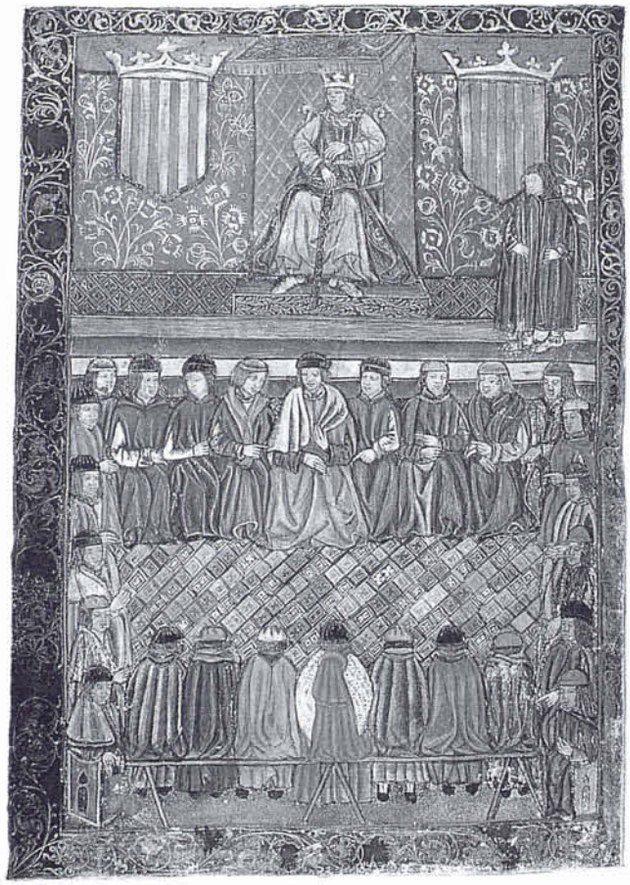
THE HISTORICAL DEVELOPMENT OF CATALAN LAW



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JAMES I IN THE COURT OF CATALONIA.
MINIATURE OF *CONSTITUCIONS DE CATALUNYA*

IT WAS NOT UNTIL 1960 THAT A GROUP OF JURISTS ACHIEVED THE PROMULGATION OF THE "COMPILACIÓ DEL DRET CIVIL DE CATALUNYA", WHICH GATHERS TOGETHER THE CATALAN JURIDICAL INSTITUTIONS. TODAY, THE PARLIAMENT LEGISLATES NORMALLY AND NEW LAWS ARE INCORPORATED THAT KEEP CATALAN LAW UP TO DATE AND MAINTAIN ITS CURRENCY.

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Two basic elements make up Catalonia's personality: the language and the law. Both have developed attitudes and a way of thinking that are characteristic of the Catalan community. The language is the most obvious differentiating sign, because it is manifest in communication between the people. The legal system, for its own part, distinguishes the people in the way it regulates their conduct.

The Catalan legal system has followed the historical evolution of the political life of Catalonia and their fortunes have followed parallel paths. Thus the age of splendour of our history coincides with the greatest power of our legal system, in the same way that the two have shared their periods of decline.

Catalonia can already claim one thousand years of differentiated historical existence. The various counties which once made up the Spanish March, created by the Carolingian Empire, gradually freed themselves of Frankish sovereignty and coalesced under the hegemony of the Count of Barcelona. The Visigothic law that ruled the country before the Saracen invasion survived in the reconquered lands and continued in currency for centuries. The measures applied by the Frankish kings to regulate the condition of the *Hispanics* constitute the first manifestations of public law.

Before long, the gathering of nobles, ecclesiastical authorities and leading judges around the figure of the count became the first nucleus of the county court with the object of collaborating in the work of government and in the administration of justice. This was the forerunner of the future Catalan courts. Visigothic law gradually lost its currency, as new customs, laws and constitutions appeared in reply to the demands imposed by the times and, towards the middle of the twelfth century, these were gathered together in a compilation known as *Usatges de Barcelona*. This compilation was later completed with injunctions by Alfons I the Chaste, Peter I the Catholic and James I the Conqueror. With a total of 174 chapters, in the thirteenth century it came to form a body of law which is now considered "the primordial and basic element of the Law of the Catalans".

At the same time, so-called common law was introduced into Catalonia –that is, the received Roman/canonical/feudal law derived from the school of Bologna. Furthermore, new juridical collections appeared, such as the *Costums de Catalunya* and Pere Albert's *Commemoracions,* which were sanctioned by the Courts held in Montsó in 1470 and became part of the *Constitucions de Catalunya.*

Other Barcelona collections were the "Recognoverunt proceres", which contains civil, mercantile and procedural usages, and the *Ordinacions de Santacilia,* which contains dispositions on rights. The two were also incorporated into the official compilations.

Our courts, whose particularities distinguished them from similar institutions of their time, reached their peak in the thirteenth and fourteenth centuries. They were not only a political organ, but chiefly a legislative one, shared with the king and based on a pact-making policy, one of the characteristics of Catalonia's legal and political structure, which writers have since studied and of which Lluís de Peguera, in 1609, said, "in Catalonia the king can not legislate by himself; the king and the people legislate conjointly and the laws hold both for the king and for others".

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The courts were made up of representatives of the three *braços,* or social sectors: the church, the military and the people. At the courts held in Barcelona, Vilafranca and Cervera in 1358 and 1359, under Peter III the Ceremonious, an institution was born which was originally a fiscal organ, but which in time acquired political functions and, with the name Generalitat, eventually became the prime organism of the government of Catalonia.

In the period of Catalan expansion in the Mediterranean, during the twelfth to fifteenth centuries, Catalan law was also introduced into Valencia, Mallorca, Sardinia, Sicily and even the Greek duchies.

It was during this period that the core of customs of the sea-faring men of Barcelona's shoreline district formed the beginning of the *Llibre del Consolat de Mar,* which contained the maritime and mercantile usages and regulations of the Mediterranean. This book constituted the most important source of modern maritime law and was translated into several languages. It remained in currency until the promulgation of the code of commerce of 1824.

However, with the death of Martin I the Humane, the last sovereign of the line of the Catalan counts disappeared. His successor was elected at a meeting of delegates which took place at Casp and which designated Fernando I of Antequera, who began the reign of the Trastàmara dynasty.

Under the rule of this king "through pacts elected", it became evident that it was necessary to unify the Catalan legal system, which was scattered in various ordinances, into a single body of law. And so, out of the work of the leading jurists of the time, there arose the *Constitucions de Catalunya,* which were published in Catalan translation for the first time in 1495. Subsequently, to keep them up to date, other compilations were drawn up in 1588-1589 and 1702, which were published under the title *Constitucions i altres drets de Catalunya.*

Unfortunately, not long after the compilation of 1702, the dispute over the succession which arose after the death of King Charles II, the last member of the House of Austria, led to the War of Succession, in which a defeated Catalonia lost her autonomy, and the so-called "Decret de Nova Planta" suppressed the public law, though the private law was left standing. The Catalan language was banned in the administration of justice, with the disposition that causes "would be substantiated in the Castilian language".

Catalan law, then, like the very language of Catalonia, was to go through times of decline and repression, until the coming of the *Renaixença.* In the last decades of the last century, vindicating voices began to make themselves heard, but it was not until 1960 that, in spite of adverse circumstances, a courageous group of jurists achieved the promulgation of the *Compilació del Dret Civil de Catalunya,* in which are gathered the Catalan juridical institutions, thus managing to revive interest in our legal system.

For this reason, when Catalonia recovered her autonomy, and with it the legislative capacity of the Parlament de Catalunya, this parliament revised and adapted the text of the *Compilació*, promulgating it once more in Catalan in 1984. Today, the parliament legislates normally and new laws are passed that modify and up-date Catalan law and maintain its currency. ■