

The Catalan *Sagrada Família*: Law and Family in Medieval and Modern Catalonia

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Abstract Catalonia is a land of Europe that has been participating in European legal culture since the Middle Ages. The basic institution of traditional Catalan society was the family (household); its articulation with the farmstead (*mas*) and farmhouse (*masia*), as well as with the patrimony (the family estate) and the legal matrimonial and inheritance system, was structural. Clear proof of the strength of the family institution on all levels is the duration over time of thousands of family or patrimonial archives, the vast majority of which correspond to families of peasant origin. The primordial legal documents of these households were marriage contracts: veritable family charters, examples of Catalan contractual law and the basis of the family and patrimonial system. They were drawn up at one of the most significant moments for the household: that of the heir's marriage. The fact that such contracts were abundant demonstrates the growing strength of the stem family, which revolved around patrimony and a society of households. At the turn of the 20th century, to ensure the continuity of Catalonia as a people with a political and cultural identity of their own, a people that had kept their historic private law alive and flourishing, the myth of the ancestral family home (*casa pairal*) emerged and focus was again placed on the strength of the traditional Catalan family—precisely when the construction of the *Sagrada Família* Temple was moving forward with the greatest strength and vitality.

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1 Introduction:¹ The Catalan Legal System and the Family in History

The Sagrada Família (Holy Family) is a Catholic temple designed by the architect Antoni Gaudí (1852–1926). It is the most emblematic building of Barcelona and, to a certain degree, of Catalan society, given that Barcelona is considered the ‘head and home’ (*cap i casal*) of Catalonia.

The Catalans wished to build this monument to the model family of Joseph, Mary and Jesus, thereby honouring, and to a large degree sacralizing, the Catalan family as it had historically been expressed through the power of households and family lineages, which were the bedrock of Catalan society and its political and legal institutions.

The Catalan legal system, via customs (customary or consuetudinary law), legislation and jurisprudence, had gradually built the legal framework comprising the Catalan familial, inheritance and patrimonial systems, the foundations of Catalonia’s political composition.

This corporatist family model would enter into decline in the second half of the 19th century, due to the Industrial Revolution and the new liberal doctrines that fostered secularization of individual rights and liberties to the detriment of the family and the ties and duties binding individuals to the household of their forebears.

It was at this time of crisis and mystification of the traditional Catalan family that construction began on the Sagrada Família church. This temple was a clear expression of the ‘ancestral home’ ideology that, in a Romantic and Christian manner, sought to idealize the past—and in this case, the traditional Catalan family as well—in order to legitimize the rebirth of Catalonia and of a new patriotic Catalan social movement that was at once innovative and conservative.

How did Catalan society and the Catalan legal code form insofar as its socio-cultural reproduction over the course of medieval and modern times? What is the history of Catalan familial culture in this context?

In this article, we will discuss the historic dynamics of Catalonia’s legal-political framework and, within it, the institutional family processes that allowed the existence of households and their family patrimony, as well as their sociocultural and biological reproduction and perpetuation.

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2 The Origins and Historical Evolution of Catalonia and Its Legal System

2.1 *The Origins*

As is known, the historical antecedents of the birth of Catalonia as a political community with full public power and endowed with its own legal system must be sought in the process of independence from the Carolingian Empire, which the Catalan counts, led by the Count of Barcelona, carried out over a lengthy period of time.²

The Moorish invasion of the Iberian Peninsula (711) spelled the downfall of the Visigothic monarchy. Most of its dominions became part of the Caliphate of Damascus and its successor, the independent Caliphate of Cordoba. By 718, the Moors had reached Narbonne, and it was not until 732/733 that Charles Martell defeated them at Poitiers, a victory that initiated the recovery of the Christian lands that had been lost to the South.

With the conquest of Barcelona by Louis the Pious in 801, a number of territories were incorporated into the Carolingian Empire, forming its Spanish March or line of defence. These would eventually become the area of Old Catalonia, organised politically as administrative divisions of the Empire and called counties because they were controlled by counts appointed freely by the Emperor as officials of the Empire.

In practice, however, these county officials rapidly turned into hereditary counts. Among them Wilfred the Hairy of the House of Barcelona became dominant and succeeded in grouping the counties of Barcelona, Girona, Ausona, Besalú, Cerdanya, Berga and Urgell under his command. He too applied private succession rules, sharing out the inheritance of the office of count and the counties among his children. With this affirmation of the right of transferring counties *mortis causa*, the march towards the independence of the counties from the Empire began.

The Moorish punitive attack on Barcelona, led by the troops of the Caliphate of Cordoba under al-Mansur in 985, meant that the relationship of Count Borrell II of Barcelona with the Carolingian Empire was redefined. The initial lack of Carolingian support and the subsequent refusal to accept imperial protection are interpreted by historians as the *de facto* achievement of Catalan independence. Independence *de iure* came later, and was not recognised by the Frankish monarchy until the 13th century, when King Louis IX of France did so formally through the Treaty of Corbeil, signed in 1258 by King James I, the Conqueror.

The public law in force in the Catalan counties of the Spanish March generally consisted of Carolingian capitularies, which established the legal system, either for the Empire as a whole or specifically for certain territories, individuals or

²D'Abadal, Ramon. 1958. *Els primers comtes catalans*. Barcelona: Editorial Teide. This section is partially based on the English version of: Montagut Estragués, Tomàs de. 2015. *Una mirada a la història jurídica de Catalunya i als seus drets històrics*. Barcelona: IEC, 173–176.

communities. It stipulated the personal conditions of the *hispani*—the inhabitants of these counties—, the immunities of certain monasteries and the fiscal contributions of goods and lands by private individuals and communities, among other matters.

Private law in this period was characterised by the survival of the legal regime established by the Visigoths through their book compiling the royal Visigothic laws, known as the *Liber Iudiciorum* or *Liber Iudicum*, which was originally written in the mid-7th century. The *hispani* maintained the Visigothic juridical tradition, in terms of the contents of the *Liber Iudiciorum*, in part because the Franks' legal system was flexible, such that their juridical relations with the peoples subject to their dominion were highly personalized. In this sense, the Catalan counties took part in a type of Roman legal culture derived from the legal tradition of the Western Roman Empire, which had been previously schematised in the Theodosian Code (438) and the Breviary of Alaric (506).

2.2 *The Feudal Monarchy*

The *Liber iudicum popularis* was drawn up on the initiative of Judge Bonsom in a Barcelona scriptorium in 1011. It was a summary of the *Liber Iudicum* created to assist Judges in the administration of the Law. This code bears eloquent witness to the ongoing existence of a link in Barcelona between the Count's public authority and the Visigothic tradition and its law-book, the *Liber Iudiciorum* (the standard code). The adjective 'popular' in this law-book alludes to its character as an instrument of public authority with which the rights of the people were protected, as a whole and regardless of the privileges of the Estates.

Moreover, in the same code we find the complete *Simbolum*, along with a wide variety of formulas of this same symbol of faith, extracted in order to formulate the exorcisms complementing the standard code. They are an example of a type of juridical thought that was different but already coexistent with the thought intrinsic to the laws of the Visigothic monarchs. Remember that this symbol of the apostles was the liturgical prayer that we know today by the name of the *Credo*, the baptismal profession of faith of the Catholic Church. Remember too that with the sacrament of baptism one entered the Christian community at a time when this was the only recognised political community. There was confusion between Religion and Law, which involved the identification of Christian natural law with positive law. '*Credo in unum Deum... visibilium et invisibilium omnium conditorem...*' (p. 622); '*Deus iudex iustus, fortis et patiens qui est auctor et creator*' (p. 796); '*per quem facta sunt omnia*' (p. 794).³ God is all-powerful and the creator of all things, such that it is He who has established Law in Society. Humans cannot create or

³Alturo, Jesús; Bellès, Joan; Font, Josep M.; García, Yolanda; and Mundó, Anscari (eds.). 2003. *El Liber Iudicum Popularis*. Barcelona: Generalitat de Catalunya, Departament de Justícia i Interior.

establish Law, but can discover or choose it directly by affirming it or indicating it by their will, their words and their individual and arbitrary behaviour or conduct.

This *Liber iudicorum* code bears witness to the fact that in early 11th-century Catalonia, two ideas coexisted: an objective concept of law, enshrined in the code containing the tradition of Visigothic Law, and a new and emerging subjective concept of law, appearing in legal thought linked to religion and exorcism through trial by ordeal. It heralded the formation of a new society, in which public power was in decline and mechanisms of self-tutelage linked to feudal and lordly practices were on the rise.

In consequence, 11th-century Catalonia underwent a crisis in the monarchy and a rise in polyarchy, as demonstrated by the prolific construction of castles and establishment of fiefs, phenomena which went hand in hand with the military and repopulating drive southwards from Old Catalonia, at the expense of the Moorish land that would soon be known as New Catalonia. Private individuals sought to achieve important social positions and defended these directly by affirming that their situation, habits, practices and customs comprised their law, inasmuch as God had wished it so. It is the manifestation in Catalonia of that famous European aphorism or motto, “*Dieu et mon droit*” (God and my right). It opened the road to the establishment of the feudal society of the three Estates. The clergy, the nobility and the commoners obtained specific legal status based on the principles of inequality and lordly privilege, but also of communal liberties.

The conflicts occurring within this polyarchic society of Estates in Catalonia were resolved either by coercion or consensus. In the first case, the conflicting parties could legitimately use force to impose their respective subjective law. In this sense, private war, feuding, personal vengeance or extra-judicial pledges were institutions in force in Catalonia. In the second case (i.e. covenants or negotiations), an agreement between persons could be reached. This agreement took the juridical form of the ‘*communia*’ or the ‘*convenientiae*’—one of the oldest examples of what is known as Catalan *pactisme* (‘pactism’). Conflicts could also be resolved by the intervention of the judicial community and assembly, in which the Count presided over the meeting of ‘*maiores et meliores*’ of corporate society, which had to ascertain which of the litigating parties had the ‘good and better’ law. In these judicial sessions, called ‘*placita*’ or ‘*iudicatum*’, in which there was no verdict because there was no recognised objective law applicable, it was possible to resort to trial by ordeal in default of other ordinary proofs. The latter was a ‘trial of God’, given that it was He who declared which was the better law and not man or the public power of the Count, which had entered into crisis.

The excessive violence of this high-medieval Catalan society caused the Church to intervene. It struggled decidedly to restrict violence by calling Assemblies of Peace and Truce, convening the ‘*maiores*’ and ‘*meliiores*’, the clergy and nobility, who forbade iniquitous violence under penalty of canonical sanction and gradually limited the cases in which individuals were permitted to exercise legitimate violence in defence of their rights. Under these peace precepts, violence in public or communal places—roads, markets, churches, cemeteries, sanctuaries and the like—was prohibited. Violence against the defenceless, such as widows, orphans,

members of religious orders or the poor, who due to their personal position could not directly defend their rights, as they had no arms with which to do so, was also prohibited. With the precepts of the Truce of God (*Treva de Déu*), the imposition of private law by force was forbidden in specific periods and on certain days of the year because of their religious significance, according to the liturgical calendar. Initially religious and ecclesiastic in nature, the Assemblies of Peace and Truce also became a political instrument to strengthen the power of the Counts when they intervened in them. They strengthened their authority by threatening those who broke the observance of the precepts of Peace and Truce with civil penalties. Thus, in Catalonia the rebirth of public power is essentially originally linked to the mission of protecting people's rights.

As of the second half of the 11th century, one can see how the Count of Barcelona was building a feudal monarchy by affirming his political hegemony over the other Catalan counts and lords. Among the means he used to strengthen his power were three particularly relevant ones: leading the war of expansion towards the south against the Moors of Hispania; signing many *convenientiae* with the *maiores* and *meliores* of Catalonia; and organizing and holding the Judicial Assemblies and Assemblies of Peace and Truce.

Through their military leadership in the wars against the Moors, the Counts of Barcelona won prestige, authority and the financial resources of the *paries* or tributes paid by the Moors in exchange for peace. Through the *convenientiae*, the Count of Barcelona became, *de iure* and through the channel of private contract, the vertex of the feudal pyramid of Catalonia. There was a written record of the oath of loyalty and homage rendered him by the other contracting parties, who received the protection of the Count in return. The judicial Assemblies presided over by the Counts of Barcelona tackled the most difficult issues arising in Catalonia, mostly of a feudal or lordly nature. The normal criteria used to resolve these cases, i.e. the most common at the Assemblies, became, over time and once they were written down, the famous 'Usages of Barcelona' (*Usatges de Barcelona*), the text containing the legal regulations to be used throughout Catalonia, wherever there was belief and trust in the Count of Barcelona's word. The Usages of Barcelona became the leading document in the general law of Catalonia, and at the same time, the Count of Barcelona came to be considered the Prince, i.e. the first among Catalan counts. This is why Catalonia, though a European Christian monarchy, was established as a Principality and not as a Kingdom.

Thus, over time, the Count of Barcelona became the Prince of Catalonia under the authority of the *Usatges de Barcelona*, the first code that contained the general laws of Catalonia, which began to be put into writing in the 12th century.⁴ The prince's power, however, ran more deeply, specifically in feudal processes of private power represented by the legal institutions of oaths of fealty and homage, as

⁴Bastardas, Joan. 1984. *Usatges de Barcelona. El Codi a mitjan segle XII*. Barcelona: Fundació Noguera, 7–38.

well as in the earlier tradition of private law, represented by the survival of Visigothic Law contained in the epitomes of the *Liber Iudiciorum* of former Visigoth monarchs.⁵

2.3 The Monarchy of Estates

The 12th century also witnessed how the notion of *iurisdictio* (jurisdiction) was used in Europe in the construction of valid processes of public power (Empire and Church). Soon this concept was transferred effectively to different emerging Christian monarchies and became a useful legal-political instrument for the monarchs leading these national communities, which were part of the Christian empire *de jure* but not *de facto*.⁶ Over the course of the Middle Ages, lower-tier political entities that were more personal in nature or smaller in geographical scope, such as municipalities, baronies, guilds and other kinds of *universitates* or corporations, also gained the power of jurisdiction, albeit of a special nature, at a lower rank than the monarch and only in certain matters, since the monarchy reserved some spheres for itself as royalty.

In the 13th century, the *Commemoracions de Pere Albert*, which complemented and updated the *Usatges de Barcelona*, granted the Count of Barcelona—now also the King of Aragon—overall jurisdiction over the entire Principality of Catalonia.⁷

However, this jurisdiction was doubly conditioned, first by the configuration of the Crown of Aragon as a territorial Union made up of the different kingdoms and lands of the monarch, one of whose founding members was the Principality of Catalonia.

This Union meant that the monarch had a certain universal jurisdiction which extended over all the territories in the Crown in certain matters like war, justice and foreign relations, while it respected and protected the general jurisdiction of each of them and the independence of their respective legal systems.⁸

Likewise, the general jurisdiction of the Count of Barcelona—and Prince of Catalonia—was soon conditioned by some of Catalonia's *constitucions* ('laws') and by *pactisme* ('pactism' or making legal pacts), the contractual doctrine according to

⁵Alturo, Bellès, Font, García, and Mundó (as in Note 3).

⁶Costa, Pietro. 2002. *Iurisdicção: Semântica del potere politico en la publicística medieval (1100–1433)*. Milan: Giuffrè, 63–91.

⁷Ferran, Elisabet. 2006. *El jurista Pere Albert i les Commemoracions*. Barcelona: Institut d'Estudis Catalans, 233–256.

⁸Montagut, Tomàs de. 1999. La Justicia en la Corona de Aragón. In *La administración de justicia en la historia de España. Actas de las III Jornadas de Castilla-La Mancha sobre investigación en archivos (noviembre 1997)*. Guadalajara: Junta de Comunidades de Castilla-La Mancha, 650–655; Montagut, Tomás de. 2013. La Constitució política de la Corona d'Aragó. In Isabel Falcón (ed.), *El Compromiso de Caspe (1412). Cambios dinásticos y Constitucionalismo en la Corona de Aragón*. Saragossa: XIX Congreso de Historia de la Corona de Aragón, 104–116.

which some jurists established a range of constitutional principles that affected the nature of the supreme political power of Catalonia and the production, application and interpretation of Catalan laws.⁹ Thus, the necessary intervention of the leading social Estates in Catalonia was established through the operation of its supreme governance at the hands of the prince, and the monarch was required to swear his observance of Catalan law if he wished to earn general jurisdiction over Catalonia. In this sense, Catalan law, which is called historical Catalan law today, was made up of the *Usatges de Barcelona*, the *constitucions* and *capítols* (capitularies) approved by the Catalan Courts (parliamentary body), and the other laws of Catalonia, meaning the privileges, freedoms and customs of the universities (municipalities and different corporations) and its people (as individuals or in aggregation as a plurality). Historical Catalan law also included European common law (Roman-canonical) and equality and sound reason, which were determined by jurists (judges, lawyers, consultants, etc.) in the practical exercise of their professions and when resolving the specific cases they were familiar with and weighed or decided.¹⁰

Therefore, historical Catalan law was a pluralistic legal system due to the number of sources comprising it: laws and customs from Catalonia, judicial and doctrinal jurisprudence from Catalonia and Europe, and civil and canonical norms common to Christian Europe. Another unique feature of historical Catalan law was the fact that it was an open legal system because its application to each specific case depended on the cultural context of the moment, and the job of the jurists and notaries involved was to interpret it. Catalan law was not closed or fully predetermined in a single code or book of laws!

During the historic process that validated ‘pactism’ (13th–18th centuries), different political and administrative institutions were founded, grew and were formalised, including the *Cort General de Catalunya* (General Court of Catalonia, a parliamentary body) and the *Deputació del General de Catalunya* (General Deputation of Catalonia, another political body). The General Court of Catalonia, whose origins are not yet clear,¹¹ was the institutional framework that, through a parliamentary procedure,¹² established the pact between the Estates of the People

⁹Ferro, Victor. 1987. *El Dret Públic Català. Les Institucions a Catalunya fins al Decret de Nova Planta*. Vic: Eumo, 295–310.

¹⁰Montagut, Tomàs de. 2003. Els juristes de Catalunya i la seva organització col·legial a l'època medieval. *Ius Fugit* 12, 269–302.

¹¹Fernández Viladrich, Jesús. Fernández Viladrich 1982. Notas en torno a las asambleas condales en la Cataluña de la Alta Edad Media. *Estudis Històrics i documents dels arxius de protocols* 10, 7–88; Gonzalvo, Gener. Gonzalvo 1991. Les assemblees de Pau i Treva i l'origen de la Cort General de Catalunya. In *Les Corts a Catalunya. Actes del Congrés d'Història Institucional*. Barcelona: Generalitat de Catalunya, Departament de Cultura, 71–78.

¹²Montagut, Tomàs de. de Montagut 1998. Estudi introductori. In Peguera, Lluís de, (Facsimile, Barcelona: Rafel Figueró, 1701), *Practica, forma, y estil de celebrar Corts Generals en Catalunya, y materias incidentes en aquellas*, VII–LVII. Madrid: Centro de Estudios Constitucionales.

and the King—the branches and head, respectively—of the Principality of Catalonia in the guise of a corporation of corporations.

In effect, the Estates that were represented in the Courts (barons and knights; prelates and men of the cloth; citizens and honorary citizens) took turns to temporarily represent the *Universitas Cathaloniae*, that is the *Populus* of Catalonia, since a fictitious political person required that a permanent body be created which would continuously express its will. This was the origin of the General Deputation of Catalonia, the body that permanently represented the Parliament (*General*), which was soon also known by the name of the *Generalitat*. Royal Decree Law 41/1977, dated 29 September 1977, which created the provisional *Generalitat* of Catalonia, was referring to this historical and political institution when it stated that “*la Generalidad de Cataluña es una institución secular en la que el pueblo catalán ha visto el símbolo y el reconocimiento de su personalidad histórica, dentro de la unidad de España*”¹³ (i.e. “the Generalitat of Catalonia is an age-old institution in which the Catalan people see the symbol and recognition of its historical identity, within the unity of Spain).

In consequence, Catalonia as a Principality, that is, as a general community, was politically and institutionally represented by both the Prince and the ‘*General del Principat de Catalunya*’ or government comprised of the three Estates of Catalonia. The latter was represented by the Deputation (*Deputació del General*) or *Generalitat*, a permanent body. The prince also represented all of the Crown of Aragón and each of the other kingdoms and territories comprising it. In contrast, the *Generalitat* exclusively represented the Principality of Catalonia and its political community, the historical, direct forerunner of today’s Catalan people.

In the 15th century, the personal union of the Catholic Monarchs led to the personal union of the Crown of Aragon with Castile, as well as the chronic absenteeism of the monarchs, who from then on lived almost permanently outside of Catalonia.

In this context, the *Generalitat* became the only higher institution with supreme representation for Catalonia that actually resided in the Principality itself.

Today we know more about the process of the formation of the Generalitat,¹⁴ the era when it was at its institutional peak,¹⁵ its reform or rearrangement by Ferdinand the Catholic, its adaptation to the universal empire of the Habsburgs,¹⁶ its rupture

¹³Benet, Josep. Benet 1990. “Precedentes Históricos del Estatuto”, *Comentarios sobre el Estatuto de Autonomía de Cataluña*, 3 vols. Barcelona: Institut d’Estudis Autònoms 1, 62.

¹⁴Estrada-Rius, Albert. Estrada-Rius 2001. *Els orígens de la Generalitat de Catalunya (La Deputació del General de Catalunya: dels precedents a la reforma de 1413)*. Barcelona: unpublished doctoral thesis, Universitat Pompeu Fabra.

¹⁵Sánchez de Movellán, Isabel. Sánchez de Movellán 2004. *La Diputació del General de Catalunya (1413–1479)*. Barcelona: Generalitat de Catalunya—Institut d’Estudis Catalans.

¹⁶Pérez Latre, Miquel. Pérez Latre 2004. *Entre el rei i la terra. El poder polític a Catalunya al segle XVI*. Vic: Eumo.

with Philip IV and the return to obedience,¹⁷ and its subsequent evolution within the active, modern framework of the dualistic constitution or body politic of Catalonia.¹⁸

2.4 *Catalonia Under Absolutism and Liberalism*

Also familiar is Catalonia's defeat in the War of Spanish Succession¹⁹ and the abolition of Catalan institutions and public law with the Bourbons' *Nueva Planta* Decree (1716),²⁰ which mutilated what we today call historical Catalan law, leaving only private, criminal and procedural law barely subsistent and in force—mere fragments of its former legal system.

However, the vindictory memory of the institutions of self-governance which were eliminated by the Bourbons and the process of rebirth and partial recovery of the autonomy lost in the 18th–20th centuries took shape at critical moments of political rupture or reformist transition during this historical period, especially upon the introduction of the first Constitutional State of Spain with the approval of the 1812 Constitution of Cádiz; and 100 years later with the fall of the monarchy and the proclamation of the Catalan Republic in Barcelona on 14 April 1931, just a few hours before the Spanish Republic was also proclaimed in Madrid.

3 The Family and Family Law in Catalonia in the Middle Ages and the Modern Era

3.1 *The Catalan Legal System, Its Civil Law and Patrimonial Archives*

The role of civil law in 19th-century Catalonia was considered of capital importance, in a manner similar to other northern territories of the Spanish monarchy (the territories of '*dret foral*', i.e. charter or *fuero* civil law).

¹⁷Capdeferro, Josep. Capdeferro 2004. La Deputació del General al segle XVII. In *L'autogovern de Catalunya*. Barcelona: Fundació Lluís Carulla, 51–56.

¹⁸Capdeferro, Josep, and Serra, Eva. Capdeferro and Serra 2015. El Tribunal de Contrafaccions de Catalunya i la seva activitat (1702–1713). *Textos Jurídics Catalans* 34, Barcelona.

¹⁹Albareda, Joaquim. Albareda 2000. *La guerra de Successió i l'Onze de Setembre*. Barcelona: Editorial Empúries.

²⁰Gay, Josep Maria. 1982. La gènesi del Decret de Nova Planta de Catalunya. Edició de la consulta original del 'Consejo de Castilla' de 13 de juny de 1715. *Revista Jurídica de Catalunya* 81.1: 7–42; Gay, Josep Maria. 1982. La gènesi del Decret de Nova Planta de Catalunya. Edició de la consulta original del 'Consejo de Castilla' de 13 de juny de 1715 (Second Part). *Revista Jurídica de Catalunya* 81.2, 263–348; Gay, Josep Maria. 1997. *El corregidor a Catalunya*. Madrid: Marcial Pons, 90–127.

The relevance of historic civil law—above all family and inheritance law—becomes particularly evident at the time of the 19th-century liberal revolution, when this law and its defence—included in the reports and annexes drawn up in preparation for the Spanish Civil Code of 1889²¹—became one of the symbols of identity in the emergence of Catalan national sentiment; a period in which jurists created a *pairalista* or ancestral home discourse²² mythologizing the Catalan legal order and its institutions.²³

Patrimonial archives,²⁴ one of the most important and abundant places where the most significant private legal documents were kept since medieval times, generally belonged to noble families. In Catalonia, above all in Old Catalonia (*Catalunya Vella*),²⁵ we also find an exceptional wealth of patrimonial documents among peasant households. The existence of such archives among this social group is an exceptional or highly unusual phenomenon for the Middle Ages or Modern Era in other European regions. They were peasant families with farmsteads of a certain size,²⁶ which began keeping accounts of the farmstead economy and eventually accumulated more or less plentiful archives. By the 17th and 18th centuries, they would sometimes draw up ‘master books’ (*llibres mestres*)²⁷ of their archives and at times also ‘family books’ (*llibres de família*) drafted by the heads of household for their heirs. These books coincided with a period of economic boom in Catalonia, as

²¹Tomas y Valiente, Francisco. 1979. *Manual de Historia del Derecho español*. Madrid: Ed. TECNOS, 571–591.

²²By the term ‘pairalism’ we are referring to an ideological construct of Occitan roots but born in turn-of-the-century Catalonia, with a strong influence from works by Frédéric le Play, which referenced and idealized the world of wealthy farmers and their *masies* (farmsteads) at the historic point when they and agricultural society in general were entering into crisis. Cf. Congost Colomer, Rosa. 1998. El pairalisme. Reflexions sobre una paraula, un concepte i dues conjuntures. *Estudis d’Història Agrària* 12: 7–16.

²³Terradas Saborit, Ignasi. 2001. La casa mítica i la casa jurídica: reflexions sobre un contrast entre el País Basc i Catalunya. In Ferrer i Mallol, Teresa; Mitgè i Vives, Josefina; Riu i Riu, Manuel (eds.). *El mas català durant l’Edat Mitjana i la Moderna (segles IX–XVIII). Aspectes arqueològics, històrics, geogràfics, arquitectònics i antropològics*. Barcelona: CSIC, Institució Milà i Fontanals, 51–56.

²⁴The term ‘patrimonial archives’ (*arxius patrimonials*) used in Catalan bibliography refers to family collections of archival documentation that bear witness to the formation and transmission of their agriculture-based patrimony.

²⁵Old Catalonia (*Catalunya Vella*) was a legal concept created by the jurist Pere Albert in the second quarter of the 13th century. The term was also used by historians of the Modern Age during the 16th and 17th centuries and is understood as the Mediterranean territories of north-eastern Catalonia.

²⁶Approximately 100 hectares or more. Cf. Ferrer Alòs, Llorenç. Ferrer Alòs 1998. Sistema hereditario y reproducción social en Cataluña. In *Nécessités économiques et pratiques juridiques: problèmes de la transmission des exploitations agricoles (XVIII^e–XX^e siècles)*. Rome: Mélanges de l’École Française de Rome. Italie et Méditerranée, 53–57, 55.

²⁷These books, like chartularies, contained all notarized or private deeds relating to the patrimony considered of interest to retain; Bosch, Mònica and Gifre, Pere. Bosch and Gifre 1998. Els llibres mestres dels arxius patrimonials. Una font per a l’estudi de les estratègies patrimonials. *Estudis d’Història Agrària* 12: 155–182.

well as consolidation of the farmstead system and the Catalan *masia*, or farmhouse, typology.²⁸

The earliest documents in the patrimonial archives of wealthy peasants can easily go back to the 11th or 12th centuries, although they could be generated at any time. They demonstrate a latent evolution in parallel to the socioeconomic progress of the peasantry or farming class, which gained greater status in the 16th century, strengthened by the medieval crisis and peasant wars of the previous century and entering a period of prosperity. In the second half of the 17th century these peasants experienced a major social rise, eventually becoming the *hisendats*²⁹ of the 19th century. Their archives grew in parallel to their patrimony. They contained documents regarding the establishment of the patrimony and its administration, as well as papers of personal or family interest relating to the private relations of those who were the subjects of this process of creation. They could also contain some extraneous documentation.

The core of these patrimonial archives are documents referring to the establishment of the patrimony, as for instance, contracts of constitution and negotiation of legal ownership or fee simple, *establiments* (a form of emphyteusis), contracts of purchase or transfer, etc. There are also documents of privilege accrediting a certain social status, legal documents, materials from lawsuits and the like. All of these documents could form part of the archives of families with a great deal of assets, such as peasants or noble families. In any case, said documents identified and justified their rights or served as tools for controlling their patrimony.³⁰

The deeds kept in these archives were legal instruments primarily created during the 13th–18th centuries, the Monarchy of Estates period, and were faithful representatives of the Catalan legal system of the time. In the Early Middle Ages, this system was based on consuetudinary or customary law, and to a lesser extent on law arising from royal (comital) legislation, and focussing on the principles of public law. It contained few institutions of civil or private law—which in any case were associated with the tradition of the *Liber Iudiciorum* of the Visigoth monarchs. It was beginning in the 13th century, as part of the Crown of Aragon, that the legal system was enriched through a new form of legislation, negotiated or ‘pacted’ between the king and the parliamentary body or Courts (the above-stated

²⁸Torres Sans, Xavier. Torres Sans 2000. *Els llibres de família de pagès; memòries de pagès, memòries de mas (segles XVI-XVIII)*. Biblioteca d’Història Rural, Col·lecció Fonts 1. Girona: CCCG Edicions; Associació d’Història Rural de les Comarques Gironines; Institut de Llengua i Cultura Catalanes de la Universitat de Girona, 15–63.

²⁹The *hisendats*, similar to the landed gentry of England, were members of an urban ruling social class resulting from an economic and social rise of rural origin. They were landowners who moved to cities, often Barcelona, whence they controlled and directed their farmsteads.

³⁰Gifre, Pere; Matas, Josep; and Soler, Santi. Gifre et al. 2002. *Els arxius patrimonials*. Biblioteca d’Història Rural, Col·lecció Fonts 2. Girona: CCCG Edicions; Associació d’Història Rural de les Comarques Gironines; Institut de Llengua i Cultura Catalanes de la Universitat de Girona, 9–25.

‘pactism’). Up to the late 16th century—the most productive one—the most typical Catalan civil institutions would be created via such copious legislative work.³¹

Legal creation activity decreased after the General Courts session presided by Philip III of Castile (Philip II of Catalonia) in Barcelona in the year 1599. Legislation was less abundant because the Courts were not called into session: the Estates only met with the king twice during the Minor Habsburg³² period. Up until the early 18th century, only one *constitució* referred to the principles of civil law.³³ Since the law was not being modernized through legislation created in the Courts, the greatest relevance would go to the work of the Catalan juriconsults of the time, namely doctors in law and judges. Their work was productive in precepts of civil law arising from practice and the fair resolution of cases, as demonstrated by the works of Joan Pere Fontanella, the Catalan jurist of greatest fame in Europe, known for his books throughout the continent.³⁴

This legislation came from the institutions of power, was agreed or ‘pacted’ in the Courts and reflected the consolidation interests of a new ruling class moving towards nobility. The modern Catalan nobility of mixed origin, which was formed through a reorganization of the traditional nobility, the ranks of honoured citizens³⁵ and the social rise of legal and medical professionals,³⁶ was both the creator and beneficiary of this legislation, primarily in the 15th and 16th centuries.³⁷ Such legislation also accompanied the social rise of the well-off peasantry keeping patrimonial archives and protecting the interests of their families, who ruled from their increasingly magnificent *masies*.³⁸

³¹Sobrequés i Vidal, Santiago. 1978. *Història de la producció del dret català fins al Decret de Nova Planta*. Girona: Universitat Autònoma de Barcelona—Collegi Universitari de Girona, 25–64.

³²The ‘Minor Habsburg’ Kings (*àustries menors*) were the kings of the House of Habsburg in Spain in their period of decline: Philip III of Castile (II of Catalonia, 1598–1621), Philip IV of Castile (III of Catalonia, 1621–1665) and Charles II (1665–1700).

³³Regarding contracts and *violaris* (i.e. *violaria* or lifetime pensions), cf. Brocà, Guillem M. Brocà 1918 (1985). *Historia del derecho de Cataluña, especialmente del Civil y Exposición de las instituciones del derecho civil del mismo territorio, en relación con el Código Civil de España y la jurisprudencia*. Barcelona: Generalitat de Catalunya, Department of Justice, 411.

³⁴Capdeferro, Josep. Capdeferro 2012. *Ciència i experiència. El jurista Fontanella (1575–1649) i les seves cartes*. Barcelona: Fundació Noguera.

³⁵The social stratum of *honoured citizens* was made up of urban petty nobility and certain peasants who became consolidated after the 15th century War of the Serfs (*Guerra dels Remences*), when they appropriated a significant number of farmsteads and between the 16th and the 18th centuries, attained this title of nobility.

³⁶Bosch, Andreu. Bosch 1628 [1974 facsimile edition]. *Sumari, índex o epitome dels admirables i nobilíssims títols d'honor de Catalunya, Rosselló i Cerdanya*. Perpignan, 413–414.

³⁷Fargas Peñarrocha, M. Adela. Fargas Peñarrocha 2001. Legislación familiar-patrimonial y ordenación del poder institucional en la Cataluña del siglo XVI. In *Cuadernos de Historia Moderna*. Madrid: Departamento de Historia Moderna, Servicio de Publicaciones, Universidad Complutense de Madrid, 93–100.

³⁸The *mas* was a type of farmstead developed as of the Middle Ages. The term *mas*, which is “the house, farmland and forest”, should be distinguished from the term *masia*, the farmhouse

As of the issuance of the 1716 Nueva Planta Decree, the absolutist monarch of the Spanish Empire (*Hispaniarum et Indiarum Rex*) granted himself exclusive legislative authority. Catalonia's public law was suppressed and the surviving private, criminal and procedural rights and laws lost their historic source of legislative renewal in the form of decisions made by the Courts.³⁹ This absence lent greater significance to legal and doctrinal jurisprudence and concrete legal experience, such that notary practice—creating much of the documentation to be found in the patrimonial archives—would become an important channel for renewal.⁴⁰

The study and casuistic analysis of the most relevant legal documents from patrimonial archives—those that justify rights, titles and the possession of various assets of the households—gives us the opportunity to ascertain the basic principles of Catalan civil law in the Medieval and Modern Eras. Among these deeds, the *establiments* and purchase contracts, the *capítols matrimoniales* (marriage charters), testaments or wills and 'post-mortem inventories' enabled the perpetuation of the houses, which were a personification of the stem families in Catalonia, and through this perpetuation ensured that they would be remembered. For noble households this meant honour, pride and rights, and for the peasant families, it certified their rights, possession of their assets and the status held by their households in local communities.

3.2 *The Inheritance Systems of the Hispanic Monarchy*

Inheritance systems in the Modern Era were somewhat varied. In the majority of the northern strip of the Iberian Peninsula, the unipersonal succession system prevailed, consisting predominantly of inheritance going to a single heir, while in the remainder of the territory of the monarchy governed by Castilian legislation, distribution into equal parts supposedly prevailed. Nonetheless, the legal framework could not and cannot explain how there were areas using another system within these two extensive regions.⁴¹

(Footnote 38 continued)

itself. Etymologically, the word comes from 'mansus', the participle of *manere*, which means to remain or reside. Cfr. *The Catalan Mas: Origins, transformations and the end of an agrarian system*; Congost Colomer, Rosa (ed) 2015; Girona; Associació d'Història rural: Centre de Recerca d'Història Rural (Institut de Recerca Històrica) de la Universitat de Girona, Documenta Universitaria.

³⁹Sobrequès i Vidal Sobrequès i Vidal 1978 (as in Note 31) 85–95; and *supra* Note 20.

⁴⁰Serrano Daura, Josep. Serrano Daura 2001. *Història del dret privat català*. In Montagut Estragués, Tomàs (ed.), *Història del dret català*. Barcelona: Edicions de la Universitat Oberta de Catalunya, 183–323, 186.

⁴¹Ferrer Alòs, Llorenç. 2007. *Systèmes successoraux et transmission héréditaires dans l'Espagne du XVIII^e siècle. Histoire et sociétés rurales* 27, 37–70, and 38–39.

In Castilian regions until the early 16th century, the Visigothic traditions prevailed, consisting of transfer of goods based on the *Fuero Real* or Royal Charter⁴² and the legal traditions arising from *ius commune* as reflected in the *Siete Partidas* (Seven Sections).⁴³ As of the laws and regulations accepted in 1505 by the Court session convened by the Catholic Monarchs in the city of Toro, the Castilian system was definitively established. Inheritances would be divided into five parts, one of which would be reserved for paying off debts and other expenses, and the remaining four parts would be joined again and divided into three parts. Of these, two thirds would go to an obligatory portion comprising the *legítima* (the ‘legitimate’) and the last third—the ‘*mejora de tercio*’—would serve to improve the situation of one or several of the married couple’s children. In practice, this legislation allowed a great variety of family strategies in which the laws or legal framework were not the determining factors.⁴⁴

The laws of 1505 offered a different solution, not only helping to prevent the dispersal of family lands, but also the deterioration of their income—they introduced the *mayorazgo* or majorat. According to this principle, an individual could do what they wished with the fifth that was available for their use, and they could also create a majorat from which the property attached to it could not be separated. As of this time in the regions of the Hispanic Monarchy under Castilian influence, wealthy social sectors and the peasant elite would use this legal instrument, which would allow the family patrimony to be transferred to a single person. At times, when the need arose to establish or reproduce relations of power or social status, the family history, easily created or recreated through the *mayorazgo*, would lead the system to the use of primogeniture.⁴⁵

3.3 *Inheritance Models in Catalonia*

In Catalonia, the inheritance model developed over the course of history since the Middle Ages was that of the single heir, a product of the seigniorial regime and the socioeconomic changes occurring around the 11th century,⁴⁶ which would be

⁴²Vallejo, Jesús. 1997. Relectura del *Fuero Real*. In Andrea Romano (ed.), “*Colendo iustitiam et iura Ferrer Alòs 2007*”. *Federico II, legislatore del Regno di Sicilia nell’Europa del Duecento. Per una storia comparata delle codificazioni europee*. Roma: Edizioni De Luca, 485–514.

⁴³The *Siete Partides* was a regulatory text draw up in the Kingdom of Castile during the reign of Alfonso X (1252–1284), with the aim of lending the kingdom a certain legal homogeneity. Its original name was the Book of Laws (*Libro de las Leyes*), but began to be called the “Seven Sections” in the 14th century or so for the number of sections into which it was divided.

⁴⁴Ferrer Alòs Ferrer Alòs 2007 (as in Note 41) 47–49.

⁴⁵Clavero, Bartolomé. Clavero 1989. *Mayorazgo: propiedad feudal en Castilla 1369–1836*. Madrid: Siglo XXI, 211–287.

⁴⁶Terradas Saborit, Ignasi. Terradas Saborit 1980. Els orígens de la institució d’hereu a Catalunya: vers una interpretació contextual. In *Quaderns de l’Institut Català d’Antropologia*, 66–97, 70–77;

socially accepted then ratified by royal legislation in the 14th century.⁴⁷ Familial-patrimonial legislation in the 16th century would modify and elaborate on certain clauses and aspects of the code, which remained engraved in the country's legal memory. This legal regime would contribute to the social consolidation of a sector of the nobility or those on the nobility track, and particularly in Old Catalonia, also the upward social movement of a sector of the well-to-do peasantry. By the end of the century, thanks to the last truly productive Courts session of the Modern Era, held in 1599, familial-patrimonial regulations were perfectly configured in Catalonia.⁴⁸

The most common or generalized matrimonial economic system in Catalonia was that of the dowry, with some exceptions in the centre of New Catalonia,⁴⁹ where the system of association was preferred, while in the proximity of the most populous cities such as Barcelona as of the beginning of the Industrial Era, the predominant system was that of separation of property.⁵⁰

The society resulting from this matrimonial system and unilateral inheritance practices was a *society of households* defined in terms of their residence,⁵¹ where patrimony lent entity and identity to a household,⁵² which thus functioned as the most important support for a policy of continuity. It is above all in the area of the Pyrenees mountains that we can best observe these legal characteristics, for here they display the same attributes but an intensity unequalled in other areas of Catalonia. The head of household passed on his social role, exercised within the family and in the community, to his successor, the heir/heiress, who had to await the time when they would enter into their inheritance in a situation of subordination, the origin of frequent tension within a family. Nonetheless, the household became the main factor of social cohesion and the will for its perpetuity determined the destinies of the individuals comprising it.⁵³ This was also why the territories along

(Footnote 46 continued)

To Figueras, Lluís. To Figueras 1997. *Família i hereu a la Catalunya Nord-oriental (segles X–XII)*, Publicacions de l'Abadia de Montserrat, 279–318.

⁴⁷Brocà Brocà 1918 (1985²) (as in Note 33), 363–375.

⁴⁸Fargas Peñarrocha Fargas Peñarrocha 2001 (as in Note 37) 96.

⁴⁹The term *Catalunya Nova* or New Catalonia refers to the territory to the west and south of the Llobregat River Basin, consisting of the former Taifas of Lleida and Tortosa.

⁵⁰Maspons i Anglasesell. Francesc. Maspons i Anglasesell 1935. *La llei de la família catalana*. Barcelona: Editorial Barcino, 19.

⁵¹Augustins, Georges. Augustins 1989. *Comment se perpétuer? Devenir des lignées et destins des patrimoines dans les paysanneries européennes*. Nanterre: Société d'ethnologie 11, 315–332.

⁵²The *casa* (house or household), the basic unit of society, as an organizing principle of the latter, has a legal personality and real patrimony attached, as well as movable and intangible assets. The transmission of its property demonstrates an organic bond between its regimes of property, matrimony and hereditary rules. Its perpetuation over time occurs through the single heir system. Cf. Lamaison, Pierre. Lamaison 1987. La notion de la maison. Entretien avec Claude Lévi-Strauss. *Terrain* 9: 34–39.

⁵³Barrera González, Andrés. Barrera González 1990. *Casa, herencia y familia en la Cataluña rural. Lógica de la razón doméstica*. Madrid, Editorial Alianza, 273–287.

the northern reaches of the Principality had highly dynamic local regulations. The latter consisted of a communal legal regime where a whole series of family strategies could be employed with the aim, among others, of mitigating the social decline of those who were not the main players in the family books or the patrimonial archives.⁵⁴

3.4 *Catalan Marriage Charters: The Founding Document for Households and Families*

The primordial legal documents of a household, and thus of its patrimonial archives, were marriage contracts:⁵⁵ true family charters,⁵⁶ examples of Catalan contractual law and the basis of the familial and patrimonial system. They were drawn up at one of the most significant moments for the household: that of the heir's marriage. These documents, at times quite extensive, which in the Middle Ages were originally separate contracts that were signed on the same day, represent the households' spirit of perpetuity and demonstrate the triumph of the single-heir and stem family system as early as the 14th century.⁵⁷ They would eventually be incorporated into Catalan legal practice at the turn of the 16th–17th centuries.⁵⁸ They reveal the successive chain of people inheriting the patrimony and holding the position of heads of household. The marriage charters—which were considered the external expression of Catalan family law—⁵⁹were not highly regulated by Catalan legislators. In fact, there was no legal obligation to draw them up or sign them; Peter III, at the Perpignan Courts session of 1351, legalized their irrevocability.

⁵⁴Mikes, Tünde. Mikes 2003. Comunitats i 'cases' a la Vall de Ribes en els segles XVII–XVIII. *Pedralbes. Revista d'història moderna* 23.1: 567–578.

⁵⁵Jesús Lalinde Abadía, in his papers on the subject, uses printed document collections. Cf. Lalinde Abadía, Jesús, Lalinde Abadía 1963. Los pactos matrimoniales catalanes. *Anuario de historia del derecho* 33: 133–266.

⁵⁶Derouet, Bernard. Derouet 1997. Dot et héritage: les enjeux de la chronologie de la transmission. In Goy, Joseph, Tits-Dieuaide, Marie-Jeanne, and Burguière, André (eds.), *L'histoire grande ouverte: hommages à Emmanuel Le Roy Ladurie*, 284–292, 288. Paris: Fayard; and Brocà Brocà 1918 (as n. 33) 682–687.

⁵⁷Donat Pérez, Lúcia, Marcó Masferrer, Xavier, and Ortí Gost, Pere. Els contractes matrimonials a la Catalunya medieval. In *Els capítols matrimonials, una font per a la història social*. Biblioteca d'Història Rural, Col·lecció Fonts 6. Girona: CCCG Edicions; Associació d'Història Rural de les Comarques Gironines; Institut de Llengua i Cultura Catalanes de la Universitat de Girona, 19–46.

⁵⁸Gifre, Pere. 2010. El procés final d'implantació dels capítols matrimonials (finals de segle XVI–començament de segle XVII). In *Els capítols matrimonials, una font per a la història social*. Biblioteca d'Història Rural, Col·lecció Fonts 6. Girona: CCCG Edicions; Associació d'Història Rural de les Comarques Gironines; Institut de Llengua i Cultura Catalanes de la Universitat de Girona, 55–69.

⁵⁹Maspons i Anglasesell 1935 (as in Note 50) 21.

Compared with these documents, testaments or wills played a marginal role of confirmation or reminder in this marriage system.⁶⁰

The most important prerequisite for a wedding was that everyone be in agreement. The *consent* of the engaged couple and, of course, of their parents, was required. The first legal provisions of this type, designed to foster the family, appeared during the reign of James I,⁶¹ establishing the requirement of parental consent for marrying—in fact, related to the power of the *senyories* or seignories—in order to inherit the patrimony and the house.

Let us study some of the most significant institutions of this law. The most important institution is *legacy*: the present and/or future donation of property by the parents to their heir (*hereu*) or heiress (*pubilla*).⁶² Legacy constitutes Catalonia's most typical legal institution,⁶³ which is consuetudinary and feudal in nature and historically entrenched. It is a gift of a universal nature on the occasion of matrimony, and is generally expressed in marriage charters. It is irrevocable,⁶⁴ yet does not enter full effectiveness until the death of the head of household, usually the heir's father. No law obliged anyone to designate a single heir, but the immense majority of households did so.⁶⁵ The consecutive succession of such instances of legacy formed the backbone of the household: they could be established or 'pacted' to the benefit of the wedding couple, or using the formula of the trust (*fideicomís* or *fideicommissum*).⁶⁶

This Catalan legacy practice was born of practical experience and not theoretic or legal principles from the Early Middle Ages. The roots of this institution can already be observed in the *Usatges de Barcelona*.⁶⁷ The '*hereditamentum*' arose from litigation regarding Early Middle Age feudal covenants (*convincences*) and is closely related to the transformation of the temporary, non-transferable fiefs into lifelong, transferable ones. The *Usatge* or *Usage* No. 76 (*Auctoritate et rogatu*)

⁶⁰Derouet 1997 (as in Note 56) 288.

⁶¹Pragmatic sanction by James I (Pragmática de Jaume I) from 1244: *Constitucions y altres drets de Cathalunya. Compilacions de 1495, 1588–1589 i 1704*. CYADC-1704/2004, 2, 9, 3, 1.

⁶²In the absence of a male heir, the head of household can choose a daughter as heiress to his assets.

⁶³Brocà 1918 (as in Note 33) 238.

⁶⁴Catalan *constitutió* arising from the Perpignan Court session of 1351, Peter III; CYADC-1704/2004, 1,5,2,1.

⁶⁵Ferrer i Alòs, Llorenç. 2010. Les clàusules dels capítols matrimonials. In *Els capítols matrimonials, una font per a la història social*. Biblioteca d'Història Rural, Col·lecció Fonts 6. Girona: CCCG Edicions; Associació d'Història Rural de les Comarques Gironines; Institut de Llengua i Cultura Catalanes de la Universitat de Girona, 71–88.

⁶⁶Faus i Condomines, Josep. (1907) 2002². Els capítols matrimonials a la comarca de Guissona. In *Centenari naixement de l'il·lustre notari Ramon Faus Esteve: 1902–2002*, Guissona, 61–178, and 74–78.

⁶⁷Collection of customs and usages or practices, applied in the *Curia* or Comital Court of Justice of Barcelona as of the mid-11th century, which began to be compiled beginning in the mid-12th century; These *Usatges de Barcelona* would later become the basis for the Law of the entire Principality. Cf. Note 4.

emphasized the irrevocable nature of the pact, which would later be ratified in Usage No. 79 (*Possunt etiam*), linking it to submission with oath of allegiance.⁶⁸ Other documents of the same period contain examples of absolute legacies preferentially bestowed upon a future son. By the mid-14th century, these universal legacies were generalized in Catalonia, and the 1351 General Courts of Perpignan under Peter III declared nul *ipso iure* any instrument issued to the detriment of legacies and donations granted on the occasion of matrimony, clearly defending the institution of the heir and future head of household.⁶⁹

The second most relevant institution was the dowry, the patrimony that the bride would contribute to the matrimony. Until the 13th century, there was also a ‘Gothic bride price’ (*dot goda marital*), of Visigoth origin—the *decima* (equivalent to a tenth of the groom’s assets)—that the groom gave to his future wife. It was a practice generalized throughout Catalonia and not just in Barcelona. In the 13th century, the Roman dowry offered by the bride began spreading.

There was no written norm on the quantity of this donation; the parties would establish it at their convenience or according to the demands of the marriage alliance. Generally, it amounted to the bride’s *llegítima*⁷⁰ or slightly more, ‘according to the household’s capabilities.’ However, dowry inflation was a constant in notarial documentation and would reach its apogee in the late 17th and the 18th centuries.⁷¹ It was an arbitrary, political decision and, in the dowry system, represented an effective instrument for family and social exclusion of the essential portion of the patrimony of non-heir children. It was designed to establish familial and economic relations between households: the dowry contributed by the bride served to pay the dowries for those excluded from inheritance in the household she was joining. As of its formulation in marriage charters, the differential treatment of the children of the head of household began:⁷² the selection of the heir or heiress’s future husband or wife was a primordial legal instrument in matrimonial alliance strategies.

In parallel to the growth of legislation on matrimony in general, a tendency can be observed to boost women’s rights. ‘Pragmatic sanctions’ (*pragmàtiques reials*)

⁶⁸To Figueras, Lluís. 1998. Droit et succession dans la noblesse féodale à propos des Usages de Barcelone (XI^e–XII^e siècle). In Beauchamp, Joëlle and Dagron, Gilbert (eds.), *La transmission du patrimoine. Byzance et l’aire méditerranéenne*, 261–262. Paris: Éditions de Boccard.

⁶⁹Cf. Note 36.

⁷⁰The Catalan ‘legitimate’ (*llegítima*) represented a limitation of the freedom to bequeath that the law imposed on the testator according to which the latter had the duty to allot his/her relatives a patrimonial amount to be taken from the inheritance. The percentage of the inheritance they were due differed according to the period, and the amount depended on the capabilities of the household.

⁷¹Congost Colomer, Rosa. 1992. *Notes de societat: La Selva, 1768–1862*. Santa Coloma de Farners: Consell Comarcal de La Selva, Centre d’Estudis Selvatans, 38.

⁷²Mikes, Tünde. 2009. Una societat de muntanya a l’època moderna: poblament, població i la seva reproducció (el cas de la Vall de Ribes al segle XVII). In Barraqué, Jean-Pierre, and Sénac, Philippe (eds.), *Habitats et peuplement dans les Pyrénées au Moyen Âge et à l’époque moderne*. CNRS—Université de Toulouse-Le Mirail, Collection “Médiennes”, 291–309, 303–309.

issued by James I, James II, Peter III and Alphonse IV established and strengthened their rights insofar as the dowry:⁷³ first the dowry was limited to a certain amount, then the wife's obligation to supply certifications to collect her dowry and bride price or dower (*escreix* or *esponsalici*) if her husband died was established. Finally, these 'pragmatic sanctions' or decrees ensured that the wife's right to collect these two items could not be undermined if she had not given her consent when her husband had contracted debts.⁷⁴

The future wife, after receiving her dowry assets from her family, while relinquishing other possible rights she had at her childhood home, formalized the dowry and presented the trousseau she would bring to her new home. The groom certified receipt of the assets through a dowry letter and at the same time, offered her a dower or bride price. This institution, likewise of earlier origin, began spreading and becoming generalized in the 12th century: it was a voluntary donation that the husband gave to his wife to provide a certain compensation for the dowry she contributed.⁷⁵ The amount (percentage) of the dower varied according to the period, ranging from 30 to 50 %—except in the Bishopric of Girona, where the '*tantundem*' or amount to be returned was 100 % of the dowry.

The legal institutions regarding the *widow* of the head of household became increasingly important. *Usatge* No. 147 ("Widow"), attributed to James I but eminently consuetudinary, granted the woman who became a widow the possession of her husband's assets as long as she remained a widow and duly fed her children. The Royal Privilege (*privilegi reial*), *Recognoverunt proceres*, issued by Peter II at the 1248 Barcelona Courts Session, held in Barcelona, limited the widow's usufruct to her first year of widowhood—the so-called year of mourning (*any de plor*)—and thereafter until she received her due part of the dowry and bride price.⁷⁶

Peter III, at the Perpignan Courts Session of 1351, would turn this privilege exclusive to Barcelona into a general law throughout Catalonia, as long as an inventory of the husband's assets had been taken in his lifetime. In the 15th century, various laws refer to the widow's dowry option (*opció dotal*), allowing her the right to choose whether to keep her husband's estate in usufruct or sell the latter to recover her dowry and collect her dower as a preferential creditor.

The most significant improvement in the widow's status arose in 1564, when Philip II assigned widows the civil law possession of her deceased husband's estate—*tenuta* or tenancy—⁷⁷ and at the same time declared the preferential right of the first wife's ('first bed') children to inherit his household estate. The widow

⁷³The 'dowry option' (*opció dotal*) was an institution according to which the wife, should her husband's assets be confiscated, could remove from said assets the amount she considered appropriate or of value proportional to the dowry and the bride price, and she had the right to keep it.

⁷⁴Brocà 1918 (as in Note 33) 232.

⁷⁵Some authors also refer to the *escreix* or bride price as an award for virginity.

⁷⁶Serrano Daura 2001 (as in Note 40) 265–266.

⁷⁷*Tenuta* or tenancy was an institution specific to Catalan family law that granted usufruct of the deceased husband's estate to the widow and her heirs.

usufruct clause was used with increasing frequency and the widow would eventually be called ‘*senyora, majora poderosa i usufructuària*’ (mistress, owner and usufructuary). By the late 16th century, the widow appears in documents as a real substitute to the head of household, protector of the hereditary estate, a link between the father and his heir.

Legal institutions also ensured the role and future of the other children of the head of household, the siblings of the heir—those *excluded* from the system. This exclusion was more radical in certain parts of the northern reaches of the Peninsula and the western Pyrenees. In Catalonia, exclusion was less extreme: socialization of the members of the household allowed the siblings to accept their situation more readily. Just as parents attempt to ensure the wellbeing of all of their children, the same occurred in household systems. Although what the siblings of the heir would be allotted from the family legacy could only offer them a lower economic and social position, the jurisprudence, both through legislation and consuetudinary law, offered various alternatives for them to improve their situation. One of these was the ‘legitimate’ (*llegítima*), the portion allotted by law to the non-heir children as well. This institution, of Roman origin, would change in the Visigoth period and in Catalonia would vary according to the historic period. In some territories, such as the County of Barcelona and Old Catalonia in general, above all before the 13th century, the ‘Gothic’ or ‘long legitimate’ prevailed, which meant that 8/15ths of the inheritance went to the legitimees. In regions of New Catalonia in the same period, the Roman legitimate was in use, which took into account the number of children to establish the amounts of the legitimate allotments: for up to four children, it amounted to a third of the estate, and for more children, the legitimate amounted to half of the father’s assets. It was in the 14th century, namely 1333, that the Catalan legal system—evolving in parallel to the formation and territorialization of general Catalan law—unified the percentage used to calculate the legitimate by obligating the entire country to observe the Roman variant while abolishing the Gothic one.⁷⁸ Ten years later, a Royal Pragmatic Sanction established the legitimate for the city of Barcelona as a quarter of the inheritance.⁷⁹ In Castilian law, *legítimas* were larger, with varied treatment of non-heirs.⁸⁰

It was nearly a century and a half before the enactment of the most important legal provisions of Catalan family and succession law of the Modern Era at the Monzó Courts session of 1585: through the law or *constitució*, “*Zelant per la conservació de les cases principals de Catalunya*” (Ensuring the conservation of the main households of Catalonia), the Courts established the general rule for the entire country. The legitimate became ‘short’ throughout Catalonia, that is, it would consist of a fourth of the estate, from which the heir had to settle the legitimate of

⁷⁸Alphonse III at the Montblanc Courts, CYADC-1704/2004, 3,6,1,1, Chap. 17.

⁷⁹Serrano Daura 2001 (as in Note 40) 262–264.

⁸⁰Pérez Collados, José María. 2005. El derecho catalan de sucesiones en vísperas de la codificación. *Anuario del historia del derecho español* 75, 331–367, 344.

his siblings, either in money or property from the inheritance. It also specified that the legitimate could not be executed during the lifetime of a usufructuary parent.⁸¹

Succession to the role of head of household as heir and manager of its patrimony was a decisive stage for all matrimonies until contemporary times. This could take place at one of two key points: when the children/heirs got married or when the parents died. These were two radically different situations insofar as their objectives and results. In the general dowry system functioning in Catalonia, as with other household systems, succession came about at the death of the parents, and primarily at the death of the head of household.

The main mechanism of inheritance was through a contract, i.e. the marriage charters, entered into when the heir married: it was a *negotiated* or '*pacted*' inheritance and regulated the future of the essential portion of the patrimony. By will, the parents generally handed down what was left after the appointment of the heir and the payment of any debts accumulated over their lifetimes as well as payment of the legitimates to their non-heir children. This mechanism can be considered effective against the fragmentation of the patrimony, but it did not guarantee the same social status for all members of the family.

The *testated succession* was carried out by drawing up in writing the last will of the testators regarding the distribution of their property and rights after their death. Early Medieval testaments or wills—one type of such documents—were drawn up according to the formal rules of Gothic laws, and these documents did not include the appointment of heirs until the 13th century.

The '*ab intestato*' formula at that time was associated with the rights of lords in the case their vassals or peasants should die without having made a will. Hence, certain *Usatges* referred to these rights as bad customs (No. 117: *Rusticus vero*, No. 110: *Similiter de rebus*, No. 138: *De intestatis*), as in the case of the *intestia*, in reference to the Lord's right to compensation for assigning the inheritance to one of the children of the deceased vassal.

Later, certain Pragmatic sanctions by James I and Ferdinand I, which lent greater legal power to the head of household figure, made the inheritance of sons or daughters conditional to having parental consent to marry or take religious vows. In the mid-13th century, stem inheritance was strengthened, as it became limited to the fourth degree of kinship, and legacy was limited to the assets proceeding from ascendants but not to those attained during the parents' lifetime. A century later, the sphere of this succession was expanded to include all property, that is, the goods inherited through stem family relations were expanded.

The Monzó Courts Session of 1585 not only established the regulations for the legitimate, but also strengthened stem family regulations in general: in addition to stepping up the role of the wife, the rights of the maternal household were also boosted through certain clauses on the return of the dowry and other assets stemming from the maternal household.

⁸¹Brocà 1918 (as in Note 33) 368–369.

During the 16th century, various provisions of the *constitucions* enacted by the different Courts sessions refer to *successió per fideïcomís* (inheritance via trust or *fideicommissum*). The main goal of this institution was to preserve and perpetuate the patrimony in the face of certain adversity that could arise within the family. In inheritance via trust, which was very frequent in Catalonia, three *constitucions* from this century helped to prevent possible fraud between the fiduciary heir or trustee and the definitive heir or fideicommissary, obliging the former to take inventories and later requiring them to be revised by a notary. The severe nature of this preventive measure went as far as threatening first-degree heirs with the loss of their inheritance⁸² if the inventory was not prepared within the established period. All in all, here we can observe not only the protection of the fideicommissary and the temporary heir or trustee, who would obtain a fourth of the inheritance, but also the technification of law as a discipline.

All legislation in the first century of the Modern Era demanded improved and expanded legal security—above all in defending households and their patrimony. Relations between the monarchy and the nobility were redefined, but the legal situation of other social strata would also be defined. The organizational space of the head of household was also defined, and households became stronger through the defence of the stem family, whose interests not only the father would look after, but also the usufructuary mother and the maternal stem family.

The 1568 *constitucions* fostered patrimonial exclusion and those of 1585⁸³ represented the triumph of the logic of accumulation, whereby the heir would be the only one to decide. The children of the first matrimony would take precedence. Not only was the heir's household stabilized, but also the maternal household. Heads of household were given authority not only over children not yet having reached puberty, but also over those over 25 years of age.⁸⁴

This patrimonial integrity was even more reinforced through the constitutions enacted in the last Courts session of the 16th century: even the subtraction of the Trebellianic fourth could be prohibited if expressly indicated in the will.

The period between this legislative effervescence and its decadence and subsequent demise in the 17th and 18th centuries does not allow us to follow the evolution of this phenomenon through the study of the laws, since they were in decline. However, studying doctrinal and judicial jurisprudence would allow it, but we could also follow the changes through an analysis of acts in practice, namely, marriage charters.

Due to lack of space, we will limit ourselves here to discussing the evolution visible through the analysis of the succession clause in three hundred marriage charters from a Pyrenean valley between the early 17th to the mid-18th centuries,

⁸²This concerned the Trebellianic fourth and the Falcidian fourth of the estate corresponding to the heir; Cf. CYADC—1704/2004, 1, 6, 8, 3.

⁸³Philip at the Monsó Courts of 1585, CYADC-1704/2004, 1, 6, 5, 2, cap. 94.

⁸⁴Fargas Peñarocha 2001 (as in Note 37) 93, and 97.

insofar as the organizational mechanism of the future of households over three generations.

The concepts we will discuss are nuptiality, gender and primogeniture. It must be kept in mind, of course, that the legal framework had already been established in the 15th and 16th centuries according to the medieval foundations of the system, which were often consuetudinary. Practice could not, however, transform the pre-existing legal framework but rather amend, interpret and adapt it to the needs of the households in the various regions of the Principality.

The succession clause, one of the last items on the marriage charters, stipulated succession for the children of the marrying couple, that is, for a third generation, by way of guideline. In these ‘virtual successions’, the precedence of children born of the first marriage as a sign of the continuity of the household bloodline grew regularly over these 150 years, with the percentage of charters where this precept was present doubling every 30–40 years. This phenomenon demonstrates the strength of the stem family and by the end of the 18th century, required the restitution of all monetary amounts and all assets to the widow and her heirs.

The gender of the individual who was to inherit the patrimony, i.e. heir or heiress (*hereu* or *pubilla*), would only be explicitly indicated in marriage charters beginning in the 18th century, although there were certain allusions to a preference for male children in previous periods.

The same was true of primogeniture: although the precept was present by the 17th century in marriage charters, it would only become consolidated during the course of the 18th century.

It can be observed that the matters considered most important in the 18th and 19th centuries, which would become basic concepts according to the major 19th-century jurists and the *pairalistes* of the 20th century, were less relevant in preceding centuries. What was important was the process: the increasing importance of the strength of the stem family as an expression of a consanguine community and its integration into a broader political community.⁸⁵

4 Conclusions

Catalunya was and is a European land which, as a general political community—whether independent or with different degrees of autonomy within the Hispanic Monarchy—has been participating in European legal culture since the Middle Ages.

The historic origins of Catalonia meld with those of its legal system. They lie with the process of independence from the Carolingian Empire and the formation of the Principality of Catalonia, under the general jurisdiction or public authority of the Count of Barcelona, who was recognized as Prince in the *Usatges de Barcelona*,

⁸⁵Sanllehy Sabi, Maria Àngels; Bringué Portella, Josep Maria; and Mikes, Tünde. 2011. Evolució Històrica. In *La casa al Pirineu*, 13–41. Figueres: Brau Edicions.

the text that modernized the consuetudinary tradition of the previous Visigothic Law in accordance with the requirements of the new Catalan feudal society of the 11th and subsequent centuries. The political establishment of the Principality of Catalonia would become clearly dualistic, insofar as the powers of the Prince and the Principality (the latter represented by the *Generalitat*, the co-governing body of Catalonia) had to find a balance allowing them to ensure positive public liberties (legal ‘pactism’ to enact Catalan laws) as well as negative ones (respect for the principle of the Rule of Law by the public authorities) for the Catalans. After the Parliamentary and Estates Monarchy (13th to early 18th centuries), which maintained this status quo, the Absolutist Estates Monarchy and the liberal constitutional monarchy of the 18th and 19th centuries would eliminate Catalan public law with a view to the centralization and uniformization of the lands under the monarchy and the political project of relieving ‘the Spains’ (*las Españas*) of the kingdoms comprising it to create a single, indivisible Spain based on a Castilian matrix.

Private Catalan law was upheld throughout the period studied, as was the basic institution of civil law and of Catalan society, namely, the family and its association with the farmstead (*mas*), farmhouse (*masia*) and patrimony, together with its matrimonial and inheritance regimes.

Clear evidence of the strength of the Catalan family institution on all levels is its perpetuity and the endurance over time of thousands of family or patrimonial archives that correspond not only to noble or powerful families, but also and in the vast majority, to families of peasant origin.

A comparison between the inheritance systems of other peoples of Spain and those of Catalonia reveals the existence of common elements as well as differences. The *llegítima* system, the matrimonial-economic regime, the documentary protection of patrimonial and familial rights and the conservation of these documents are certainly quite different. But the same or analogous strategies could be planned and executed, as in the case of the conservation of patrimony over time through the heir or heiress in Catalonia, or regulations more hostile to that end had to be avoided or rechannelled in practice, as in the case of the Castilian law of succession.

The primordial legal document of households and thus of patrimonial archives were marriage charters: veritable family charters, examples of Catalan contractual law and the basis of the familial and patrimonial system. They were drawn up at one of the most significant moments for the household: that of the heir’s marriage. An analysis of nine hundred marriage charters from a Pyrenean valley showed a growing use of this legal institution of consuetudinary roots over the course of the 16th–18th centuries, such that nearly every 30 years the number of marriage charters signed before a notary doubled. This demonstrates the growing strength of the stem family, which revolved around the *mas* and the *masia*, in a basically agrarian society that began to decline when it could not compete with the new, contemporary society arising from the Industrial Revolution and the emigration to the cities of a large portion of the “secondary” children excluded from the ancestral home of their forebears.

Nonetheless, at the turn of the 20th century, to ensure the continuity of Catalonia as a people with a political and cultural identity of their own, a people that had kept

their historic private law alive and flourishing, the myth of the ancestral home (*casa pairal*) emerged and focus was again placed on the strength of the traditional Catalan family—precisely when the construction of the Sagrada Família Temple was moving forward with the greatest strength and vitality.

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