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LEGAL AND ILLEGAL FORMS OF VENDETTA IN THE LEGAL FRAMEWORK OF CATALONIA, 15TH TO 17TH CENTURY

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ABSTRACT

Feuding between families and factions as an organised, collective form of redressing a grievance or offense was as common in Catalonia as anywhere else in feudal Europe. Catalan law set out recognised regulations on the forms in which this activity could be deemed legitimate. This paper describes the legal basis of private revenge and its survival until the seventeenth century, despite the gradual deterioration of the system, which became increasingly characterised by recourse to a threefold process of legislation, mediation and repression.

Keywords: Feuding, Vendetta, Catalonia, Private Warfare

FORME GIURIDICHE E FORME ILLEGALI DI VENDETTA NEL QUADRO GIURIDICO DELLA CATALOGNA, DAL XV AL XVII SECOLO

SINTESI

Le contese tra le famiglie e le frazioni come forma organizzata e collettiva nel rimediare a un reclamo o a un offesa erano comuni in Catalogna come in qualsiasi altro luogo dell'Europa feudale. Il diritto catalano aveva stabilito norme riconosciute sulle forme in cui queste attività potrebbero essere ritenute legittime. L'articolo tratta la base giuridica della vendetta privata e della sua sopravvivenza fino al secolo XVII, nonostante il graduale deterioramento del sistema, che divenne sempre più caratterizzato dall'appellarsi verso il triplice processo di legislazione, mediazione e repressione.

Parole chiave: faida, vendetta, Catalogna, guerra privata

INTRODUCTION: THE LEGAL CONTEXT

> *The Catalans are moreover of stark and lasting anger and wrath: if they bear rancour against a man, there is afterward hardly a king toward whom they will have goodwill or who can content them. Whence it follows that they are tenacious in their enmities, and some are vengeful, and thus in former days, there were so many challenges and factions, hatreds and resentments in Catalonia* (Pere Gil, 1600 in: Iglésies, 2002, 270).

This description is not exceptional.[1] In the early modern period, all travellers and even the natives themselves insisted on the persistence of these hatreds and the unique ability of the Catalans for violence. Manuel de Melo, a Portuguese who fought in Catalonia in the Catalan Revolt of 1640, said: "*They are men of an extremely hardened nature, their few words* […] *in injury show great feeling and they are accordingly inclined to vengeance*" (Melo, 1645, 50 in: Estruch, 1982).

Were they violent? Yes. But also just, turning again to Gil's words: "*Also, though formerly and at present there have been feuds and factions and acts of revenge, the Catalans have not been nor are they cruel to their enemies, but rather exact their revenge without employing added cruelty*" (Pere Gil, 1600 in: Iglésies, 2002, 271).

This anthropological interpretation of the endemic existence of feuding and acts of revenge, however, does not account for the persistence of private wars, which are found in the earliest days of feudalism in the tenth century and continue actively until the mid-seventeenth century, when constant warfare first with the Spanish monarchy and then with France swept them away.

To find the legal mechanisms that permitted the longevity of the system, therefore, we have to search in the process that built, firstly, the feudal system and, subsequently, late medieval and early modern monarchies.

In the Catalan case, the construction of feudalism take place, as it did around Europe, in the context of what has been called "seigniorial terrorism": the appropriation of the lands and freedom of the peasants through the use of violence.[2] This aggression drew a reaction from the Church. In much of the Western Mediterranean – e.g., the northern part of the French kingdom, Occitania, Catalonia – it produced a movement inspired by the Papacy and carried out by the monks of Cluny: the Peace of God and the Truce of God.

In principle, the Peace of God and the Truce of God were two distinct institutions. The Peace of God was based on the Carolingian Peace of the King: it sought to protect the lives of the people and the property that were most important for the economy (e.g., homes, fields, harvests) and religious buildings.

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1 This paper was written as part of a research project on social conflicts as a resistance to power on the periphery of the modern state in the sixteenth and seventeenth centuries, project HAR2013-44687-P being undertaken by the Study Group on the History of the Western Mediterranean (GEHMO) at the University of Barcelona. GEHMO is recognised as a consolidated research group and funded by the Government of Catalonia (reference 2014SGR173).

2 Though the concept of "seigniorial terrorism" has fallen into disuse, it has frequently appeared in studies of the formation of Catalan feudalism (Bonnassie, 1976; Bisson, 1985–1986, 153–172).

The aim of the Truce of God was to limit the use of violence through "pacts" or agreements accepted by the parties and to avoid combat on important religious festivals.

The first documented assembly took place in Charroux in 989, with the aim of preventing attacks on the laity and clergy. The movement was quite uniform and brought the same kinds of standardised prescriptions to various parts of Europe (Head & Landes, 1992).

In the Catalan world, the first documented assembly was held in Toulouges in the Roussillon in 1027. The Truce of God put forward a formulation that no inhabitant of the county and bishopric could attack any enemy from None, or the Ninth Hour, of Saturday until Prime, or the First Hour, of Monday, particularly to obey the precept of Sunday as required. The truce protected unarmed monks and clerics and families on their way to and from the parish church. A particularly important provision was the establishment of sanctuary, which afforded a holy and inviolable space that extended thirty paces around churches. The sacred and protective function of churches can be linked, for example, with the right of any individual to seek refuge in a place of worship and with the prohibition of entering with weapons. Of particular note, the punishment for offenders was purely spiritual: excommunication (Gonzalvo, 2010, 95–103).

In subsequent decades, the various assemblies that were convened expanded the protection to other groups and matters. In the assembly of Vic in 1033, at which Peace and Truce were finally merged, protection was extended to men and women working in the fields, their houses and their clothing. Further details specified which livestock were to be protected from violence. As part of this process, the scope of the punishment was broadened. No longer affecting only the soul, punishment was also directed at the offenders' pocket. This became possible because the counts began to take an interest in convening the assemblies and in guaranteeing their results. The Truce of God received a new impetus with the establishment of a calendar that specified when war could be waged and prohibited warfare on a third of all the days in the year by excluding all liturgical festivities and Sundays.

The expansion of regulations and the participation, and ultimately domination, of royal secular power in the assemblies reached a culmination in 1173, during the reign of Alfonso II of Aragon, when the assembly met in the small village of Fondarella. Here the monarch proclaimed himself the ultimate guardian of justice and public order. This was not intended as a simple theoretical declaration. The monarch ascribed to himself the power to dictate peace and truce and placed under his protection the economic keys of the time: the roads, markets, merchants and harvests. Now the punishment would no longer be merely excommunication or financial penalty: breaking the royal law would be *lèse-majesté*, a crime against the sovereign. To reinforce the Peace, therefore, was to reinforce royal power (Gonzalvo, 1994, XXVII).

As Thomas N. Bisson notes, however, the impetus given by Alfonso II went too far. On the pretext of securing the public order, he was seeking to expand the power of the crown and in 1192 the nobles refused to keep accepting the limitations on their privileges that the various regulations sought to impose. Wanting to raise an armed force to secure the Peace and Truce, as the king did, was too much. The reaction of the nobles forced the

monarch to backpedal. In the reign of Peter II of Aragon, the royal authority over Peace and Truce was limited to the king's direct vassals and to the roads and markets, but he lost control over the peasants bound to the nobility when he accepted *ius maletractandi*.

While this did not mark the end of the assemblies, the texts that were approved became increasingly impoverished from then on. They did not address new cases, but merely repeated old formulas from the past and with increasing hollowness. This failure, however, would pave the way for the Catalan parliamentary system in a process that parallels other places in Europe between 1175 and 1225 (Bisson, 1991).

The protection of public order, therefore, came about by protecting the Peace and Truce and royal authority. The key debate did not concern the protection of individual persons, but was fought over the prerogatives of the nobles and those of the king. This marks one of the major issues in the debate over the centralisation of power and the resistance that it faced in a dispute that initially tilted in the nobles' favour.

Ultimately, the rules of the Peace and Truce were collected in the Catalan legal corpus: the Usages of Barcelona and the Constitutions of Catalonia. The most important usages were: *Statuerunt etiam*, *Constituerunt etiam (I)*, *Si quis per treguam*, *Omnia malefacta*, *Tregua dacta*, *Cunctis pateat*, *Haec est tregua* and *Treguam etenim Domini*.

Arising from this legal framework were the four fundamental royal prerogatives for the defence of public order:

1. *Auctoritate et rogatu (II)*. This placed under the protection of the prince any royal official engaged in his tasks wherever he may be.
2. *Simili modo*. This authorised the prince to order inviolable truces among enemies.
3. *Moneta*. Against anyone who counterfeited and manipulated coinage.
4. *Camini et stratae*. The roads were covered by permanent Peace and Truce, as were the waterways and sea routes, and all those who travelled on them (Ferro, 1987, 75).

We should, however, make no mistake here. The concern of the Peace and Truce and the laws derived from them did not aim to stamp out private warfare, but only to limit its impact. All individuals, not only the nobles, were permitted recourse to private warfare and could engage in it in accordance with the law. The only way to put an end to such warring was through reconciliation, which might be spontaneous or imposed by the king in keeping with his powers.

Theoretically, the king could have declared a universal and lasting Peace and Truce, but he did not do so. This is possibly because he was unable to do so. Not until 1670 would a ban on duels become permanent and be interpreted as extending to private warfare in accordance with the rules coming out of the Council of Trent (Ferro, 1987, 74).

In the Catalan case, a clear distinction was drawn between a dual and private warfare. On 27 April 1519, Charles I of Spain had to write to the Lord of Béarn to dissuade him from providing a place for Galcerà Palau (a Knight Hospitaller) and Joan Gilabert to fight a duel. The king demanded that he withdraw the offer because the matter was already in the courts and there was no room for any duel, as the Catalan and Valencian laws made clear. Shortly earlier, he had made the same demand of the King of France over a duel, in

this case between Pedro Vélez de Guevara and Juan de Lanuza (RAH: Salazar y Castro Collection. A-18, F. 54-54v).

It must be pointed out, however, that the duel was more closely linked with a form of judicial proceeding connected to the judgment of God, which had been expressly rejected by the Church since the Lateran Council of 1215 and by public law since the thirteenth century. In other words, while feuding between families and factions originates in revenge, the duel is a test of truth in a legal framework. The growing effectiveness of the royal court (the Reial Audiència) eliminated duels early in the sixteenth century, at least public duels, but not private wars because of this distinction in their nature and origin.

LEGAL STANDARDS

> *One of these is the common feuding between factions, being the effect typical of high spirits jealous of their honour. To see the truth of this, observe there is no feuding that does not have its origins in a personal grievance or something very close to one* (Gilabert, 1616, 4v.).

The start of a private war was nearly always bound up with an affront to honour that required revenge to restore the situation prior to the offence or at least to give satisfaction to the offended party. The major issue is that there is no concrete definition of what might be considered an "affront to honour". If we examine the cases that we know of, we can find realities of all sorts.

A prior issue to address is who could engage in feuding and who could not. In this respect, the law seems to lag behind the reality. If it seems clear that in the Middle Ages only members of the nobility were allowed to initiate or take part in private wars, by the Constitution of 1539 under Charles I of Spain, the list has grown to include: "*prelates, ecclesiastical persons, barons, knights, the gentry, burghers and honourable commoners*" (Serra, 2003, 155). Despite what the law might say, however, the participation of lower social groups was common from the Late Middle Ages, when solidarity in factions gave more security than social class in the face of economic and political difficulties (Sabatè, 1998, 457–472). The administration of the viceroy provided a list dated 7 January 1522 naming individuals found to have broken the Peace and Truce. The list includes 47 individuals, most of whom do not have a trade or social estate specified, but there also appear nine peasants, a master mason and three wool workers (ACA: Can. 4215, fol. 52v.–53v.). Needless to say, we are not talking about straightforward criminals in the latter cases, because they have a known trade and place of residence. Rather they are socially integrated individuals who had taken part in a conflict between factions. Very similar data recur throughout the sixteenth and seventeenth centuries (Torres, 1991).

ISSUES CONNECTED TO THE HONOUR OF A FEMALE RELATIVE

One very curious case concerns the Riquers and the Pardinas in Lleida. In 1510, they reached a truce that was then broken in 1512 when Antoni Riquer, the youngest of

Figure 1: Serrallonga (Source: Wikipedia)

the family, carried off Isabel Castillo, the lover but not the legitimate wife of Garcia de Pardina (Riquer, 1979, 54–55).

A second case set off an enormous conflict: the double marriage of the Count of Quirra in 1542. Betrothed to a daughter of the Viscount of Perelada, the count ended up marrying the daughter of Bernat de Pinós, and his justification was that the first engagement had been made under duress. The result was a war that drew in a large swath of the Catalan nobility. Acting as veritable "condottieri" were the outlaws Antoni Roca and Moreu Cisterer, who led the two opposing forces (Casals, 2011).

CONFLICTS OVER HONOUR

In July 1537, Tomàs de Pujades and Enric de Sentmenat ran into one another at the festival of Montcada, near Barcelona. Pujades had fought at Tunis with the Emperor Charles V and Sentmenat was a relatively young man. At the festival, they began to argue when the latter accused the former of being a coward and liar when recounting his adventures in Africa, and Sentmenat slashed Pujades's face. The row sparked a war that was to last decades, polarising many families of the Catalan nobility in favour of one side or the other and resulting in a large number of deaths (Casals, 2000). It should also be noted that this conflict would eventually be subsumed in the war mentioned earlier between the Count of Quirra and the Viscount of Perelada, which was to break out five years later. Such a merging of conflicts was a characteristic of the Catalan private wars, in many cases making it impossible to discover the original kernel of the war.

Though we do not have a very clear idea of its origin, one of the most important wars of the sixteenth century, the feud between the Sarrieras and the Agullanas in the area of Girona, may well fall into this category. It broke out in 1505 for reasons that

remain unclear. Until 1501, the families had been partners in a company selling woven goods in Sicily. So was the cause a failed business or perhaps financial fraud? In reality, the instigator of the conflict was Miquel de Cartellà, son of Lionor Sarriera, who sent a letter of defiance against the Camós family, to whom he was related. Subsequently, this challenge was extended to other figures, such as the Baron of Llagostera and Baldiri Agullana, who came from a far branch of the same family tree as the original Camós family (Riquer, 1964).

Honour was a key point in many of these wars. For this reason, it became a literary resource in the literature on the subject. Lope de Vega turned the famous bandit Antoni Roca into a man seeking to avenge the murder of his father and the dishonour of his mother; in *Don Quixote*, Cervantes depicted Perot Rocaguinarda, a real bandit, as a character whose honour is attacked. Then there is Serrallonga himself, who had become a bandit through the treachery of a jealous neighbour (Fuster & Reglá, 1961).

POWER STRUGGLES AND ECONOMIC STRIFE

It would be naïve to suppose that moral reparations were the sole driving force behind these vendettas. In many cases, they had much more mundane purposes and could affect any social group. A good example is the Poblet Monastery. In 1531, the monastery's abbot Pere Caixal was dismissed for misappropriation of the order's property. His relatives, however, did not accept the punishment and they attacked the monastery and its lands with bandits hired for the occasion. The conflict would last a year and ultimately the removed abbot was shut away in the Valencian castle of Xàtiva, where he died in 1543 (Altisent, 1974).

An even more obvious and bloodier example is the conflict known as the "War of Castellbò", which pitted the inhabitants of the Viscounty of Castellbò, a small territory in the Pyrenees, against Lluís Oliver de Boteller for fifteen years. Oliver de Boteller was a knight from southern Catalonia who had purchased title and lands from the dowager queen Germana de Foix in 1529. The peasant uprising was contested by an alliance of other vassal lords with Oliver de Boteller, who in the end had to renounce his title and lands to the king. The extent of the conflict is evident from the final cessation of hostilities, which was signed by over two hundred people, a bishop of Barcelona and fourteen municipalities (Madurell, 1975).

Nor might hostilities be opened only by an abbey or a viscounty. Elite groups also engaged in defiance. In 1544 in Cervera, a nephew of a deceased man who had left everything to the Brotherhood of St. Nicholas challenged the priors so as to force them to renounce the inheritance (Llobet & Portella, 1991).

We should also bear in mind that interfamily wars, in many cases, mask authentic struggles for power in a given village or territory. To cite only the abovementioned cases, the Pous and the Riquers were also battling for influence in the government of Lleida, as the Agullanas and Sarrieras were doing in Girona, to the point that in Girona in 1522 there was an actual popular uprising incited by the feuding sides (Duran, 1982, 224–233).

Figure 2: Perot Rocaguinarda (Source: Wikipedia)

CONFLICTS OVER INHERITANCE AND SUCCESSION

If there was one issue that could strain the relationships between the different branches of a single family, it was the issue of succession. The reasons are both structural and a matter of circumstances. The lack of clear legislation on the principles of inheritance – e.g., the argument over succession via the female line – led to a constant contesting of wills, which then went to the Reial Audiència of Catalonia, a court that took decades to resolve cases and could drag on for generations because of the repeated challenges and appeals that were presented. This slowness encouraged the litigants to solve the matter by force of arms. In 1517, the poor health of the second Duke of Cardona spawned a military escalation among his relatives, because the only direct descendent was a girl, Joana. The same situation recurred in 1523, when the duke fell ill again (Molas, 2004, 33–34). And when the succession of the fourth Duke of Cardona fell to his daughter Joana II of Cardona in 1575, his relative Galcerà of Cardona brought a lawsuit on the succession that dragged on until 1603 (Molas, 2012, 236–237). In 1586, the Count of Quirra died without issue and his death provoked a war between Joaquim Carrós, a cousin of the deceased, and Violant of Cardona, a sister of the count. Then, in 1613, a war broke out between Alexandre d'Alentorn and his sister-in-law over the Barony of Rialp upon the death of Jeroni d'Alentorn (Torres, 1991, 81–82).

The element related to circumstances concerns the consequences of the Catalonian Civil War (1462–1472). In this case, the confiscations carried out by each side during the conflict created a legal imbroglio over whom to return the possessions if the owner had died prior to 1472, despite the legal arrangements made both in the Capitulation of Pedralbes of 1472 and in the representative assemblies in Barcelona called by Ferdinand II of Aragon in 1481. Once again, the slow resolution of these situations gave rise to open warfare, such as the conflict between the Pinós and Castre-Pinós families – two branches

of a single family – for the Viscounty of Illa. Despite an initial ruling in favour of Pere de Castre-Pinós in 1493, it took fifty more years and a new ruling to achieve a definitive peace (Duran, 1982, 85–91).

THE MECHANISMS FOR ISSUING A CHALLENGE AND WARFARE

Despite the growing ossification of the assemblies of Peace and Truce, it would be a mistake to think of private warfare simply as a medieval relic or holdover in the early modern period. Until the sixteenth century and specifically the representative assembly of 1599, there continued to be new legislation and changes to existing laws to regulate private warfare amid the apparent contradiction of a monarchy that sought to eliminate it, while nonetheless feeling obligated to bring it up to date.

While the earliest rules adopted in the assemblies of Peace and Truce insisted on keeping truces and setting punishments for people breaking truces, the passage of time increasingly saw legislation aimed at ensuring the limits of conflicts.

At first, even though the right to "feud" was limited by custom to members of the military estate, people of any status could lend their support. This could be because they were vassals obligated by feudal bonds or in exchange for financial remuneration or some other type of reward or, obviously, out of solidarity with relatives and neighbours. Excluded were the "serfs" because they were attached to the land and not allowed to abandon it.

War had to be declared by means of a "challenge" issued by public letter, setting out the reasons for the challenge and giving notice that, after a period set by law, the property and people of the newly declared enemy would be attacked. The period was originally ten days, but later dropped to five. When it had elapsed, hostilities could commence. Provided that no act of violence had yet been committed, however, the challenger could retract the challenge without the challenged party being permitted to retaliate or request protection from the king so as not to be required to accept the challenge.

There was also a variant: when a vassal challenged his lord, thereby *de facto* breaking the feudal bond. This specific category of defiance letters was called *acuidament*.

Even though the declaration was supposed to be made by sending a messenger with trumpet to the challenged party, the most common method in the sixteenth century was to put a letter in a public place like the door of a church or the door of the challenged party.

The usual structure of the letter went as follows:

> *I declare that for the rancour I bear you, I herewith challenge you notifying you that from ten days after you are presented with this letter, I shall seek to harm your person by all the ways that are available to me. And so that ignorance may not be alleged by you, I send this letter of challenge by a trumpeter who acts on my behalf* (Carreras Candi & Bosch, 1936, 42).

In addition to stating the reason for the challenge, such a letter quite often contained the most offensive insults possible. In one curious case, a letter was written in verse.

Despite the originality of the form, however, the contents were entirely orthodox for 1533. The letter insulted the challenged party by accusing him of being a pauper despite his presumption of being a knight:

Knight of the outhouse,
you who possess a title,
but have no horse
nor mule to ride,
nor money to buy,
speaking you bark,
no-one wants you anywhere,
for you have nought to eat.

The challenge concludes with a specific naming of the cause:

I, Pere Moncada, of the lake of Pinell, hereby challenge you,
Jordi Vilaplana, for the miserliness that you have shown in stealing
the cloak from my first cousin, that within six days from now,
be on your guard of me if we should meet.
From Pinell, 17 February 1533.
(Llobet i Portella, 1991, 59–75)

At this stage, the public authorities could do nothing. The only option was to dictate Peace and Truce, though in this case it was to be accepted by the contenders. In this respect, some municipalities had special privileges. For example, Cervera was given the so-called "privilege of disputes" (or *privilegi de rixes*) at the representative assemblies of Tortosa in 1442. This permitted the municipal government to impose "peace and truce" among the neighbours of the town. For example, in the case of Pere Pere Mir "scribe" on one side and Francesc Amat on the other, both of Cervera, a truce of 101 days was imposed between the two parties. This included friends and protectors, with the penalty for breaking the truce being set at 100 Spanish libras. The two witnesses of the settlement were Gaspar Martorell and Pau Salbà (ACC: Top 420, 14 February 1574).

From that moment onwards, the challenger was absolved of any guilt for harm caused to the enemy. Equally, if a truce was not explicitly renewed at the end of its term, immediate attack was permitted without the need for further notice.

Over time, increasing limits were put on the potential actions and victims of warfare:

- Women were excluded. No physical harm was to come to them.
- Minors under the age of fifteen were excluded. The age limit possibly came from the chivalric tradition that set this age limit for taking part in knightly combat between individuals.
- In 1503, Ferdinand II of Aragon limited the degrees of kinship that could lawfully take part in a war and could, therefore, be attacked (Torres, 1991, 70).

In addition, universal "Peace and Truce" were established whenever there was an external war and also while representative assemblies were being convened and for some days after their adjournment for the safety of participants.

Neither was it lawful to challenge a royal official for reasons linked to his office, nor to challenge clerics. Similarly, challenges could not be anonymous, nor made under false names, nor made by foreigners residing in Catalonia unless they were nobles.

The monarchy kept close watch on any failure to follow these rules and the rules in the Usages, such as attacking someone on the royal highways. This was because action could now be taken against infractions of the rules. The problem was that action could not be directed at the head of a faction, only against specific individuals who broke a rule. They were expelled from the Peace and Truce, deemed outlaws and could be attacked by any public force, royal or municipal.

A highly significant case occurred in Barcelona in 1512 in connection with the war between the Agullanas and the Sarrieras. At the behest of the viceroy Jaime de Luna, the Batlle General of Catalonia Miquel Sarriera sent word that peace was to be negotiated with the Agullanas and the Baron of La Llacuna. To this end, the latter parties journeyed to Barcelona where they stayed in a house in Gignàs Street on the night of 29 January 1512. They did not know that they had fallen into a trap laid by Miquel Sarriera. At one in the morning of 30 January, a chunk of wall in the house where they were staying was breached and Miquel Sarriera and his brother Antic burst through with some 40 men. The baron and Agullana had their throats slit and three others were wounded, among them the Widow Xammar, and then the assassins fled quickly down Regomir Street.

When he learnt of the events, the viceroy ordered the city's gates to be closed and every house of Barcelona to be searched, if necessary. Encircled, the fugitives, who had fled in the direction of the beach, came out of hiding in the monastery of Framenors on 2 February.

Their flight was improvised: they had secured a ship, but without provisions and unready to set sail. When they headed north up the coast, the governor of Catalonia, the viceroy and the chief magistrate of Barcelona gave pursuit. All of the villages along the coast were advised to detain the ship's occupants if they came to port. On 4 February, the ship dropped anchor in Palamós, where the governor arrived on that same night with his men and arrested a portion of the crew who had gone ashore for provisions.

On the next day, the governor tried to negotiate the surrender of those still onboard, but no response was forthcoming. When the viceroy arrived and the men onboard remained silent, he decided to bombard the ship. An attempt to flee ended in failure: the wind prevented the ship from leaving port and it was stove in on coastal rocks and began to sink. Miquel Sarriera drowned in a desperate attempt to escape in a boat that ran aground. His nearly sixty followers were taken prisoner. Days later, the master mason who had made the hole in the wall and a priest who had organised the entire plot were hung and quartered at Sant Feliu de Guíxols (Vicens Vives, 2010, II, 366–368).

If we analyse the entire incident, we can see that there were numerous infringements of the law that led to the intervention of the viceroy. Jaime de Luna had agreed a truce with Miquel Sarriera for the negotiation. Later, there was the attack through a breached wall, the harming of a woman, and much more.

Though the total prohibition of private warfare was never resolutely proposed, attempts were made to stretch the law to avoid it, basically obliging contenders to accept a Peace and Truce against Catalan law, an approach denounced on more than one occasion by the nobility. Alternatively, as we have seen, any lawlessness might be exploited to take action, even if only against the perpetrators and not against their untouchable noble "*fautors*" or protectors. This protection was the point of convergence between private warfare and ordinary delinquency, making it impossible to eliminate one without eliminating the other, as the king's officials well knew:

> *And as for the things claimed as freedoms in the places of knights and as permission to behave as an outlaw, I think I see clearly that all these thieves that roam abroad have someone who favours them or who at least will not expel them from the land in good faith* (Juan de Acuña, 1540).

CONCLUSIONS

Throughout the seventeenth century, the practice of private warfare or feuding as a way to redress a grievance between individuals, whether noble or not, gradually faded away, at least in its broadest form. Despite the prohibition of Philip IV of Spain which may well have been little more than the endorsement in law of an existing reality, the practice was so deep-seated that it was carried on in a practically ritualised form until the beginning of the eighteenth century. In 1706, the governor of Catalonia was still promoting Peace and Truce between individuals, even when they appear to have engaged in no violent acts against one another. One example was signed by Jaume Francí, an artisan, and his wife Isabel on one side and Josep Fonts, a linen weaver, and his wife Maria on the other side. The parties, in good faith, undertook the following: "*They will commit no offence in word or deed or in any other way, under penalty of 50 Spanish libras in the contrary case*" (ACA: Governació General, Volume 46: "Codex mandatorum et treugarum (sic) curia Generalis Gubernationis Cathalonie anni 1706").

Study of the use of private warfare as revenge for offences of all sorts can be addressed from many perspectives. It can be pursued within the context of infrajustice, as Claudio Povolo (Povolo, 2015) and other have done, or as part of the field of social disciplining and alternative forms of social networks as Tomás Mantecón (Mantecón, 2015) does.

The focus here is on one of the most debated aspects since Braudel (Braudel, 1966) and one which has a long tradition in Catalan historiography from Joan Reglà (Reglà, 1966) to Xavier Torres (Torres, 1991): the legal and political impact of private warfare in the construction of state power, which Rossella Concilla, for example, has addressed in the case of Sicily (Cancilla, 2013).

Let us recall first that vendettas were a form of social control, not of social disorder or disruption. It is only considered the latter when state forces begin to introduce legal mechanisms (particularly investigations) that seek not only to stop the violence, but also to break the link between blood and justice that characterised the vendetta, and a new system emerges and takes away the parties' roles in conflict resolution.

In addition, private warfare was ideally matched to the feudal system. To the extent that absolute monarchies rested on a feudal foundation, there is a clear contradiction between a wish to concentrate power around the authority of the king and the impossibility of controlling the social practice of feuding factions without breaking up society itself. In this respect, monarchies wanted the practice to disappear less to keep the peace – a concept that belonged more to the period than the notion of public order – than to strengthen their power, or *jurisdictio*, which private wars and vendettas could call into question.

In this light, the only possibility was to use the mechanism of legislation to limit the extent of vendettas, mediation to avoid the destabilisation of war, and repression against wrongdoers when this was possible. Legislation, mediation and repression became the key to the monarchy's response in Catalonia to vendettas and private warfare.

ZAKONITE IN NEZAKONITE OBLIKE MAŠČEVANJA V PRAVNEM OKVIRU KATALONIJE, 15. DO 17. STOLETJE

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POVZETEK

Razbojništvo, kot organiziran in kolektiven način za popravo krivic ali napadov, je bilo v Kataloniji zelo pogosto, tako kot v ostalih delih Evrope, kjer so prakticirali fajdo. Katalonsko pravo je skušalo regulirati te prakse in razbojništvo označiti za legitimno dejanje. Vendar je državna kriza v 15. stoletju privedla do degeneracije sistema in povečanja števila protizakonitih aktivnosti. Posledično so se politične sile veliko bolj vpletale bodisi kot mediator med storilcem in žrtvijo, bodisi da bi zatrle najbolj ekstremne oblike maščevanja, kar je povzročilo politični spor v odnosu med Katalonijo in Špansko monarhijo.

Predlagana je shema:

1. *Srednjeveški izvor in načini priznanja pravice do maščevanja in razbojništva*
2. *Pravni standardi: kdaj, kako in kdo lahko izvaja razbojništvo*
3. *Pisma izziva, kot pravni in literarni način izzivanja*
4. *Med zakonitim in nezakonitim: nekaj primerov*
5. *Načini, da bi se izognili sporu: prepoved, mediacija in zatiranje s strani oblasti.*

Ključne besede: fajda, maščevanje, Katalonija, zasebne vojne

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