from the time of the *Decretum Gratiani*, with the added problems implied by this dating. The kinship established between some of these first articles and the *Libri Feudorum*

17. Talking about a collection of 190 articles does not mean ignoring the differences, but rather simply emphasising that independently of its division into articles and, thus, their number, this collection coincides *grosso modo* with the first 140 *usatici* in the commentators' order, which indicates the presence of minor variants.

18. I am attempting to simplify complex problems as much as possible; it appears to me the actual articles 97-118 result from an approximation of some articles that were independent and in which a distinction can be made between articles 97-106 (Group *A*) and 110-118 (Group *B*). Articles 108-109 are normally linked to group *A* and article 107 to group *B*, but they are still independent, in the same way that group *A* seems, in turn, to be the result of the approximation of articles with independent origins. See note 19.

19. The greatest uncertainty is article 107, which could be linked to either groups *A* or *B* or have a life of its own. See note 18.



can also affect this dating. The greatest difficulties arise for some of the articles in appendix *A* that Brocá purports to link to James I. This possible link would affect the earlier dating of the *Usatici comitis* conserved in *ms. P 7*, because this manuscript already contains a copy of the 190-article version. From the moment when the problem of dating the *Usatici* cannot be confused with the problem of the age of its articles, the mention of a version written in 1173 allows us to conclude that its possible contents cannot be identified through the antiquity of its articles, but rather from the conservation of some evidence of this original version.

5. Fourth thought

This possible double final article (either number 188 or 189-190) immediately generates a problem because, in some cases, article 188 is followed by articles 189-190, and in others, article 188 is followed by other articles. In principle, it seems possible to state that the version that ends with article 188 must be earlier than the one whose final article is 189-190. In second place, there are versions that place article 189-190 immediately after chap. 188 and others that place other articles after article 188. The latter seem to be older but it is in fact difficult to reach conclusions about this, because number 188 was the final article, and the articles added after it have not always been copied in the same order.²⁰

Ms. B 5 is the only one that places an explicit immediately after chap. 188, and the articles from group *A*, namely 97-106 and 108-109, (within the 188-article version) after article 96, while it lacks the articles from group *B* (107, 110-118). The articles in these two groups —*A* and *B*— cannot be understood as a unit, despite some versions that place *A* and *B* together after article 188. However, in contrast, there are other versions that place groups *A* and *B* before article 188, but not always in the same place nor always both groups together. When group *B* is placed before article 188, it always follows group *A*, although chap. 196 and chap. 42 do not follow any rule.

As we have seen, *ms. P 7* contains a version with 190 articles. *Ms. B* shows the existence of a version with 188 articles. This 188-article version thus appears to be the oldest, enriched with the addition of new articles, among them numbers 189-190. These added *Usatici* are basically the articles in Groups *A* and *B* and Appendix *A*. *Ms. B 5* shows the existence of this 188-article version, but at the same time shows its contamination from the version of 190 articles, with the articles in group *A* between articles 96 and 119-121.

A recovered version of the *Usatici* sheds some light on this situation of doubt thanks to an anonymous annotator. This annotator states that the last article of the version of the *Usatici primi* (with this terminology I do not prejudge its antiquity which I would do by accepting that used by the annotator *Usatici antiqui*) was article 188 and lacked the articles between 80 and 119-121, i.e., theoretically it

20. See note 23.



lacks articles 80-118, because the following warning is placed after article 80: “Ab inde usque ad usaticum Auctoritate et rogatum omnium et cetera non est in ordine usaticorum antiquorum set bene est in libris antiquis”.²¹

Simplifying as much as possible, these *Usatici primi* lack not only groups *A* and *B* (articles 97-118) but also articles 81-96. This statement must be qualified as the articles in this version are in a different order.

If we disregard the position of the articles in groups *A* and *B* and those in Appendix A, the order of the first 190 articles is, with slight variations, the same in all the manuscript versions, both those that end with article 188 and those that terminate with number 190. All the manuscripts that end with article 188 also contain article 190, separated by other articles, which are those mentioned above.²²

It is not necessary to go into details. Articles 97 to 118 are missing from these so-called *Usatici Primi*, as are some, although not all, of articles 81-96. Moreover, this order of articles 81-96 also extends to the articles copied after articles 119-121, which appear in the same order in current versions, sometimes altered in some manuscripts.

Ms. P 7 was copied sometime between 1173 and 1251. The *Usatici* then ended with article 190 and these 190 articles, with slight variations (some absences or changes of place), followed the order found in the commentators’ version. The articles that make up Appendix A and that were included in the commentators’ version after article 140, were not included in the *Usatici comitis*. Article 141 of this commentators’ version was copied after the index of the *Liber Usatici* and before the text of the *Usatici comitis*.

These data do not resolve the problem of when articles 97-118 and 189-190 were added to the *Usatici primi*, but when *ms. P 7* was copied, both the former and the latter were already part of the *Usatici comitis*. The remaining articles, later placed after article 190, are, to use the known terminology, *Usatici adventicii*, the *us.* 141-174 in the mentioned commentators’ version —or *Usatici extravagantes*. These were not in the commentators’ version, although depending on the versions, *us.* 133 and 171-174 were added to the *Usatici* in the aforementioned numerical order of the commentators when the official compilation was done. However, *ms. P 7* is a late step. Consequently, the articles in the Appendix should be placed among the *Usatici adventicii* although they are included in the 188-article version in some manuscripts.

6. Fifth thought

The manuscripts, beginning with *ms. B 5*, that end with article 188 show that their version of the *Usatici* was enriched through the addition of new articles that were copied directly after article 188. However, this same *ms. B 5* shows that this

21. See note 1. Meanwhile, in the light of these new data, one can use: Iglesia Ferreirós, Aquilino. “Un manuscrito de los Usatges: the *ms. 6* de la Biblioteca Universitaria de Cagliari”. *Initium*, 4 (1999): 521-609.

22. I simplify as much as possible, restricting myself to the essential; the problem derives from two manuscripts that end with article 188 but then copy article 189-190, followed by the articles from the two groups mentioned and Appendix A.



enrichment might also have been carried out by including some of these added articles before article 188.

It is not only the recovered version of the *Usatici primi* that allows this claim to be made, but also the manuscripts of the 188-article version that include all the articles from groups *A* and *B* and those encompassed in Appendix A after article 188.

The articles in group *A*, included in *ms. B 5* after article 96 and before articles 119-121, must logically have first been copied after article 188. This opens two hypotheses: either the articles copied after article 188 were all copied at the same time or their order after article 188 determines their antiquity, with those closest to article 188 being the oldest. This would lead us to needless arguments²³.

When *ms. P 7*, the oldest surviving manuscript, was copied, the articles in groups *A* and *B* already formed part of the *Usatici comitis*, a version with 190 articles, in the same place where they appear in the commentators' version.

Ms. B 5 shows that the articles in group *A* were part of this older version that ended with article 188 and *ms. B 1* shows that the oldest version that ended with article 188 had been completed with the addition of articles 189-190, but did not yet include the articles from groups *A* and *B*.

7. Sixth thought

The *Usatici primi*, that is the *Usatici antiqui* identified by the anonymous annotator of *ms. C 1*, ended with article 188 and lacked articles 80-118, with exceptions due to a special order of its articles that also affect those articles copied between articles 119-188. According to the anonymous annotator of *ms. C 1*, this version of the *Usatici primi* was the one known at that time, but the manuscripts that have survived copied other articles outside it, which are the ones found in the known versions. This annotator did the same as historians do nowadays when describing the version of the *Usatici* contained in *ms. P 7*, although he did not clarify his statements in the same way. The old manuscripts, and it is known that their age is relative and, in any case, can be no more than the one hundred years during which men maintain their memory of things, that is, three generations for those who like these chronological measurements, had versions of the *Usatici primi*. However, other articles, that are now included in what can be defined as appendices, were copied outside this. Initially, there is nothing to establish a different chronology between the *Usatici primi* and the other copied articles: the articles included in the *Usatici primi* were as old as those copied outside these because both were copied in the same old manuscripts.

These *Usatici primi* lacked both the articles from group *A* and group *B*, as well as the articles in Appendix A. However, they also lacked other articles between chap. 80 and 119, which is a section of the *Usatici* within which d'Abadal identified the *Usatici* included in the original version to construct the theory of the principality.

23. See notes 20 and 24.



This observation is enough. The textual tradition shows that d'Abadal's identification must be corrected. The observations by the anonymous annotator show that some of the articles that d'Abadal considered new, introduced to coin the theory of the Principality, were missing from the version of the *Usatici primi*, while others had already been included.

Among all these articles, I will only mention chap. 82, with a limited textual tradition. It is missing from *ms. C 1* —thus is not found in the *Usatici comitis*— but is copied in an appendix with a copy of the new *Usatici* that accompanied the version of the *Usatici comitis* in *ms. C 1*. This has a warning by the anonymous annotator that these belonged to the *Usatici primi*, giving their exact number and, thus, the precise place where they should be placed.

The basic idea is this: the *Usatici primi*, identified by the anonymous annotator, lacked some articles found in the known versions of the *Usatici* and had its own order for the articles.

Among these missing articles, those which make up groups *A* and *B* formed part of the appendices of articles in the *Usatici* that were copied after article 188, the supposed final article of the presumably original version of the *Usatici*. The articles from Appendix *A* and numbers 189-190 were also copied. The doubts arise when identifying the position of articles 81-96: those in the *Usatici primi* are also found in the versions with 188 and 190 articles. And there is still the problem of the order of articles 119-188.

Supposing an original core of the *Usatici*, which for the time being, can be identified in what I have called *Usatici primi* recovered from *ms. C*, the 188 —and 190— article versions can be considered later steps, born from the enrichment of this original version.

The missing link would then be identified with *ms. B 1*, which would suppose the step from the version of the *Usatici primi* to the *Usatici comitis*: one that ends with article 190, but lacks the articles from groups *A* and *B* and Appendix *A*. Compared with the *Usatici primi*, it would include the articles absent from that version and would contain the definitive order (with some variants), incorporating articles 189-190 as the end. One could think that these articles were also found directly after the versions of the *Usatici* in those manuscripts, but the known versions do not allow this conclusion to be confirmed, as it can be confirmed for the articles mentioned in groups *A* and *B* and Appendix *A*.

In any case, the author of this version in *ms. B 1* had to complete the version of the *Usatici primi* and reorder its articles. It is of little importance that this version is the one copied in *ms. B 1* or that this is a simple copy of an older version. And here is where the unsolved problem with the known data appears. The origin of the problem arises, simultaneously from a finding and from that *reductio ad unitatem* so present in human thought. How can the range of existing versions be redirected to a single one and, at the same time, combine this original nucleus with later work to adapt it to the so-called theory of the principality?



8. Seventh thought

Let me leave aside the theory of the principality—which merits closer consideration—and concentrate on the known data. The *Usatici* is a version of ancient law and, from this point of view, while no element has been found to doubt that the articles incorporated in the *Usatici primi* may date from before 1173, the articles added after number 190 lead us to the 13th century. For the moment, the examination of the sources of the *Usatici* by d'Abadal and Valls and Brocá, and some data that I have added, serve to base the age of the articles copied in the collection of the *Usatici primi*, the collection with 188 articles and the one with 190 articles.

There is no data that allows us to state that there is an older version than the one evidenced by the *Usatici primi*. The discussion is not about the antiquity of the articles used to make up a version of the *Usatici*, but rather about the age of the version of the *Usatici*. Prior to 1173, there is no mention of *Usatici scripti* and, in consequence, before that date, there could not be a collection of articles identified by the name of *Usatici*. While older evidence is not forthcoming, it is necessary to start from this finding. A written collection of *Usatici* is first identified in 1173, although under the name of *Consuetudines*. The mention of the meeting in 1173 contained in one of the articles not only allows a written redaction to be identified, but also allows this to be linked with the known versions of the *Usatici*.

If it is not possible to link this written version with a legislative act (not in the sense of the French Revolution), if the *Usatici* were not established by the count of Barcelona, who was behind their writing? The edition of the *Costums de Girona* allows us to talk about a collective version of the *costums*. Were the origins of the *Usatici* the same? Did different versions arise that gradually came closer without ever establishing a single text until the powers intervened?

In favour of this hypothesis, we could invoke the confrontation between the king and the privileged estates that delayed the definition of a text for the *Usatici*. In 1283, Peter the Great promised that, in the future, when he gave general constitution or statute to all Catalans, he would do so in the courts with the consent of the greater and healthier part. Here is where the cycle of the *Usatici* seems to close; this would explain its future fate, not its early history.

The textual tradition shows that there are some *Usatici* attributed to the activity of Alfonso I, Peter I or James I. It was also in 1283 when the practice of identifying the *Usatici* through their incipit (or their rubric or article) began to spread. However, it was not until 1412 when there was an attempt to set the Latin text of the *Usatici* to proceed then to translate it into Catalan. This attempt would lead to setting the *Usatici* recognised as such. The fate of this stillborn compilation also explains the fate of the task carried out by these compilers. It is known that certain articles of the *Usatici* were selected and incorporated into the Compilation as such. It is also known that other articles of the *Usatici* evidenced by the manuscripts were dispensed with. Sometimes, some were excluded from the Compilation, others were not included as *Usatici*, but were included with their character modified: either converting them into constitutions—and I maintain the same indeterminacy as the editors—or



identifying them as constitutions of peace and truce, or finally converting them into *costums*. The unification of the constitutions of peace and truce in an added title, from the moment when there were *Usatici* that dealt with peace and truce, justifies that this section opens with some articles, identified as such, but which soon give way to articles of peace and truce, identified as such and, thus article 218 was compiled as a constitution of peace and truce.

A numerical order according to the commentators was only given to the *Usatici* with the official Compilation, which was when the 174 existing *Usatges* were identified (really 173) that were not fully identified with the alphabetically enumerated *Usatici*. This was when *us.* 133 and 171-174 were both converted into *Usatici*, creating a single text (*us.* 174) from various constitutions of peace and truce and transforming what the Catalan translation identified as a “*Usatge dels prelats e comte de Rossello*” into an *Usatge de Barcelona*.

9. Conclusions

The major difficulties arise, on one hand, from the known data and, on the other, from a theory designed to explain Catalan political organization. All the known manuscripts contain a version of the *Usatici Barcelone* that, independently of its characteristics, begins with the articles that the Catalan jurists called prologues, which contain the theory of the count’s power to make laws and set the customs —*condere legem et constituere consuetudines*— which was very present during the reign of James I.

These prologues bring together the different versions and legitimise the articles incorporated into the distinct versions as *Usatici*. The possibility of other final articles (articles 180 or 147) cannot be discarded, but there is little data and what is known would not alter the fundamental problem because it is not possible to demonstrate the existence of a version of the *Usatici* without the prologues. If we cannot go back to an original nucleus of the *Usatici*, bereft of these prologues, it is not possible to presuppose an agreed version of the *Usatici*, because the prologues are evidence of a guiding hand. Behind the *Usatici* there was a jurist (or various working together), who constructed the theory of the count’s power on the basis of the *Liber* and made it real by bringing together articles from different sources.

The question is not then one of explaining how the commentators’ version came about from a coral tradition, but rather the opposite, how a symphony of different versions arose from a single text. This explanation can be reconstructed hypothetically from the data available, regardless of all psychological or sociological explanations. The oldest known version of the *Usatici* has not survived, but can be recovered, with the mentioned doubts, from the notes by the annotator of *ms. C 1*.

These *Usatici primi* —*Usatici antiqui* according to the arranger— would form a version with 188 articles that would coincide *grosso modo* with the first 188 articles of the ideal version and the first 140 *usatici* of the version by the commentators, although the latter lacked part of articles 81-96 and groups *A* and *B* (articles 96-118).



Moreover, these *Usatici antiqui* had their own order of *grosso modo* articles 119-188. The old manuscripts with this version of the *Usatici primi* also copied other articles that were included over time within the *Usatici primi* as part of a new version.

Although we have doubts, given that the manuscripts do not offer us information about this question, before proceeding to enrich these *Usatici primi* with the articles copied from outside, the contents must have been rearranged with the inclusion of some new articles—those missing from the *Usatici primi*—which are not, however, copied after article 188 in the known manuscripts of the *Usatici*, with the exception of the addition of articles 189-190. These additions—with the doubts about their identification—needed the principles established in the prologues. This task is nowadays conserved in *ms. B 1*: it copies a version of the *Usatici* that ends with article 190²⁴ and lacks the articles in groups *A* and *B*.

From this moment—and here the explanation begins to fail—there is the possibility of the diversification of the versions deriving from this original nucleus. However, to follow this explanation it is necessary to hypothesise that the inclusion and reordering of the articles were not always accompanied by the addition of articles 189-190. If we accept the existence of the lost step to complete what has survived, we might think that, on one hand, a 188-article version appeared, true to its original final article, and another order with 190 articles. This need for intermediate steps is also required for there to be different orders for the articles between 121 and 188.

Bearing in mind these hypothetical affirmations that can only have some force if the later data allows them to be confirmed, I presuppose that the order of the articles is maintained, although it is interrupted by the addition of new articles, when the older ones are copied in the old order. Their numbering only changes as a result of these new additions.

Thus, if we start with a version like the one in *ms. B 1* (of which there are two versions: one ending with the old article 188, the other—*ms. B 1*—which then adds articles 189-190, with which the redaction ends), it is necessary to accept (in line with the annotator's notes) that the different versions could survive in manuscripts that copied other articles from outside this nucleus of the *Usatici* after the two aforementioned final articles.

This situation, and the one in the *Usatici comitis*, explains the formation of the 190-article version. In this, the articles in groups *A* and *B* were combined to form a unit and added between article 96 and articles 119-121. Moreover, Appendix A was copied outside this 190-article version. These fundamental decisions marked this 190-article version that has managed to dominate, at least in the surviving textual tradition. Except where the appendices were added, most of the manuscripts of this version only copied these first 190 articles and completed these with some loose articles, preferably those linked to the activity of the counts (Alfonso I, Peter I and James I).

The 188-article version kept the separation between the first 188 articles and the added articles. The other articles were copied outside this version, but in some cases the articles copied after article 188 were included before chap. 188, as *ms. B 5* graphically

24. This manuscript is the one that copies article 180 (which had already been copied in its corresponding position) directly after article 190. See note 23.



emphasises. This lack of unity explains that while the versions include almost the same articles, these appear in a different order without the need to alter the received order of the articles, because they only incorporate absent articles into the original 188-article version. The characteristic of this version is that the articles in groups *A* and *B* and Appendix *A* are independent and when linked to each other, are never copied together between articles 96 and 119-121. Moreover, the articles in group *B* are added in different places, but never between articles 96 and 119-121. Moreover, the articles from Appendix *A* are always copied after article 118 —although article 42 has a life of its own. This circumstance explains why these articles cannot be defined as adventitious. They are extrinsic compared with the order of the commentators. The best that we can do is to recognise that while they were incorporated into the version with 188 articles, the 190-article version always excludes them.

These two new versions explain the fate of the other articles. They were added at different moments and places in the manuscripts and their presence is also very irregular. It is thus impossible to establish an order for the articles after article 190 —always bearing in mind the particular case of the articles in Appendix *A*.

The fate of these articles —which are adventitious and extravagant with regard to the commentators' order— is different and it is not possible to follow it except individually. In general terms, taking the commentators' order as a model, the old link between *usatíci* and the *us.* 140 and 145-152 has long been clear. The other articles are either linked to the presumed or real activity of counts Alfonso I, Peter I and James I, assimilating to their constitutions, some approved in a church council during the reign of James I. Another group of articles is mentioned with some collections used to draw up some of the articles in groups *A* and *B*. More clearly, these date back either to the *Excepciones Petri*, the Decree or the Justinian Compilation, with difficulties for identifying the real source. Finally, a group of articles that, with some exceptions, only appear in the appendices in the manuscript tradition seems to be designed to recover the Visigothic tradition. These general conclusions can also be extended to the so-called *usatíci extravagantes*.

This effort to recover the *Liber* seems to link the *Usatíci* and the *Statuta comitis*, but the presence of common articles in both versions makes it difficult to understand their relations. *Ms. P 7* shows that Appendix *A* was not yet part of the *Usatíci comitis* (although it did form part of the *Liber Usatíci*) and the first evidence of the existence of the *Statuta comitis* seems to lead us to a period after James I, the use of articles from the *Recognoverunt procures* inclines us to think that they were written after 1284, this is not conclusive — it is not possible to determine with certainty when the aforementioned articles came to be considered part of the *Usatíci*, except if their incorporation in the *Liber usatíci* is considered decisive. And they are not the only common articles.

It is not easy to explain the fate of the mixed versions with the unitary form, where the *Usatíci Barchinone* and the *Statuta comitis* were merged, because this type of version failed and both versions continued to be copied separately although they had articles in common. However, this is a question that goes beyond the bounds of this article.

