Miscel·lània

Jurisdictional conflict, strategies of litigation and mechanisms of compromise in thirteenth-century Tortosa

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Resum
La codificació oficial dels Costums de Tortosa a la dècada del 1270 ve motivada per les disputes jurisdiccionals entre els senyors de la ciutat i els ciutadans, sorgides ja a principis del segle XIII. Aquest article estudia la dinàmica d'aquest conflicte, posant especial èmfasi en el desenvolupament del plet que va tenir lloc, sota jurisdicció papal, durant la dècada del 1260.Així mateix, s'analitza la implicació de les parts en conflicte en el procés de revisió dels Costums arran de l'acord de col·laboració per a revisar les lleis consuetudinàries, assolit el 1272. Les successives fases d'arbitratge i el volum assolit per l'expedient van provocar la reformulació dels objectius i estratègies de les parts litigants. El curs del procés així com la revisió, molt polititzada, dels Costums van servir per a modular l'expressió dels interessos civils i senyorials en el codi legal tortosí i en els acords addicionals. Els compromisos assolits van tenir una gran influència sobre la combinació d'autoritat municipal i senyorial sorgida, que es va prolongar durant molt després que la Corona assumís el control administratiu de la ciutat, a la dècada de 1290.

Paraules clau: Tortosa, Costums, senyors contra ciutadans, segle tretze

Resumen
La codificación oficial de las leyes de Tortosa en la década de 1270 surge a raíz de las disputas jurisdiccionales entre los señores de la ciudad i los ciudadanos, que aparecen ya a principios del siglo XIII. Este artículo examina la dinámica de este conflicto, dando especial atención al desarrollo del pleito sostenido bajo jurisdicción papal en la década de 1260. Así mismo, se analiza la implicación de las partes en el proceso de revisión de los *Costums*que siguió al acuerdo de colaboración para revisar las leyes consuetudinarias alcanzado en 1272. Las diversas fases de arbitraje y el engrosamiento del expediente motivaron la reformulación de los objetivos y estrategias de litigación de las partes. El curso del litigio así como el proceso de revisión, muy politizado, sirvió para modular la expresión de intereses señoriales y civiles en las leyes de Tortosa y en los acuerdos suplementarios. Los compromisos alcanzados tuvieron una decisiva influencia sobre la combinación de autoridad municipal y señorial surgida, que se prolongó mucho después que la Corona asumió el control administrativo de la ciudad, en la década de 1290.

Palabras clave: Tortosa, código legal, señores contra ciudadanos, siglo trece

Abstract:

The official codification of Tortosa's customary laws in the 1270s emerged out of extended jurisdictional disputes between the town's lords and citizens that first surfaced at the turn of the thirteenth century. This article examines the dynamics of this disputing, devoting particular attention to the proceedings of the trial that took place under papal jurisdiction in the 1260s. It then turns to consider the involvement of the two sides in the process of revising the customs following their agreement to collaborate in the codification and revision of the customary laws in 1272. Successive rounds of arbitration and growing case record forced the reformulation of the objectives and strategies of litigation of each side. The course of litigation of these conflicts and the highly politicized process of revision served to modulate the expression of civilian and seigniorial interests in Tortosa's codified customary laws and supplementary agreements. These engagements thus had a pronounced influence over the mixture of municipal and seigniorial authority that endured long after the monarchy assumed administrative control over the town in the 1290s.

Key words: Tortosa, customary laws, town's lords vs. citizens, thirteenth century

JURISDICTIONAL CONFLICT, STRATEGIES OF LITIGATION, AND MECHANISMS OF COMPROMISE IN THIRTEENTH-CENTURY TORTOSA[1]

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The town of Tortosa was captured from Muslim control and received its general charter of settlement from Count Ramon Berenguer IV of Barcelona in the mid-twelfth century. Before the fiftieth anniversary of the conquest, however, the implications of this document had already become an open source of conflict. The situation seems to have been triggered chiefly by the alienation of the monarchy's administrative rights to the town to the powerful Templar military order, which joined the noble Montcada family in exercising lordship over Tortosa.[2] The lords and townspeople litigated over jurisdiction and judicial practices during much of the thirteenth century until striking a compromise that made possible the codification and seigniorial approval of the town's customary laws and privileges, as the *Costums de Tortosa*, in the 1270s. At their core, the disagreements concerned reconciling existing comital-royal exemptions with the prerogatives expected by the lords.[3] Such tensions were common to many seigniorial towns, yet the circumstances of the royal withdrawal and the tenacity of the litigants rendered Tortosa's

1 Aspects of this project were presented at the 42nd International Congress on Medieval Studies, Kalama zoo Michigan (May 2007). I would like to thank the other panelists and audience members at that session for their helpful comments and suggestions for improvement. All translations, unless otherwise noted, are my own. In most cases, I cite only the most reliable version or edition of a given document. The following abbreviations are used throughout this article: ACA = Barcelona, Arxiu de la Corona d'Aragó; ACT = Tortosa, Arxiu Capitular de Tortosa; ACTE = Tortosa, Arxiu Històric Comarcal de les Terres del Ebre; AGP = Barcelona, Arxiu de la Gran Priorat de Catalunya (in ACA); Arm. = Armari/o; C = Cancillería real; c. = carpeta, calaix; f. = foli/o; perg. = pergamin(o)/s; Reg. = Registre/o.

2 The genesis of Tortosa's communal collective (later identified as a *universitas*) and the hardening of this seigniorial regime under the Templar Order and Montcada family took place at a time when the monarchy was struggling to maintain its administrative control over the realms against the pretensions of independent barons, holding true to the regalian ideology initially expressed in the mid-twelfth-century *Usatges de Barcelona*. See T.N. Bisson, "The problem of feudal monarchy: Aragon, Catalonia, and France," in his *Medieval France and her Pyrenean neighbours: Studies in early institutional history* (London, 1989), 237-55 (244), and E. Ferran i Planas, *El jurista Pere Albert i les Commemoracions* (Barcelona, 2006), 145-154.

3 See T. Barton, "Lords, settlers, and shifting frontiers in medieval Catalonia," *Journal of Medieval History* 36 (2010): 204-252 (209-216).

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conflicts unusually insoluble. The duration of the dispute, and the amount of documentation it generated, bears witness to the ingenuity with which each party could utilize legal channels to further their jurisdictional objectives.

While previous work by Oliver, Massip, Font Rius, Fabregat and others has made important assessments of aspects of these disputes, an analytical overview of the growth, mediation, and resolution of the conflicts has yet to appear.[4] Accordingly, in this article we will chart how core issues of the disputes evolved in response to periodic rulings. As each of these scholars has recognized in his own way, what was arguably most instrumental in empowering the citizens to resist the lords were the stipulations of Tortosa's settlement charter investing the townspeople with clear judicial rights. Accordingly, over the course of the thirteenth century the chief objective pursued by the lords in their extended litigation against the citizens eventually shifted, as legal recourses were exhausted, from increasing the seigniorial court's judicial capacity to questioning the validity of the customary laws and practices utilized by the municipal court and subjecting them to review and seigniorial approval. Yet, as we shall see, the tactics of the litigants are also crucial to accounting for the tardy resolution of the dispute. This remains a much neglected issue among previous studies. We will explore how the parties employed strategies to prolong and influence both adjudication and the process of review initiated by the compromise of 1272. As we shall see, while the intractability of these disagreements was chiefly a product of the gulf between the understandings maintained by the citizens and lords of their respective rights and privileges, the case was also intensified and its complexity increased by the susceptibility of the process of mediation to manipulation by the litigants.

4 B. Oliver, *Historia del derecho en Cataluña, Mallorca, y Valencia. Código de las Costumbres de Tortosa*, 4 vols. (Madrid, 1881), J. Massip, *La gestació de les Costums de Tortosa* (Tortosa, 1984), L. Pagarolas, *Els Templers de les terres de l'Ebre (Tortosa) de Jaume I fins a l'abolició de l'Orde (1213-1312)*, 2 vols. (Tarragona, 1999), vol. 1, 150. See also A.J. Forey, *The Templars in the* Corona de Aragón (London, 1973), 193-194, and J. Shideler, *A medieval Catalan noble family: the Montcadas, 1000-1230* (Berkeley, 1983), 203-204. The most comprehensive recent overview is E. Fabregat Galcerà, *Burgesos contra senyors: la lluita per la terra a Tortosa (1148-1299)* (Tortosa, 2006), although he devotes less attention to the phases of litigation scrutinized here. See esp. 143-147.

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Rather than applying a pre-existing legal corpus from elsewhere in Catalonia, the population charter issued by Count Ramon Berenguer IV after Tortosa's capture from Muslim control established an essential base of juridical rules and guidelines that, while shaped by existing legal traditions and prior charters of settlement, was nevertheless a unique formulation.[5] While short and rudimentary, like the charters of security granted to the Muslim and Jewish communities by the count in this same period, the grant outlined many of the legal norms essential for Christians relocating to the frontier community: how debtors should be treated, procedures for judging civil and criminal cases, what sorts of fines and other punishments should be levied, and so forth. Of great significance to the impending dispute was the charter's provision that the municipal court, composed of an appointed *veguer* and leading men of the town (*probi homines or prohoms*), would exercise full jurisdiction over all cases.[6] Moreover, in what was arguably an attempt to safeguard comital jurisdiction, the privilege limited the jurisdictional capacity of any lord or seigniorial bailiff concerning civilian matters.[7] Although such bailiffs were certainly present in Tortosa, their activity appears to have been confined to servicing of the properties and rights of their lords.[8]

5 Ramon Berenguer IV issued a shorter preliminary charter in 1148 that was superseded by the definitive charter dated from 1149. ACA, C, perg. RB IV, no. 2 and ACTE – Perg., Reg. 463, Privilegis III, no. 6 (translated 24 Feb 1158); J.M. Font Rius, ed. *Cartas de población y franquicía de Cataluña*, vol. 1 (in 2 parts) (Madrid, 1969), vol. 1.1, docs. 68 (late 1148?) and 75 (30 Nov 1149). Fabregat Galcerà, *Burgesos contra senyors*, 50-60, describes each of the charters in detail. J. Serrano Daura, *Senyoriu i municipi a la Catalunya Nova, segles XII-XIX: comandes de Miravet, d'Orta, d'Ascó i de Vilalba i baronies de Flix i d'Entença*, 2 vols. (Barcelona, 2000), vol. 1, 139-140, has identified clear features of Visigothic law in certain of these procedural aspects of the charter.

6 See J.M. Font Rius, *Orígenes del régimen municipal de Cataluña* (Madrid, 1946), republished in his *Estudis sobre els drets i institucions locals en la Catalunya medieval* (Barcelona, 1985), 281-560 (415-450). The *probi homines* were the heads of the leading families of the community entrusted with representing the collective interests of the town. On the general role of the *veguer* in local governance in Catalonia, see J. Lalinde Abadía, *La jurisdicción inferior en Cataluña (Corts, veguers, batlles)* (Barcelona, 1966), 72-79, and F. Sabaté, *El territori de la Catalunya medieval. Percepció de l'espai i divisió territorial al llarg de l'edat mitjana* (Barcelona, 1997), 172-180.

7 Font Rius, *Cartas*, vol. 1.1, doc. 75: "Addo iterum vobis quod per clamorem aut per ullum reptir quod vobis facerem non faciatis mecum bataiam neque cum ullo seniore aut baiulo de Tortosa." Ramon was also clearly intent on displaying himself as the sole lawgiver in the document: "nisi quod sola iustitia mihi dictaverit, quam iustitiam tenebitis et observabitis secundum mores bonos et consuetudines quas subterius vobis dedi et scribi feci."

8 See Pagarolas, *Els Templers*, vol. 1, 181-187.

Royal charters issued during the period of transition to seigniorial administration recognize the existence of Tortosa's body of customary law, albeit with few specifics concerning its content or development. Already by the mid-1160s, after the young Alfons I (ruled 1162-1196) asserted lordship over the town by receiving the homage of over 100 heads of household in Tortosa, documentation refers to transactions being performed "according to the custom of Tortosa."[9] There is no evidence of conflict between lords and citizens over jurisdiction or privileges during the latter half of the twelfth century, even after the Crown alienated authority over the town from the 1180s—retaining only financial prerogatives—subjecting it to the shared lordship of the Templars and Montcada family.[10] The application of Tortosa's "good customs and liberties" to the settlement of Ulldecona by the Hospitallers in 1222 explicitly recalled Alfons' confirmation and amplification of Ramon Berenguer IV's initial privileges.[11] The provisions granted by Pere I (ruled 1196-1213) to settlers at Sant Jordi d'Alfama in 1201—shortly after his initial mediation of Tortosa's jurisdictional disputes—not only offered the prerogatives already held by Tortosa but also utilized the town's citizens as a model of the enfranchised status to which the future inhabitants of this "desert of Alfama" would be entitled.[12]

The established nature of Tortosa's customary privileges for self-governance could explain why the lords never challenged the townspeople's right to organize a municipal collective. While the authority exercised by Tortosa's lords may have precluded the creation of a royally sanctioned consular regime

9 ACA, C, perg. A I, no. 6 (25 Apr 1163). AGP – Arm. 4: Tortosa, *Cartulari de Tortosa* (no. 115), f. 73v, no. 238 (13 Aug 1165). In this royal grant, Berenguer de Copons received houses in the Genoese portion of Tortosa in perpetuity and as an allod, "secundum consuetudinem Dertuse."

10 ACA – C, perg. A I, no. 326 (Mar 1182); *Alfonso II Rey de Aragón, Conde de Barcelona y Marqués de Provenza: Documentos (1162-1196)*, ed. A.I. Sánchez Casabón (Zaragoza, 1995), doc. 339. The order obtained remaining royal rights held by Guillem de Cervera in 1215. ACA – C, perg. J I, no. 39 (23 Mar 1215); Pagarolas, *Els Templers*, vol. 2, doc. 1.

11 Font Rius, *Cartas*, vol. 1.1, doc. 242 (11 Apr 1222): "ad bonas consuetudines et libertates Dertuse sicut dominus comes Barchinone, bone memorie, eas Dertuse contulit et dominus rex Anfos eas corroborravit et eis de consuetudinibus et libertatibus addidit." See Fabregat Galcerà, *Burgesos contra senyors*, 71-72. J.M. Font Rius, "Las redacciones iniciales de usos y costumbres de Tortosa," in his *Estudis sobre els drets i institucions locals en la Catalunya medieval* (Barcelona, 1985), 163-194 (165), provides numerous additional examples.

12 Font Rius, *Cartas*, vol. 1.1, doc. 214 (24 Sep 1214): "sint securi et franchi et liberi et ingenui per totam terram meam sicut populatores et habitatores Dertuse." See Fabregat, *Burgesos contra senyors*, 93-95.

similar to those formed in other prominent towns (Barcelona, Cervera, and Lleida) around the turn of the thirteenth century, the townspeople's existing privileges prevented the lords from denying them the right to assert expansive rights of self-governance and defense.[13] By comparison, when the townspeople of Vic, lacking similar comital protections, sought to establish a consulate without seigniorial approval in the early 1180s, the bishop of Vic asserted himself as the dominant lord of the town to suppress the attempt.[14] The local men had taken oaths of mutual support, elected consuls, and advanced their own claims to self-governance, but were warned by the bishop to renounce these actions lest he denounce them as traitors to his seigniorial and episcopal authority. The townspeople responded by taking their complaint to Alfons, who initially offered to help them, motivated as he must have been to sponsor governmental institutions to compete with seigniorial regimes even it meant sacrificing elements of his emergent Peace and Truce.[15] Yet, after consulting the bishop's documentation in support of his case, the king dropped his support.[16] Alfons must have sensed the illegitimacy of extending the right to organize a consulate to residents under a seigniorial regime. The bishop then pressed on with legal proceedings by an episcopal tribunal that condemned the attempt by the citizens to usurp jurisdiction. The tribunal's decision, paraphrasing the *Corpus iuris civilis*, ruled that any attempt by the citizens to exercise justice by coercing or punishing malefactors without concession by the public authority (i.e., the bishop) was illegitimate.[17]

Early conflict over Tortosa's own budding institutions of self-government may lack such rich details but does share some identifiable structural features with these incidents at Vic. Here, the question of what local governmental institutions represented public authority was more complicated, owing again to the judicial capacity of the townspeople instituted by the count's settlement

13 See P. Daileader, "The Vanishing Consulates of Catalonia," *Speculum* 74/1 (1999): 65-94 (66-76).

14 P. Freedman, "An Unsuccessful Attempt at Urban Organization in Twelfth-Century Catalonia," *Speculum* 54/3 (1979): 479-491. See also his *The Diocese of Vic: Tradition and Regeneration in Medieval Catalonia* (New Brunswick, NJ, 1983), 84-87.

15 Daileader, "The Vanishing Consulates of Catalonia," 75-76.

16 P. Freedman, "Another Look at the Uprising of the Townsmen of Vic (1181-1183)," *Acta Mediaevalia* 20-21 (2000), 177-186 (181-183).

17 Freedman, "An Unsuccessful Attempt," 482.

charter. In 1199, the lords of Tortosa must have attempted to limit the judicial activity of the municipal court. As in Vic, it is clear the citizens sent representatives to appeal for aid from the king, Pere, who, given the existence of comital-royal privileges, took up the case concerning "jurisdictional rights [the citizens] said pertained totally to them."[18] Yet, in this case, the lords lacked the legal instruments to support their case. The king ruled that the citizens could judge their own civil and criminal cases, as had been stipulated by his grandfather in the population charter, and should have a hand in mixed cases (i.e., those involving both the citizens and the lords), which would be judged by special arbitrators elected by both sides. In order to accommodate discrepancies in the seigniorial and civilian customary laws, which, in any case, remained an unknown quantity for the lords, these special arbitrators would adjudicate using both "law" and "reason" (*iudicare de iure et secundum rationem*).[19]

The lords arguably lost much more than they gained from the king's verdict. They were learning that extending the competency of the seigniorial court would be difficult because it could only come at the expense of the jurisdiction already exercised by the municipal *curia*. The primary obstacle they faced was that the town court's very existence as well as its jurisdiction over civilian issues were demarcated by the provisions of the charter of settlement.

Yet, if the king's ruling were unsatisfactory for the lords and the jurisdiction of the town court remained a bitter issue for them after this unfavorable outcome, they did not make quick issue of it. Indeed, there is no overt evidence of further disputing for three decades. In the intervening period, the citizens had sought additional support by appealing to the papacy for confirmation of their customary privileges. Writing in 1219, Honorius III evinced little concept of the growing conflict with the town's lords but did associate Tortosa's receipt of its privileges with the town's capture from the Muslims. The victory of Las Navas de Tolosa over the Almohads notwithstanding, the lower Ebro had witnessed few territorial gains since Ramon Berenguer IV's successful campaigns. The pope may well have viewed confirming these privileges to

18 ACTE – Perg., Reg. 495, Privilegis, III, 42 (1 Jan 1199); Massip, *La gestació*, doc. 4: "super iudicatura quam homines Dertose ad se ex toto pertinere dicebant."

19 See Fabregat, *Burgesos contra senyors*, 88-89.

be in support of territorial expansion from this frontier center.[20] Nevertheless, Hadrian's concession ostensibly exerted no influence over the future conflicts between the lords and citizens, even when the papacy itself began arbitrating the case in the 1260s.

Jaume did not refer to the privilege when he intervened to mediate the dispute in 1228. This may have been because he was intent on using the case as an opportunity to display his own judicial capacity as king within his realms. He may already at this point have had ambitions to recover the local administrative powers in Tortosa ceded to the Templars by his predecessors.[21] A *sentencia* concerning alleged abuses by Tortosa's jurisdictional lords, who ranked among the most influential in Catalonia and Aragon, was a prime occasion for the king to reclaim some of the crown's capacity to safeguard public safety lost over the previous decades. Since Jaume was the "true king" (*verus princeps*), whose revived Peace and Truce claimed to protect all subjects from certain abuses regardless of their jurisdictional circumstances, he had the duty (in keeping with his "office") to impose a correct interpretation of the law, making "what is doubtful, clear and certain" and illuminating that which is "obscured in shadows."[22] The king made his intention of displaying his overarching, realm-wide authority to the citizens and lords even more apparent in a privilege granted the same day as his verdict. Citing his desire to "restore the renown (*gloriam*) of the city and citizens," Jaume extended his protection over "all male and female inhabitants of Tortosa" and their property "through all places of lordship (*dominacionis*) and our kingdom and

20 Oliver, *Historia del derecho*, vol. 4, 481-82 (19 Dec 1219). See Fabregat Galcerà, *Burgesos contra senyors*, 95-96. For an accounting of this frontier stasis, see Barton, "Lords, settlers, and shifting frontiers," 227-232.

21 These ambitions were not expressed overtly until 1247, when the king managed to obtain from the Templars limited jurisdictional rights in Tortosa pertaining only to his property there. ACA – C, perg. J I, no. 1083 (28 Jul 1247); *Documentos de Jaime I de Aragón*, ed. A. Huici Miranda and M.D. Cabanes Pecourt, 5 vols. (Valencia, 1976-1988), vol. 2, doc. 467.

22 ACTE – Perg., Reg. 466, Privilegis III, no. 9: "igitur cum ex officio regie potestatis tanquam verus princeps quod dubium est teneamur facere liquidum adque certum et quod est in tenebris positum et obscurum in lumine deducere claritatis singulorum questionibus super materia superius annotata decrevimus respondere et iura dubia ex regalis cura regiminis interpretatione congrua per seriem declarare."

those of all of our allies (*amicorum*) in land and sea and whatever [body of] fresh water."[23]

In his ruling, the king responded to complaints by the citizens, officially organized for the first time into a collective (*universitas*), that the lords were pressuring them to have these mixed cases heard in the seigniorial court, in the town's castle (*çuda* or *suda*), in violation of his father's ruling from 1199.[24] Jaume agreed that "the Çuda is neither safe nor suitable … because [it] cannot be attended by the citizens without the inconvenience of the litigants and the utmost damage and danger …. What a scandal and tumult there would be if the *universitas* were to ascend to the Çuda considering [over seventy years of custom]."[25] Not only, in the king's view, was the municipal *curia* "idoneo et honesto" in comparison, but it was also well established by the town's customs, dating back to its population charter.[26] He also further limited the definition of cases that would be heard by special judges in a neutral location: only those between the *universitas* and the lords. Again with an eye to the practical implications of procedural norms for the less powerful civilian litigants, he asserted that cases between the lords and any individual citizens would

23 ACTE – Perg., Reg. 544, Privilegis V, no. 13, ACTE – Perg., Reg. 428, Privilegis V, no. 17 (30 Apr 1228): "sub nostra proteccione custodie emparancia salvitate commoda atque securo ducatu nostro et guidatico speciali." He promised to restore double the value of any lost property as well as to fine officials and men 3000 *solidi* for non-compliance. On the institution of the *guidaticum*, see R.I. Burns, "The *guidaticum*, safe-conduct in the medieval Arago-Catalonia: a mini-institution for Muslims, Christians, and Jews," *Medieval Encounters* 1 (1995): 51-113 (56-61).

24 See Fabregat, *Burgesos contra senyors*, 97-104.

25 The *sentencia* of Pere I had treated the citizens as allied individuals ("cives Dertuse"). ACTE – Perg., Reg. 466, Privilegis III, no. 9, ACTE – Perg., Reg. 129, Castellania i Templers, I, no. 29, and many other copies in ACTE (30 Apr 1228); Massip, *La gestació*, doc. 5. See Font Rius, *Orígenes del régimen municipal*, 510-513. Like the Catalonian consulates mentioned earlier, the appearance of *universitas* was a product of the rising influence of Roman law. For the use of the term in the thirteenth century, see P. Michaud-Quantin, Universitas*: expressions du mouvement communautaire dans le Moyen-Age latin* (Paris, 1970), 33-44, 59-64.

26 The ancient quality of Tortosa's customs was a feature later touted in the *Consuetudines civitatis Dertuse* and *Costums de Tortosa* and one common to other such codifications in Catalonia. See P. Daileader, "La coutume dans un pays aux trois religions: la Catalogne, 1228-1319," *Annales du Midi. Revue archéologique, historique et philologique de la France méridionale* 118 no. 255 (June-Sept 2006): 369-385 (372-376).

instead have to be judged by the municipal court.[27] The king went on to consider another complaint of seigniorial misconduct relating to the citizens' customary privileges. The Templars "and other lords of Tortosa" were accused of imposing on citizens laboring in the mountains. With direct reference to the population charter, the king noted that these lands had been included among the natural resources (*empriu*, *ademprivium*) made freely available to Tortosa's settlers. He accordingly pledged to defend the citizens against any party seeking to deprive them of this guaranteed right of *empriu*.[28]

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Given these elements of the king's *sentencia*, it is perhaps not altogether surprising that the next round of arbitration, in 1241, was entrusted by the lords to a non-royal arbitrator: Bishop Ramon de Siscar of Lleida.[29] Yet, his decision, known as the *Sentència de Flix*, was also not exclusively favorable to seigniorial interests.[30] In ruling on a wider range of issues than simply curial jurisdiction, this decision would prove to have a much more powerful influence over future litigation and the eventual process of review than the prior royal verdicts.[31]

Bishop Ramon's ruling broadened support for the citizens' privileges guaranteed in the charter of settlement while amplifying the capacity of the

27 While the citizens clearly had a strong defense, the king may have been encouraged to render a favorable ruling due to his pending expedition to Mallorca, which, in the absence of baronial support, would come to rely on the emergency *bovatge* levy and pledge of military aid offered by the citizens of Barcelona, Tortosa, and Tarragona at the *Corts* of Barcelona several months later. ACA – C, perg. J I, no. 365 (123 Dec 1228); P. de Bofarull y Mascaró *et al*., ed. *Colección de documentos inéditos del Archivo de la Corona de Aragón*, 42 vols. to date (Barcelona, 1847-1973) [henceforth, *CODOIN*], vol. 6, 95-98, doc. 16, and *Documentos de Jaime I de Aragón*, ed. Huici and Cabanes, vol. 1, doc. 113. Desclot, *Crònica* 14, ed. F. Soldevila, *Les quatre grans cròniques* (Barcelona, 1971), 421-422. For context, see J. O'Callaghan, *Reconquest and Crusade in Medieval Spain* (Philadelphia, 2003), 90-91 mentions the episode.

28 See Fabregat, *Burgesos contra senyors*, 102-104.

29 Ramon was the former abbot of the Cistercian house of Poblet. On his career and activity, see J. Villanueva, *Viage literario a las iglesias de España*, 22 vols. (Madrid, 1803-52), vol. 16, 138-140, and L. McCrank, "The Cistercians of Poblet as landlords: protection, litigation and violence on the medieval Catalan frontier," in his *Medieval frontier history in New Catalonia* (Aldershot, NH, 1996), VII, 255-283 (271-272).

30 Fabregat, *Burgesos contra senyors*, 117, considers the verdict "molt favorable als ciutadans." Compare Font Rius, "Las redacciones iniciales," 168.

31 See the summary of the complaints and verdict in Massip, *La gestació*, 91-93.

seigniorial *curia* beyond what had been stipulated in the latest royal verdict. On this former issue, Ramon broke with precedent, conceding that the seigniorial court, convoked in the *suda* or any other place within the town preferred by the lords, was indeed competent to judge criminal and civil cases between the citizens and any members of the seigniorial *familiae*.[32] The verdict also protected seigniorial interests by determining they should exercise jurisdiction over cases relating to the *lleuda* levy, from which they must have derived much of their income from the town. The town court retained its jurisdictional powers for any cases that did not affect the lords, their men, or such crucial seigniorial interests. These included all other civil cases as well as any criminal cases involving wounding or injury that did not implicate the lords. The bishop thus eliminated not only the distinction between mixed cases (involving the *universitas* or individual citizens) introduced by Jaume's verdict but also the special circumstances for their adjudication originally established by Pere.

Fixated as it was on the jurisdiction of the seigniorial *curia,* the *Sentència de Flix* did not delve into or seek to reform the laws and procedures used by the town court.[33] The legal prioritization it mandated ostensibly affected only the judges appointed to hear mixed seigniorial-citizen cases, who were to apply first the *Usatges de Barcelona* and only afterwards resort to Tortosa's own

32 ACA – C, perg. J I, no. 838 and ACTE – Perg., Reg. 462, Privilegis II, no. 5 (8 May 1241); *CODOIN*, vol. 4, 155-164, doc. 61: "quod homines dertusenses tam universi quam singuli … firment directum in Çuta vel civitate Dertusense ubi magis ipsi domini voluerint quandocumque et quotienscumque ab ipsis velint recipere firmamentum videlicet de omnibus querimoniis et demandis criminalibus sive de crimine civiliter intentandis."

33 Sparse case evidence suggests that the municipal court did indeed retain jurisdiction over civil cases between citizens and the lords. E.g., less than a year after the decision, a civil dispute between the Templars and a citizen of Tortosa, Pere Jordani, was judged in Tortosa's *curia* by the *veguer* and two of his subordinates, suggesting that the central jurisdictional provision of Jaume's ruling had been implemented. AGP – Arm. 4: Tortosa, *Cartulari de Tortosa*, f. 58r, doc. 179; Pagarolas, *Els Templers*, vol. 2, doc. 59 (18 Apr 1242).

"reasonable" laws "as is custom up until now."[34] This language of the ruling is unclear as to whether it was equipping judges to restrict the application of Tortosa's laws to those deemed "reasonable" or merely approving them as suitable for use in the seigniorial court. If the former, it would be the earliest extant sign of the lords suspicion concerning the validity of the town's customary laws. In any event, it was an important limitation, given that the Templars would soon shift their strategy of litigation to challenging the use of these laws within the town court.

While willing to advance a narrow reading of the judicial privileges stipulated in the settlement charter when it came to cases between lords and citizens, Bishop Ramon was more inclined to preserve the powers of local governance held by the citizens and municipal court. He put a stop to numerous seigniorial attempts to establish new sources of income within the lordship and assert greater administrative authority at the expense of the *universitas*. The lords were not authorized to demand tolls from individual citizens for the passage of boats along the Ebro River beyond a nominal annual payment by the *universitas* of 10 *morabetins*. Similarly, echoing Jaume's ruling, the lords were not to infringe on the rights of the residents to utilize the lands in the surrounding hills (*empriu*), which had been ceded to the men of Tortosa "by special donation of the kings and of the lords." Only under very limited circumstances would disputes between the lords and the *coloni* cultivating new lands in these areas be handled by the seigniorial court.[35] The lords were also ordered to desist from attempting to collect one-fortieth of wheat

34 ACTE – Perg., Reg. 462, Privilegis II, no. 5: "Qui quidem iudex a dominis Dertuse super questionibus constitutos iusto recto ac fideli iudicio primo secundum usaticos Barchinone postmodum secundum rationabiles consuetudines civitatis Dertusensis vel alias sicut consuetum est actenus dirimat inter ipsos cives et dominos dertusenses per dictas criminales sive cum de crimine civiliter agitur questiones." This ruling was reminiscent of contemporary seigniorial opposition to centralizing bodies of law such as the *ius commune*. In 1243, under pressure from his magnates, Jaume agreed to restrict the use of Roman law in secular courts throughout his lands. Courts were to use first local customary laws, then the *Usatges de Barcelona*, and finally judicial common sense. M. Turull Rubinat and O. Oleart, *Història del dret espanyol* (Barcelona, 2000), 33. See also M. Vanlandingham, *Transforming the state: king, court and political culture in the realms of Aragon (1213-1387)* (Leiden, 2002), 96-100, and P. Daileader, *True citizens: violence, memory, and identity in the medieval community of Perpignan, 1162-1397* (Leiden, 2000), 53. The king would reiterate this concession at the *Corts* of Barcelona in 1251: *Les constitucions de pau i treva*, ed. G. Gonzalvo i Bou (Barcelona, 1994), doc. 29, c. 3.

35 ACTE – Perg., Reg. 462, Privilegis II, no. 5: "quod coloni qui eas perceperint excolendas si de terris ipsis sit questio in posse dominorum qui ipsas terras dederint excolendas firment directum sub eis que placitum agitetur."

and flour as well as levies owed for animals that ran counter to Tortosa's privileges. While thus frustrated in their attempts to secure additional revenues from the lordship as a direct result of the limitations imposed by the comital population charter, the lords were also freed by the bishop from one of the obligations assigned to the lord of the town by the document. In the future, they would no longer be expected to pay the citizens rewards for the capture of fugitive Muslims. While likely based primarily on the notion that these payments were anachronistic, left over from a time when Tortosa was positioned close to the frontier, Bishop Ramon's dismissal of these obligations also showed that he viewed the transition from royal to seigniorial governance as effecting necessary changes to the social contract forged by the original charter of settlement.

Aside from expanding the jurisdiction of their court, the lords failed in their attempts to secure greater administrative power and a share of the governmental incomes at the expense of the citizens, *prohoms*, and town court. The maintenance of the civic baths and walls, for instance, would continue to fall entirely under the administration of two elected *prohoms*.[36] The handling of debtors would be carried out exclusively by this *curia*, and the lords would not be permitted to collect any part of what was owed. The involvement of the *prohoms* in matters of governance and public safety, and specifically response to any hue and cry, did not infringe, in the bishop's opinion, on the seigniorial ban. Furthermore, the weights, measures, and bread weight all had to be properly maintained, but any accusations of impropriety by the lords needed to be lodged in the municipal court.

Because the appeal had been lodged by the lords at considerable expense and many of their claims had been upheld, Bishop Ramon ordered the citizens to reimburse them the sizeable sum of 700 *morabetins*. The citizens, on the other hand, received seigniorial confirmation of "all of their franchises, customs, and donations" obtained from the count or by other means.

36 This stipulation indicates that, by this point, the bishop of Tortosa had somehow lost his control of the town walls received from Ramon Berenguer IV and confirmed by Alfons I, when the latter barred the men of the town from constructing on it. ACT – Cartulari 5, f. 20r; *Diplomatari de la catedral de Tortosa (1062-1193)*, ed. A. Virgili (Barcelona, 1997), doc. 119 ([1162-1188]): "Quapropter ego admiror et valde indignor quem ipsi homines ertuse ausi fuerunt contempnere ad adnichilare donum predicti muri que pater meus dedit predicte ecclesie et ego confirmavi et iterum confirmo."

PAPAL INVOLVEMENT

After two more decades of silence in the sources, the Templars sent a letter of complaint with supporting documentation to Pope Urban IV in 1260. They alleged that the municipal court had been utilizing Tortosa's customary law in preference to the *Usatges* in violation of the mandates of the *Sentència de Flix*.[37] Extrapolating from the decision, the Templars claimed that the bishop had meant to mandate the same prioritization for all judicial proceedings in Tortosa and not merely the seigniorial court. Judges, they maintained, were first to use of the *Usatges* of Barcelona and only subsequently Tortosa's local laws.[38] Yet, it quickly became clear that the Templars were advancing this (arguably erroneous) reading of the *Sentència de Flix* as a basis for challenging the validity of the customary laws and practices utilized by the citizens. While the *Usatges*, they asserted, were known to contain good customs ("bonis consuetudinis"), Tortosa's customary laws lacked seigniorial approval and, in some cases, were corrupt. In support of these claims, which reached far beyond anything raised in prior litigation, the Templars cited instances of questionable judicial practices committed by the town court as symptoms of systemic problems afflicting the laws and institutions maintained illegitimately by the citizens Tortosa.[39] The citizens, in turn, defended their practices by tactical reference to their charter of settlement, asserting simply

37 Only the papal response survives. ACA – C, perg. RB IV, no. 224 [*CODOIN* vol. 4, 166-168, doc. 61], ACA – C, perg. J I, no. 1796, ACA – Bulas, legajo 15, no. 2 [cataloged by F.J. Miquel Rosell, *Regesta de Letras Pontificias del Archivo de la Corona de Aragón* (Barcelona, 1948), 65], ACTE – Perg., Reg. 141, Castellania i Templers II, no. 48: "cum huiusmodi licentia per quam dictis civibus usus bonarum consuetudinum reservatur ad pravas et antiquas consuetudines extendi non debeat maxime quia de intentione dicti episcopi hoc non videtur aliquatenus processisse dictos cives dertusenses quod predictis et aliis consuetudinibus que absque interitu salutis eterne servari non possunt ab eadem civitate ipsorum penitus profligatis."

38 ACA – C, perg. RB IV, no. 224: "super temporali iurisdictione civitatis eiusdem que ad ipsos magistrum et fratres plene ac libere pertinet … sicque predicti cives Dertusensis huiusmodi pretextu arbitrii contendunt uti huiusmodi consuetudinibus et non nullis aliis viri contrariis per quas eorundem magistri et fratrum iurisdictio enervatur."

39 These alleged abuses appear as the first two entries in a longer list of Templar grievances, which they eventually submitted as part of a *Libellum* as the evidenciary basis of their case. They had to have been drafted prior to the start of the case in 1262 when the *Libellum* was first presented. It is likely that the entire *Libellum* or a version of it had been sent as part of the Templar complaint to Urban IV as he appears to have cited verbatim passages from it in his letter. The *Libellum* appears in ACA – C, perg. RB IV, no. 224, ACTE – Privilegis III, no. 31, and ACA – C, perg. J I, no. 1796. The latter contains the fullest version, which was presented in court: *CODOIN*, vol. 4, 148-155, doc. 61, and Font Rius, "Las redacciones," doc. 2.

that they were protected as customary privileges from seigniorial oversight and intervention.

Upon reviewing the materials, however, and perhaps noticing that language in the *Sentència de Flix* implying that elements of Tortosa's customary law may not have been "reasonable" mentioned earlier, the pope issued a rescript agreeing that Tortosa's customary laws, as applied in the town court, demanded further investigation. He referred the case to Bishop Arnaldo of Zaragoza, who in turn delegated the duty to a canon of the cathedral of Huesca named Sancho de Bolea in August 1262.[40] The bishop ordered representatives from the *universitas* to appear before Sancho in Huesca, present their customary laws in written form for examination, and respond to the allegations of abuse raised by the lords.

Information contained in Urban's letter, which would be repeatedly referenced throughout the proceedings, exerted considerable influence over the course of the ensuing trial. The pope transmitted not simply directives but also interpretations that slanted heavily in the favor of the Templars. For instance, he determined that the *Sentència de Flix* ruled that "the jurisdiction of this city remained totally in the power of the master and brothers [of the Temple]" without mentioning the important limitations it had maintained from the royal verdicts concerning the seigniorial *curia*. He also reiterated that while the uses of Barcelona prescribed by the bishop of Lleida were verifiably good customs ("bonis consuetudinis"), Tortosa's own law remained an unknown quantity. According to Urban, the practices decried in the Templars' *petitio* were justified by the citizens on the basis of a mere "pretext" in their customs. In lifting much of the descriptive language of his letter directly from the Templar complaint ("humbly entreated to us from the master and brothers"), the pope seemed to agree that these curial practices were questionable.

40 ACA – C, perg. J I, no. 1796. On 7 Aug 1262, the bishop admitted that he was too busy to undertake the case leading him to appoint Sancho as his delegate.

Furthermore, the manner in which Urban presented them to his delegate seemed to imply that these claims had already been verified.[41]

While holding back from prejudging the case, Urban nevertheless made it clear that he suspected the state of affairs in Tortosa ran counter to what had been mandated by the *Sentència de Flix*.[42] He thus agreed with the Templars that the customs of Tortosa, in their present state, and as applied by the citizens in the town court, were potentially illegitimate but, as yet, an unknown quantity. Whether the citizens of Tortosa were, in fact, guilty of such abuses could not be determined one way or the other, the pope reasoned, until the customary laws were presented by the citizens, analyzed by experts, and ultimately approved by the lords of the city. However, this process of resolution would turn out to be far less of a technicality than the pope, Templars, or judicial delegates may have anticipated. It would soon become apparent that presenting these customary laws for review was a concession a determined subset of the *universitas* was altogether unwilling to make.

41 ACA – C, perg. J I, no. 1796: "Porro ydem cives Dertuse asserint quod in prefata civitate de consuetudine obtentum existit ut nullus pro aliquo crimine quantumcumque notorio puniri possit ni apparuerit accusator legitimus qui ad penam talionis inscribat et quod in aliqua causa nisi criminalis fuerit non compellantur testes ad prohibendum testimonium veritati sicque predicti cives Dertusensis huiusmodi pretextu arbitrii contendunt uti huiusmodi consuetudinibus et non nullis aliis viri contrariis per quas eorundem magistri et fratrum iurisdictio enervatur." Originally derived from Scripture (*Deut.* 19:16-21, *Exod.* 21:23-25), the *penam talionis* (or *lex talionis*), as it was known in Roman law, is the law of retaliation: an eye for an eye, tooth for a tooth, etc. However, in this context, it was clearly being used to articulate a concept of equivalence: that false accusers would receive the same punishment as had faced the accused. See M.B. Merback, *The thief, the cross and the wheel: pain and the spectacle of punishment in medieval and renaissance Europe* (Chicago, 1998), 139-140.

42 Dated 15 Oct 1261, this letter likely was also written to Arnaldo of Zaragoza, although it was not cited in the case proceedings. Only one fragmentary copy survives in ACA – C, perg. RB IV, no. 224; *CODOIN*, vol. 4, 166: "Quare humiliter petebant a nobis ut cum huiusmodi licentia per quam dictis civibus usus bonarum consuetudinum reservatur ad pravas et antiquas consuetudines extendi non debeat maxime quia de intentione dicti episcopi hoc non videtur aliquatenus processisse dictos cives dertusenses quod predictis et aliis consuetudinibus que absque interitu salutis eterne servari non possunt ab eadem civitate ipsorum penitus profligatis."

DYNAMICS AT COURT IN HUESCA

This papal mandate not only escalated tension between the citizens and their lords but also soon divided the *universitas* into two factions. One minority group of citizens favored open opposition, arguing that the customs should not be written down and subjected to seigniorial approval. They also advocated open resistance, at one point reportedly storming the *suda*.[43] A more sizeable subset favored some degree of cooperation. They argued that the *universitas* should write down the customs and collaborate with the court and lords to secure the best outcome for the community.[44] Perhaps they reasoned that open resistance would only escalate the conflict and, in turn, undermine the legal validity of Tortosa's customary tradition established by the population charter, subsequent royal and seigniorial privileges, and the earlier royal rulings on the dispute. Indeed, Urban had already authorized the imposition of excommunication if the citizens failed to respond to the summons.[45]

It is unlikely this debate within the *universitas* signifies that the customs had never been written down in any form over the many years Tortosa's customary law was used in the town court. The citizens were not contemplating a shift to written record from an exclusively oral legal environment.[46] Indeed, local judges must have had access to some sort of compilation for use in court. What the citizens apparently distrusted was unauthorized seigniorial emendation of their local laws, privileges, and traditions. "Writing down" the customs, in this context, must have signified the preparation of an official presentation for submission to an external authority for review and confirmation. Chiefly at issue was who would constitute that external authority.

43 ACA – C, perg. J I, no. 1796 and ACTE – Perg., Reg. 485, Privilegis III, no. 31; *CODOIN*, vol. 4, doc. 61, 164-165: "Remenbranza de hominibus qui venerunt ad portam castri cum armis et muniti. In primis, Sanso de Lobregato, Raimundus de Berengata … [over twenty other names]. Isti contradicunt quod non scribantur consuetundines."

44 ACTE – Perg., Reg. 485, Privilegis III, no. 31: "G. de Montblanch, … [83 additional names]. Isti volunt quod consuetudines scribantur."

45 He required his prior approval of any such action, however. ACA – C, perg. RB IV, no. 224: "quod decreveris per censuram ecclesiasticam firmiter observari pro viso ne in universitatem Dertusensem excomunicationi vel interdicti sententiam proferas nisi a nobis super hoc mandatum receperis especiale."

46 Compare M. T. Clanchy, "Remembering the Past and the Good Old Law," *History* 55 (1970): 165-176, idem, *From Memory to Written Record: England, 1066-1307* (Oxford and Cambridge, MA, 1993), esp. 25-43, and 295-327, and A. Kosto, *Making agreements in medieval Catalonia: power, order and the written word (Cambridge, 200)*, 294.

Although a majority of citizens favored preparing the customs for review, the *universitas*, as a whole, remained unwilling to submit to the kind of revision envisioned by the pope. The question the citizens faced was how to respond to the impending court process. Flatly refusing to participate was not a feasible option: it would earn the *universitas* swift excommunication and the disfavor of the authorities. Instead, ostensibly in hopes of concessions and a more favorable review of the customary law, the citizens elected to pursue a strategy of moderate defiance. They set out to distract the court from addressing the main issue of the case, the review of their allegedly abusive unauthorized customs, with objections and delays, all under the guise of participating in good faith.

The citizens must have known that, failing the presentation of the suspect customary laws, the abuses alleged by the Templars could not be assessed and the case could not proceed. Accordingly, they tenaciously wielded their objections in an effort to force the court to back away from its inquiry and investigate other matters of interest to the citizens. This strategy of litigation, as depicted in the extensive records of the case proceedings, would prove to be remarkably effective.[47]

Appearing at court in Huesca on 16 October 1262, the Templars formally requested, in writing, that the customs be examined, and included a detailed list exposing twenty-three customs they alleged were abusive. The following day, however, the two representatives sought to undermine the very basis for the case by questioning the core assumption of the papal rescript. They argued that the Templar lords could not legitimately question judicial practices conducted within the jurisdiction of the municipal court. In support, they pointed out how, in its complaint to the pope, the order had mischaracterized its jurisdictional rights in Tortosa, omitting those of the town court protected by the *Sentència de Flix*. In fact, both the Templars and the Montcadas had confirmed the rights of the men of Tortosa to "all freedoms, customs, and donations" they had received from the *principes* and held "up to the day the

47 ACA – C, perg. J I, no. 1796. This source has received scant attention from scholars. Oliver, *Historia del Derecho*, vol. 1, 97, Massip, *La gestació*, 94 and Pagarolas, *Els Templers*, vol. 1, 213-215, refer to the litigation but do not deal directly with this trial record. I address the important contributions by Font Rius below.

trial."[48] The Templar *procuratores* urged the court to dismiss these objections, which they regarded as an attempt to stall the case, and to continue with the main issues. Nevertheless, after some deliberation the judge granted the citizen representatives ten days to lodge their formal objection. They would have to demonstrate that the rights of the *universitas* had been damaged by the Templar complaint and consequent papal rescript. About ten days later, the *procuratores* for the *universitas* delivered their counter-argument in which they alleged that the proceedings were prejudicial to the rights and immunities of the *universitas* and pronounced their intention to appeal the case in hopes of a dismissal.[49]

They also presented arguments in support of their motion. One of the Templar representatives had recently died, and the citizens challenged the legitimacy of his substitute, Ramon de Payllas. Since the Templar delegation was illegitimate, they moved, the case should be put on hold and the court should instead proceed with the *universitas'* appeal and counterclaims. Ramon, however, was able to prove that he was a legitimate alternate delegate, and the citizens pushed on with another objection, to which the judge also granted a hearing.[50] They argued that the Templars had abused their rights of lordship by illegitimately seizing property belonging to the *universitas*. Only after the lords had restored it could attention legitimately be dedicated to the

48 ACA – C, perg. J I, no. 1796: "Tacuerunt etiam veritate in eo quod non dixerunt eundem episcopum arbitratum fuisse quod domini Dertuse confirmarent laudarent et approbarent hominibus Dertuse omnes libertates consuetudines et donationes quas ex donationibus principum aut longissima presciptionem habuissent et tenuissent usque ad diem arbitrii prolati ab eodem episcopo cum hec omnia arbitratus fuerit idem episcopus prout apparet per formam ipsius arbitrii evidenter."

49 ACA – C, perg. J I, no. 1796: "contra rescriptum apostolicum impetratum ab eisdem magistro et fratribus contra dicta universitatem non esse admittendas sentientes nos et dictam universitatem a dicto interlocutoria gravatos fore. Ab eadem interlocutoria ad summum pontificem appellamus nos et bona nostra et dictam universitatem et bona sua iurisdictioni et proiectori eiudem summi pontificis supponentes."

50 ACA – C, perg. J I, no. 1796: "Ad quem respondit dictus R. de Payllas procurator templi quod mandatum non est finitum morte dicti G. Arnaldi set dompnus G. de Pontons magistri templi cuius auctoritate dictus G. Arnaldi dictum R. de Payllas procuratorem substituit quotiens cum abesse contingerit sicut in procuratorem dicti R. de Payllas dignoscitur contineri et idem procurator ante mortem processerit in negotio. "

order's complaint.[51] The legal basis for such a claim was questionable, but the premise seems to have been that the Templars first had to get their own administrative house in order before they could accuse the municipal regime of abuses. Rather than rejecting the notion as irrelevant to the proceedings, however, the Templar *procuratores* made the debatable assertion that the objection was invalid because the Templars were a religious order with no concept of private property and thus immune to the charge.[52] In response, the citizens pointed out that this statute invoked by Templars could only concern disputes between *religiosi* and not mixed disputes between clerics and secular persons concerning secular property. Based on this initial presentation, the judge was convinced to allow further examination of the citizens' claims. He delayed the trial for several months in order to discuss this accusation of property seizure along with other objections the citizens might have.

When the court reconvened in late January of the following year, the *universitas* lodged its own dossier with the judge. In it were the anticipated arguments and supporting evidence for the objection of the property seizure along with five additional objections concerning abuses allegedly committed by the Templars in their exercise of lordship over Tortosa. The Templars, the citizen *procuratores* reiterated, had to acknowledge, and render satisfaction for these outstanding claims before the *universitas* could be expected to answer for the abusive customs raised in the Templar complaint. Elaborating on the original objection presented at court months earlier, they alleged that the Templars had been involved a violent seizure ("manu armata") of civilian property in Tortosa valued at more than 40,000 *solidi*. They also claimed damages of 150 *solidi* for the order's forceful usurpation of the civic baths rented from the

51 ACA – C, perg. J I, no. 1796: "Salvis omnibus exceptionibus et defensionibus iuris et facti competentibus et competituris dicunt excipiendo procuratores universitatis Dertuse nec se nec universitate predictam teneri respondere petitioni magistri et fratrum templi donec ipsi magister et fratres templi restituterint ipsi universitati possessionum cuiusdam loci seu platee que est Dertuse cuius fines sunt ex parte una Iberis et ex parte altera calle Judaycus quam plateam sive locum dicta universitas possidebat de qua possessione ipsi magister et fratres eandem universitatem per violentiam spoliarunt."

52 ACA – C, perg. J I, no. 1796: "Proponit pars templi quod exceptio spoliationis opposita a parte civium Dertusensis non est admittenda quia rerum privatarum exceptio agenti super ecclesiasticis opponi non potest. Unde cum magister et fratres templi agant super rebus ecclesiasticis et ipsi excipiunt de rebus privatis super exceptione sua non sunt aliquatenus audiendi nec obstat si dicatur a parte adversa quod res illa est communis quia inter ecclesiasticas res communes et privatas est differentia adhibenda nec se contingunt C. de sacrosanctis ecclesiis ut inter divinum et petit quod primo pronuntietis super ea."

citizens by Peter Jordani, one of the citizen *procuratores*.[53] The Templars had also been collecting the small payments (*cortam mercedem*) paid by the bath patrons and had prevented the Jews and Muslims of Tortosa from attending the baths, resulting in some 300 pounds of lost revenues. Furthermore, the Templars had established a new market in Tortosa on land belonging to the citizens without authorization and refused to perform restitution. [54] Finally, in contravention of earlier rulings, the Templars had continued to deny the citizens their customary right to pasture cattle and other animals within Tortosa's municipal district.[55]

It is difficult to know whether the citizens were simply stalling or actually believed they had the legal right to demand restitution before continuing with the issues identified in the papal rescript. It seems likely they hoped that the Templars would be motivated to settle in order to move on with their *petitio* or that the even the judge might grant them some of their exceptions. While, in theory, they had nothing to lose except for time and expenses, the wealthy Templar order had far greater resources to draw upon in order to prevail in this legal battle.

It soon became clear that the judge, Sancho de Bolea, was neither keen on letting discussion of these exceptions become protracted nor in the mood for

53 ACA – C, perg. J I, no. 1796: "Item excipiendo proponunt quod non tenetur eis respondere donec ipsi magister et fratres restituerint eisdem cives ad possessionem vel quasi iuris percipiendi quolibet anno. CL. solidi iaccensis censualiter in balneis quod P. Jordani civis Dertuse tenet pro ipsis civibus in qua possessione vel quasi ipsi cives erant et magister et fratres templi eosdem ea possessione vel quasi dolose et pro violentiam privarunt propter quod dicunt ipsi procuratores se non teneri respondere ad petitionem partis adverse donec sint restituti. Item proponunt excipiendo quod cum essent in possessione vel qui huius iuris scilicet quod omnes habitatores Dertuse venirent ad eorum balnea pro se balneandis et singuli pro balneo certam darent mercedem iidem templarii ipsos cives spoliarunt huius possessione vel quasi mandado et inhibendo sarracenis et iudeis Dertusensis ut ad ipsum balneum non venirent propter quod dicunt iidem procurares quod non tenetur respondere ad petitionem adverse partis donec sint restituti cum omni causa dampni dati quod extimant trecentas libras."

54 ACA – C, perg. J I, no. 1796: "Item excipiendo dicunt se non teneri respondere eisdem templariis donec restituerint eisdem civibus possessiones cuiusdem soli in quo edificaverunt ipsi templarii macellum quod macellum vocatur macellum novum quod solum dicti cives possidebant et ipsi templarii eos dicta possessione iniuriose deiecerunt."

55 ACA – C, perg. J I, no. 1796: "Item proponunt excipiendo quod cives Dertusensis essent in possessione vel quasi iuris pascendi pecora et alia animalia sua in loco sito in termino Dertusensis qui vulgariter appellatur Limers et in eodem loco etiam possiderent vel quasi possiderent ius excolendi et laborandi quandocumque volebant iidem templarii ipsos possessione vel quasi huius spoliarunt. Inde eos et eorum animalia depellendo propter quod dicunt similiter se non teneri responere quousque fuerint restituti."

compromise. The Templars, who perhaps doubted that the exceptions would be entertained for long, also seemed unmotivated to arrange a settlement. After some deliberation, the judge ruled against all of these objections, not on the grounds that they were immaterial, but instead because the citizens had not presented sufficient evidence to support their claims. The Templars then complained of the excessive expense of these discussions over the citizens' objections, amounting to more than fifty pounds, and urged that the court proceed with "the principal [order of] business in accordance with the [papal] rescript."[56] Sancho agreed, only to find himself barraged by the civilian representatives who insisted that he issue yet another continuance for them to prepare to lodge further counter-claims. Once again, unexpectedly, the citizen *procuratores* managed to sway the judge. In the face of further protest by the Templars, Sancho de Bolea suspended his court for a further three months.

Sancho soon wrote to his superior, the bishop of Zaragoza, to account for his oversight of the case thus far. He detailed the handling of the citizens' exceptions and explained how this debate had precluded discussion of the main issue of the case. He also confessed that he suspected the citizen representatives had deliberately and in bad faith sought to derail the execution of the papal rescript.[57] Sancho seems to have been defending himself when he pointed out that after considering the objections, in consultation with legal experts, he had ruled them out and sought to proceed in fulfillment of his duties as judge and executor of the papal orders.[58] He did not, however, account for why, despite his suspicions, he granted the citizens another delay rather than pressing on with the business of the case.

56 ACA – C, perg. J I, no. 1796: "in negotio principali iuxta formam rescripti."

57 ACA – C, perg. J I, no. 1796: "non duxi aliquatenus deferendum utpote frustratione et ad impediendum negotium ut credebatur non sine malitia interiecte cause autem quibus eadem deferendum non duxi sunt hec."

58 ACA – C, perg. J I, no. 1796: "Item quia agebatur super reformatione quarumdam pravarum consuetudinum ut dicebatur et sic super tali negotio quod accelerationem maximam requirebat pro eo quod dicte consuetudines in enervatione iurisdictionis vergebant et periculum animarum et ideo cum ageretur super reformatione earum et in negotio quod causa tam accelerationem desiderabat dicta exceptio non erat aliquatenus admittenda maxime cum dicti dives nichil per dictam exceptionem consequerentur sed per eam salutem animarum et reformationem consuetudinum impedirent."

During this second hiatus, the citizen representatives themselves appear to have recognized that the judge's patience was wearing thin and that pressing forward with their objections in Sancho's court would earn them little. Accordingly, they had written a letter of protest about the judge's ruling, which Sancho had forwarded with his own account to the bishop of Zaragoza. At that time they had made no indications that they intended to lodge their appeal with a higher court. Yet, when Sancho de Bolea reconvened his court on the first of June the representatives for the *universitas* failed to appear, he anounced. He excommunicated them the following day ("pro tanta contumacia"), a sentence, he announced, he would only lift after they had paid the Templars 100 *morabetins* to cover their travel expenses and if they appeared the first of July. We have no record of the further proceedings under Sancho de Bolea. It is possible that he brought his court back into session in July but unlikely that the citizen representatives appeared. When the *universitas* met to elect its representatives in mid-July, the task at hand was described as "agendum causam appellationis" at the court of Bishop Arnaldo of Zaragoza.

EPISCOPAL AND PAPAL COURT

Appealing to the episcopal court enabled the *universitas* to breathe new life into its objections and further delay the handling of the Templar complaint. Although Bishop Arnaldo had been in contact with his delegate, there was a possibility he might understand or interpret differently the nature of their appeal and be swayed to the side of the citizens. No additional mention of the excommunications or fines imposed by Sancho on the citizens' *procuratores* exists in the extant case records. When both sides appeared in bishop's court in mid-September, the Templar representatives did, however, request that the citizens pay their expenses, now estimated at over 200 gold pieces. The *procuratores* submitted their letter of appeal explaining why they had abandoned the proceedings at Huesca. Since Sancho had managed the proceedings unjustly and the bishop had reserved the right of delivering the final decision in the case, they had decided to lodge their case at episcopal

court.[59] Upon consideration, the bishop accepted the case, perhaps in recognition that his delegate had not conducted the case to his liking.

In the proceedings that followed, the argumentation presented by the new Templar representatives—that Sancho de Bolea's *interlocutoria* to dismiss the citizens' appeal had been "bene latam" (citing Tancred and Gratian)—seems considerably more developed and steeped in Roman legal theory and canon law than what had been witnessed previously. Although they did address, in particular, the public-private distinction raised by the citizens, the Templar *procuratores* emphasized that any objection made by the citizens, valid or invalid, should not be permitted to distract the court from fulfilling the tasks assigned by the papal rescript.

The citizens matched this performance by unleashing their own arsenal of legal theory to support their claim that Sancho's ruling had been both unjust and "contra rationem." Yet, while using such technical argumentation to support their first objection (*exceptio spoliationis*), the citizens, at the same time, discounted the notion that the opinion of one legal expert or group of experts should dictate a verdict.[60]

Surprisingly, the bishop saw fit to rule in favor of the citizens on 19 October 1263. He agreed that Sancho de Bolea had been incorrect to deny their appeal and found the citizens' "exception of theft" to be valid.[61] Seeking to capitalize on this opportunity, the *procuratores* for the *universitas* pressed on by

59 ACA – C, perg. J I, no. 1796: "Santio de Boleya … fuerit proposita exceptio spoliationis ex parte universitatis predicte et ipse interloquendo pronuntiaverit exceptionem spoliationis non esse admittendam sed ea non obstante esse in negotio pro cedendum et ideo non ex ea admissa et quia alias predicta universitatem idem S. gravabat ad per ipsos extitit appellatum peniter predictam sentenciam interlocutoriam latam per predictum S. de Boleya tamquam iniustam et iniquam infirmari et per vos pronuntiari bene appellatum et male interlocutum et revocari marritum quicquid post predictam appellationem per eundem iudicem extitit acceptatum et quod vos postmodum in eadem causa procedatis procedatis prout de iure fuerit faciendum."

60 ACA – C, perg. J I, no. 1796: "Iam licet non est ergo recedendum a textu legum nec ab opinionibus dictorum comunium et ante privatorum pro opinionibus peculiaribus et magistrorum per notorum et qui nituntur infringere et impugnare dictas opiniones suorum maiorum ad hoc ut aliquid domine videantur si alique sunt glose inveniuntur vel interlocutores contra predictos doctores quod non credunt sindici universitatis Dertusensis."

61 ACA – C, perg. J I, no. 1796: "Omnibus itaque consideratis de consilio peritorum pronuntiamus eundem subdelegatum male interlocutum fuisse et predictos cives ab eo legitime appellasse ac eandem interlocutoriam infirmantes predictam spoliationis exceptionem decernimus admittendam."

arguing that the Templars should respond to all of the exceptions proposed in Sancho's court. The Templars countered that they should not have to address these other objections, as they had not been part of the original appeal. After more deliberation, the bishop agreed to allow the citizens the right to present the rest of their complaints. He ordered the parties to reappear in Zaragoza to conduct this examination; the two sides would have to present on the exceptions before a panel of legal experts. Just days later, the Templars presented their arguments to the panel first. Yet, when the citizen *procuratores* had their turn later in the day, they complained that there was not sufficient time to work through their proofs of the validity of the exceptions, and the proceedings were permitted to continue into the following day. Ultimately, however, after all of the presentations and deliberations had been completed, upon conferring with the tribunal, the bishop pronounced the exceptions inadmissible and ordered that the sides prepare to continue with the main issue of the case.

At this point the citizens had only one option left for evading the bishop's order and delaying the case. Rather than submitting their customs in written form for review, they requested that the bishop permit them to appeal their objections to papal court, as they had initially requested some months earlier. The Templar representatives reiterated with frustration that they should proceed with the case rather than permit further consideration of these groundless objections. Despite his doubts over the citizens' intentions and the validity of their grievances, the bishop conceded them this right and set the appeal to commence in Rome on the first day of the new year, 1264.

At this point, it is worth considering what the citizens thought they could gain from this course of action. An appeal in and around Zaragoza was one thing, but to travel to Rome to push for these exceptions, which had been dismissed twice in two different courts, was escalation to another order of magnitude in terms of cost, time, and potential political repercussions. First of all, their prospects were not good. Urban IV remained pope and must have been disappointed with the progress of the case following his rescript in 1261. In bringing their appeal before papal court, the citizens would be exhausting their final legal recourse. If the papal court ruled against their exceptions they would have no choice but to cooperate with the papal mandate that their customs be examined. The most plausible explanation was that the

citizens recognized the inevitability of their customary law being reviewed but still retained some hope of winning concessions, checking seigniorial aggressiveness, and asserting some level of control over the review process.

The proceedings in Rome got off to a delayed start, first because they were postponed from the bishop of Zaragoza's proposed date (the citizen representatives were not even elected until mid-January), and second because the *procuratores* for the *universitas* were late to appear. On 10 March 1264, when the court was called to order in the Roman *curia* by Renerus de Paissi, the general *auditor* of cases of the papal palace and chaplain to the pope, the *procuratores* denounced each other and insulted their respective intentions in the case. The Templars lodged a complaint that the late arrival of the citizen *procuratores* was further evidence that they intended to prolong the case. The possibility of compromise or settlement appeared highly unlikely.

Renerus devoted the first month of the proceedings to administrative arrangements. On Friday, 2 May, when prompted by the judge, the citizens communicated that they wished to proceed with their appeal. The Templars presented to the court their prepared *Libellus* concerning the appeal. The order was prepared to argue the main issue of the case before this new judge but insisted that he should not consider the citizen's exceptions, which had already been dismissed by the bishop of Zaragoza after extensive consideration. In spite of these objections, Renerus subjected the prior handling of the case in Huesca and Zaragoza to an exhaustive review. He had the parties work through the proceedings and reach consensus on what had transpired. The Templar *procuratores* were understandably cautious throughout this exercise, unwilling to subscribe to the oral rendition of events presented by the citizens and instead insisting on referring to written court records.[62]

The court proceedings under Renerus continued into the early months of 1265 and culminated in a protracted presentation by the Templar *procuratores* of their responses to each of the citizens' allegations of abusive lordship. Yet,

62 For instance, when the citizen *procurator*, Pere Egidio, reported how Sancho de Bolea had served as papal delegate in their case over the customary laws used by the citizens, the Templar *procurator*, Arnau d'Abadia, refused to do anything more than reference the *acta* lodged in court and the letter of Urban IV. "Item ponit quod dictus episcopus gessit se pro delegato a sede apostolica super quibus die consuetudinibus quibus dicebantur uti predicti cives et super approbatione aliorum consuetudinum que de iure essent approbande vel super reprobatione earum. Credit secundum quod continentur in actis exibitis coram domino auditore et in littera papali. Aliter non credit."

then, in an unexplained development, just when the court had finished this order of business, Renerus de Paissi was dismissed and substituted in late March with a certain Garinus, who, at that time, held the offices of archdeacon, chaplain, and *auditor*.[63] Yet, while the new judge did request copies of the presented arguments, he does not appear to have subjected the participants to a complete revision of the testimony. In late May, Garinus confirmed that the two sides had nothing more to add, and was preparing to deliver his verdict. At this crucial point, without explanation the scribe ended the case record, which consequently contains no information regarding the verdict.

Font Rius, the only other scholar to have studied these case records, hypothesized that the papal court had ruled in favor of the citizens' appeal, admitting the exceptions and sending the case back to the Aragonese realms.[64] Regardless of the verdict, the case certainly would have reverted back to the Iberian Peninsula, since the papal court was only committed to considering the appeal. Yet, given that the scribe had produced the record on the behalf of the Templar *procurator*, the omission of this outcome could indeed suggest that the papal court upheld the citizens' exceptions.[65] Since Font Rius wrote, additional evidence has surfaced proving that the Roman court upheld the citizens' appeal. In June 1266, appearing in the court of Cardinal Gottifridus of Saint George, the citizen representatives pledged to pay the Templars a penalty of 50 pounds if their exceptions were found to be false.[66] The document reviews the exceptions and stipulates the citizens' argument that they should not have to answer to the claims of the Templars until their exceptions are redressed. The defensive stance of the citizens recorded, the next day Gottifridus established the future course of litigation of the case, thus formally ending the handling of the appeal by the papal court. He named the abbot of Poblet and a deacon from Lleida as judges over the case,

63 The election of Clement IV was not the cause, as Garinus secured control while Urban IV remained pope.

64 J.M. Font Rius, "El procès de formació de les Costums de Tortosa," in this *Estudis*, 141-162 (151-152).

65 The scribe identifies himself and his patron in the last lines of the transcript for the proceedings under Garinus. ACA – C, perg. J I, no. 1796: "Unde ego infrascriptus Sauniarius predictam interlocutoriam scripsi et exinde feci publicum instrumentum pro habet frater Arnaldus."

66 ACA – C, perg. J I, no. 1849 (22 Jun 1266); Pagarolas, *Els Templers*, vol. 2, doc. 113. The parchment at ACA has been lost and only Bofarull's manuscript transcription is now available in the archive's reference section (vol. 5, f. 10v-12r).

which was to be heard near the castle of Flix, in the diocese of Tortosa.[67] No documentary evidence concerning those proceedings, or whether they even in fact took place, has come to light.

By the end of 1268, the handling of the case had taken a new turn. Ramon de Valls, official of Lleida, had been designated by Clement IV to judge the case. The scant documentation indicates that Ramon had begun hearing witness testimony by that date.[68] This process under Ramon de Valls was aborted, however, due to the pope's death. The new pope, Gregory X, wrote to the citizens of Tortosa in April of 1272 (although the letter was not received until August) to inform them that he had ordered Pere Bernat, officer of the bishop of Lleida, to begin the process anew, under roughly the same guidelines as had been stipulated by Clement.[69]

Thus, by the early 1270s, over a decade after this latest round of litigation had commenced, no end for the case appeared in sight. Both sides appeared determined to proceed with litigation, and no evidence has surfaced to suggest that compromise was being considered at this point. As a price for maintaining their stance on the exceptions, the citizens agreed to the 50-pound penalty.

Yet, it is not difficult to imagine that by this point the resolve of both parties to proceed with the case may well have been flagging. The Templars were well aware of the ability of the citizens to delay the process of litigation, while the *universitas* must have feared that it was only a matter of time before the Templars would succeed in redirecting attention to the central issue of the case. A compromise enabling each side to avoid further costly litigation yet secure the most important of their demands must have seemed a most attractive option.

MECHANISMS OF COMPROMISE

By August 1272, the sides had achieved just such reconciliation, expressed as the *Composició de Frare Galart de Josà*, which bore the name of Tortosa's Templar commander. The agreement granted the lords precisely what they had been demanding for more than a decade:

67 ACA – C, perg. J I, no. 1850 (23 Jun 1266); Pagarolas, *Els Templers*, vol. 2, doc. 114.

68 AGP – Arm. 4: Tortosa, perg. no. 15 (17 Dec 1268); Pagarolas, *Els Templers,* vol. 2, doc. 115.

69 ACA – C, perg. J I, no. 2119 (6 Aug 1272); Pagarolas, *Els Templers*, vol. 2, doc. 119.

The said parts want and agree that all the customs, those which the said citizens have used and use. [let] the said citizens give those [customs] to the brothers of the Temple and to Ramon de Montcada … [and] let all of those customs be repealed (*reprovades*) which contain faults (*peccat continguen en si*) and through which justice is able to be revoked (*puxa ésser enbargada*).[70]

Shortly, the citizens would hand over their written customary laws, known as the *Consuetudines Dertuse civitatis*, to be reviewed and corrected by an independent tribunal of legal experts, yielding the official *Costums de Tortosa* in 1279.[71] While the primary seigniorial objective would be fulfilled by this review of the customary laws, the advantages for citizens in the compromise were, in fact, more numerous. Most importantly, they would earn the lords' recognition of the municipal regime and the jurisdiction of its court, confirmation of Tortosa's customary law as the primarily legal force within the town, and an impartial review of their customary law. A decade earlier, the citizens would have had no influence over the review process, much less the right to elect one of the delegates to the tribunal. That the citizens were able to safeguard the most fundamental underpinnings of their judicial autonomy and guarantee the maintenance of various customs, helps explain why they finally agreed to come to the bargaining table with the lords and sign on to this procedure of review after so many years of wrangling.

A more subtle yet crucial gain was that the lords theoretically lost any ability to penetrate the municipal jurisdiction over civil cases in the future. The agreement references but does not describe in detail the jurisdictional division debated by the lords and citizens up to the *Sentència de Flix*. It was thus presupposed by the *Composició* that the citizens would have their own justices who would judge criminal and civil cases along with the *veguer*, except for cases to be held in seigniorial court in the *suda*.[72] The agreement established a number of customary regulations concerning judicial procedure, signifying that they would not be subjected to verification by the custom -review process.

70 The *Composició de Gallart de Josà* survives in Latin and Catalan versions. ACA – C, perg. J I, no. 2136 and ACTE – Perg., Reg. 452, Privilegis II, no. 52; *Costums de Tortosa*, J. Massip (Barcelona, 1996) , doc. 7 (Catalan version).

71 Font Rius, "El procès," 156-159. See also his "Las redacciones," 180-182.

72 The *Consuetudines/Costums* 1.1.9, ed. Massip, 10, defers to the *Sentencia de Flix* by name: "Encara volgren e consentiren que·ls juhiïs sien dels ciutadans de la ciutat de Tortosa exceptats los juhiïs de la Çuda que són contenguts en la carta que o feyta a Flix."

In pecuniary or civil cases, for example, the *veguer* of Tortosa along with two elected citizens would decide the case as, the agreement makes it known, had been observed in the past.[73] Notorious and public wrong doers would be incarcerated by the *veguer*, who would judge in tandem with the elected citizens, even if no accuser presented himself. Under normal circumstances, however, if no accuser appeared, the *veguer* and appointed citizens were to enact pecuniary and not corporal punishment, except when the guilty party was insolvent. The *veguer* and citizens were also granted jurisdiction over some specific types of cases of a particularly sensitive nature to the community: the agreement itemizes nine different categories of offenses to be received by an inquisition in the *curia*.[74]

Seigniorial involvement in such cases under municipal jurisdiction was carefully limited by the agreement. Bailiffs were only granted the right to intervene if the town *curia* had either decided not to hear the case or delayed longer than three days.[75] Such intervention, however, would be conducted only under the purview of the town *curia* and, consequently, could not amount to a usurpation of municipal judicial authority.[76] If the *veguer* unnecessarily delayed a case or refused to exercise judgment, the citizens present in the *curia*

73 Appeals would be handled by two or more new chosen citizens. The appointed citizens would judge in tandem with the *veguer*. Oliver, *Historia del derecho*, vol. 1, 112, first suggested that these elected citizens were the forerunners of the judges who appear in the *Costums*, a logical supposition. On this matter, see also, *ibid*, vol. 3, 616. The most useful recent work conducted on the inquisitorial process described by the *Composició* is J. Cerdá Ruiz-Funes, "La 'Inquisició' en las Costums de Tortosa," in *Costums de Tortosa. Estudis* (Tortosa, 1979), 379-406. These regulations appear essentially unchanged in the *Consuetudines/ Costums* at 3.1.1, ed. Massip, 131.

74 Massip, *La gestació*, 100, counts nine, as have other scholars: all offenses committed against women, especially if attacked in their abodes, malicious acts causing damage to trees, vines, and wheat, thefts, destruction of houses, forgeries, killings of big and small livestock, and obstruction of roads.

75 *Composició*: "e si aquels ciutadans per lo veguer amonestats III vegades, enaxí que no sien feytes en I dia les amonestacions, mas sien feytes dins III dies, en los quals cort sia tenguda, e no volran fer la inquisició, que en aquest cas lo veguer ab los batles del Temple e de Muntcada pusca fer la inquisició e punir los malfeytors." Previous scholarship has tended to skip over this provision of the agreement, even when merely summarizing the agreement's comments, perhaps due to its complexity and the difficulty of its interpretation. E.g., Massip, *La gestació*, 100, who offers the most detailed summary of each item in the *Composició* mentions only that this provision called for the elected citizens to be selected from those who came to court, omitting the rest.

76 *Composició*: "Encara volgren e consentiren que per quals que sie feyta inquisició, per los ciutadans tant solament o per lo veguer e els batles damunt dits, que en tot cas juren los inquisidors en presència de tots aquels qui seran en la cort que jutgaran e faran feelment la inquisició."

would have the right to conduct independently an inquisition and ruling. As with other aspects of the *Composició,* this chain of judicial authority was expressed with greater clarity yet went essentially unchanged in the *Costums.*[77]

Although the *Sentència de Flix* remained an authoritative text along with other foundational documents such as the population charter in the *Consuetudines* and *Costums*, elements of its provisions underwent modification in the *Composició*.[78] Most importantly, the charter of compromise pronounced the primacy of Tortosa's own customary law, rejecting the Templars' rendition of the legal hierarchy established by the *Sentència de Flix* that they had maintained throughout the 1260s. Tortosa's written customs would be consulted first, then the *Usatges de Barcelona*, and finally common law.[79] In winning seigniorial consent for the first time to the priority of Tortosa's own customary law, the *Composició* was a watershed in the history of Tortosa's legal development. It guaranteed that the city would be subject to the legal regulations that had evolved out of its post-conquest reconstruction and not an external body of law such as the *Usatges*.

The lords and citizens enacted other governmental provisions while the tribunal's review was under way. The most important of these agreements was arguably the *Carta de la Paeria*, drafted on 12 May 1275. It formalized and regularized the policing functions of the municipal administration, supplementing the rules and regulations established in the *Composició* three

77 *Costums* 1.1.10-1.1.12, ed. Massip, 10-11, which upholds the executory power of the *veguer* in civil and criminal cases, and provides that the bailiff of Montcada, then the bailiff or commander of the Temple, should fulfil this role if the *veguer* is unable. All of these failing, the citizens are granted executory power over these actions.

78 Other judicial opinions and agreements that were outmoded in certain respects nevertheless retained legal force and were cited in the codifications. For example, Pere I's ruling of 1199 is cited by the *Costums* (but curiously not the *Consuetudines*) for establishing the exemptions from submission to curial justice to be enjoyed by clerics. *Costums* 3.6.2, ed. Massip, 149.

79 *Costums,* Preface, ed. Massip, 3. This rule appears with greater frequency and greater verbosity in the *Consuetudines*: e.g., in a comparatively longer passage in the Preface as well as at 3.1.1, *de judiciis*, ed. Massip, 3 and 132, respectively.

years earlier and taking shape under the tribunal's review of the *Consuetudines*.[80] Significantly, for the first time in the extant documentation, the *probi homines* appear as a corporate, elected body governed by specific procedural norms. As under the *Composició*, municipal curial jurisdiction encompassed low and high justice for non-seigniorial cases, civil matters as well as "iudicio sanguinis." The *curia* was to conduct inquisitions continuously on all except for holy days. Although the *veguer* would act with the *paers* in some aspects of the inquisitional process, the *paers* were solely responsible for the most important judicial duties of the *curia*, examining witnesses and even pronouncing verdicts. This role was fitting given that they were representatives of the *universitas* and not directly appointed by the lords.[81] Each year "in perpetuum" at the feast of the Ascension, the *Carta* dictates, the *universitas* would elect sixteen "pròmens," four from each primary urban parish, from which the *veguer* would choose four to serve with him as *paers* or *paciarii*.[82] While serving alongside the *paers* in the *curia*'s tribunal, the burden of making arrests and executing curial rulings fell on the *veguer*'s shoulders alone.

On the other hand, the involvement of the *veguer* in the investiture of the *paers* and the performance of their duties appears to have been carefully arranged

80 ACA – C, perg. J I, no. 2234 (2 copies); ACTE – Perg., Reg. 430, Privilegis II, no. 19 and Perg., Reg. 481, Privilegis III, no. 25 (12 May 1275). Only the Catalan version of the document which appears in the supplemental documentation to the *Costums* has been published: Oliver, *Historia del derecho*, vol. 4, 496-500, and Massip, ed. *Costums,* doc. 8. See Pagarolas, *Templers*, vol. 2, doc. 126. On 11 May 1275, the *universitas* elected representatives to make the pact. ACA – C, perg. J I, no. 2233; Pagarolas, *Els Templers*, vol. 2, doc. 125. Massip, *La gestació,* 101-104 summarizes the document's provisions. For instance, the *Carta* applied all of the nine conditions under which the curial tribunal could launch an inquisition included in the *Composició*, adding only a final condition for incidents of threatening with a knife. The *Carta* also restipulated the *Composició*'s provision that only those convicted of violent crimes lacking the ability to pay the fine should receive corporal punishment. ACTE – Perg., Reg. 430, Privilegis II, no. 19: "Officium autem paciariorum consistet in hiis que sequntur. videlicet quod in illis casibus in quibus potest et debet fiere inquisicio in civitate Dertusense secundum formam composicionis facte inter dominacionem et universitatem Dertusensem. que compositio incipit …. ipsi paciarii simul cum vicario faciant inquisiciones bene et fideliter et inquirant etiam contra omnes illos qui dicentur cultellos extraxisse contra alique vel aliquos in civitate Dertusense et in eius terminis."

81 Cf. Massip, *La gestació*, 101. ACTE – Perg., Reg. 430, Privilegis II, no. 19: "set ipsi paciarii per se examinent dicta testium diligenter."

82 ACTE – Perg., Reg. 207, Privilegis II, no. 19: "Volunt et concedunt quod ipsa universitas quolibet anno in perpetuum in festo Ascensionis domini. eligat sexdecim probos homines bonos et legales de qualibet parrochia civitatis scilicet quatuor. et hoc facto vocet ad se vicarium qui pro tempore fuerit. et ipse vicarius incontinenti de illis sexdecim nominatis a civibus eligat quatuor scilicet de qualibet parrochia unum."

in the *Carta de la Paeria* so as to protect seigniorial interests.[83] The *paers*, as deputies ultimately chosen by the *veguer*, were not held to swear an oath to the lords, but pledged "in the presence of the *veguer* and those who were there that they would act … faithfully in inquisitions and in all things pertaining to their offices, and from that point they were entitled *paciarii*." Yet, the Montcadas' traditional right to appoint the *veguer* nevertheless seems to have been used to exert a certain degree of influence over the offices of the *paers*. It was clearly mandated in the *Carta* that the *veguer* had to swear his oath to the Montcada bailiff, in the presence of the Templar bailiff and citizens, before electing the four *paers*.[84] As the most prominent municipal officers, the *veguer* and *paers* were also to receive oaths from all of Tortosa's inhabitants to assist them in the performance of their official duties. These oaths, however, were deliberately crafted so as not to run counter to the fidelity to the lords owed by the townspeople.[85]

The *Carta de la Paeria* thus engineered a careful balance between seigniorial privileged authority and municipal executive power. The lords agreed to broaden the spectrum of cases to be heard by the municipal *curia* in return for a stake in judicial revenues. The lords tended to enjoy the dominant share of judicial proceeds, in return for their delegation of certain jurisdictional prerogatives, while the municipality's stake was justified by the services it provided. Apart from the proceeds retained by the court for its own maintenance, the *paers* were granted a portion as remuneration for "their

83 Ruiz-Funes, "La 'Inquisició' en las Costums de Tortosa," 390.

84 ACTE – Perg., Reg. 207, Privilegis II, no. 19: "et vicarius antequam eligat predictos quatuor, iuret ad sancta dei evangelia in posse baiuli nobilis Raymundi de Montecathano et in presentia baiuli templi et civium in civitate inferius ubi congregati fuerint. quod tam in eligendis ipsis quatuor quam etiam in inquisicionibus faciendis bene et fideliter se habeat per totum illum annum. et predicti quatuor cives electi per vicarium iurent in presencia vicarii et aliorum qui ibi erunt quod in inquisicionibus et in omnibus aliis que spectant ad eorum officium bene et fideliter se gerant et habebant et deinceps vocentur paciarii." The lords had devoted attention to reviewing and confirming the *veguer*'s oath the previous year. ACTE – Perg., Reg. 508, Privilegis, III, no. 57 (14 Mar 1274): "super sacramento vicarii Dertusensi prestanorum in inquisicionibus faciendis." Regulations regarding the *veguer*'s oath appear at *Consuetudines/Costums* 1.3.1, ed. Massip, 19.

85 ACTE – Perg., Reg. 207, Privilegis II, no. 19: "Item volunt et concedunt quod omnes cives et habitatores Dertusensis et eius termini. iurent vicario et paciarii. quod *salvo iure et fidelitate dominacionis* bene et fideliter iuvent eos in exsequendo officio suo cum per eos fuerint requisiti. et deffendant ipsos in perpetuum. si aliquis vellet offendere eos aliquo tempore racione officii paciarie quod gesserunt" (my emphasis).

work."[86] For cases involving weapons, the lords would receive two-thirds and the *paers* one-third of the fines. The *paers* would also receive one-third from all other general inquisitional incomes as well as one-fourth of the established seigniorial fifth of the "proceeds of condemnation" assigned to the *curia*.[87]

Such jurisdictional resolutions accomplished by the *Carta de la Paeria* relieved the tribunal from having to revisit these particularly conflictive issues. Reiterating the provisions of the *Sentència de Flix* and the *Composició,* the *Carta* maintained that certain members of the seigniorial "families" were not to be judged by the *veguer* and the *paers*, while other peripheral members would be subject to curial justice just like other citizens. This resolution was then transmitted by a provision enacted by the lords and *universitas* in 1279 and included in the first book of the *Costums*, which exempted the lords from the custom that dictated that any inhabitant of Tortosa guilty of murder would be executed. Ramon de Montcada and his knights would be subject to the *Usatges de Barcelona* rather than the customs applied by the municipal court, while the Templars would take responsibility for dealing with cases in accordance with their own regulations.[88] Thanks to the continued validity of such supplemental agreements, the costums did not touch the settled issue of the lords' legal status.

86 ACTE – Perg., Reg. 207, Privilegis II, no. 19*:* "et paciarii habeant quartam partem *pro suo labore* ... de qua condempnacione dominacio habeat duas partes. et paciarii habeant terciam partem *pro suo labore"* (my emphasis).

87 Not to be confused with the *curia*'s own one-fifth share of monetary penalties (*Consuetudines* 1.5.1, which is revised but not altered dramatically in the *Costums*, and 6.1.19, "quinta part per justicia"), the seigniorial one-fifth of judicial fines was well established in both the *Consuetudines* and the *Costums*: e.g., 9.29.15 (ed. Massip, 524), which appears identically in both codifications, "que la seynoria nuula pena per aquests usatges demanar no pot, sinó la quinta part d'aytant com serà, condempnat lo demanat."

88 *Costums* 1.1.14, ed. Massip, 12. This act overrode the provision of the *Carta de la Paeria*, which stipulated that only those who could not pay the monetary fine would be liable to corporal punishment. Such punishment, however, would only be enacted in the city, a restriction even more powerfully expressed in the *Costums* (1.1.16, ed. Massip, 13).

CONFIGURING THE TRIBUNAL AND NEGOTIATING THE REVISION

The foundation of the compromise was agreement on the composition of the tribunal charged with reviewing the customs.[89] The lords and citizens both agreed to submit to the tribunal's ruling under a penalty of 2000 gold pieces (*aureos*).[90] There could be little doubt that both parties were thus fully committed to this process of arbitration: the citizens had turned their backs on the strategy of stalling and disruption and accepted this review process as fair and in their best interests. Bishop-elect Arnau de Jardí of Tortosa would head the tribunal, while Jaspert de Botonat, abbot of Sant Feliu of Girona, and Ramon de Besalú, canon of Lleida, were chosen to represent the lords and the *universitas*, respectively.[91] The parties recognized the importance of Bishop Arnau as the tribunal's lone impartial member. The document even went to lengths to account for his replacement should he die before the judgment had been rendered.[92]

Agreement on these elements of the tribunal's design did not, however, end conflict between the litigants over the manner in which the judges would conduct their review. Upon submission of the *Consuetudines* to the tribunal by the citizens, for example, the Templars and Ramon de Montcada petitioned for a copy, arguing that it would enable them and their advisors to study the

89 Font Rius, "El procès," 152-153. The supplemental agreement appears as the first document of the judicial opinion issued by the tribunal on 15 May 1277: ACTE – (Reg. 453), Privilegis II, no. 53; Massip, *La gestació,* doc. 10, 334-336.

90 The surety paid by the lords was delivered by Guillem de Sentmenat, whose family had long served in the office. Interestingly, Pere de Tamarit, the same man who had helped prepare the codex of *Consuetudines Dertuse* for submission to the tribunal, also was charged with the delivery of the 2000 gold pieces for the *universitas*. See below for further discussion.

91 See Font Rius, "El procès," 153. Despite the fact that the *universitas* held its meetings in the cathedral choir, the see of Tortosa had ostensibly remained neutral throughout the long dispute, and thus had good relations with both sides.

92 The bishop was in fact able to see the entire process through, even though the tribunal did suffer alteration: Jaspert de Botonat was called away to the Roman *curia* in the winter of 1274 and replaced by Master Domingo de Teruel, then sacrist of Teruel, a substitution initially opposed by the citizen syndicates. ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 8; Massip, *La gestació,* doc. 10, 341-342. The delegates were required to swear to be fair to both sides: "Et arbitri dixerunt que prestetur iuramentum de calupnia ab utraque parte." Domingo, like Ramon de Besalú, was mostly likely deliberately chosen because he was an outsider. He later appears far outside Tortosa's ambit as a parish rector (of "Fababux"), serving as one of the tithe collectors in the diocese of Zaragoza: Citalica: *Rationes Decimarum Hispaniae* (1279-80). Tomo II - Aragón y Navarra, ed. J. Rius Serra (Barcelona, 1947), f. 216.

customs and formulate their allegations as the tribunal conducted its work.[93] After considering their motion, Bishop Arnau agreed in August 1273, that the customs and usages submitted by the citizens should in fact be copied in order that he might retain the original.[94] Thus, the first identifiable authorized ("a partibus aprobatum") copy of the *Consuetudines* was produced roughly one year after the *Composició* and supplementary agreement.[95] And for the first time, the lords were anticipating receipt of the customary laws for which they had so ardently fought for many years.[96]

This request for a copy of the *Consuetudines* by the lords was part of a wider struggle between the lords and citizens over influencing the review process. Rather than "hardly explicable," as Massip has characterized it, this conflict arose as a result of continued insecurity on the part of the citizens concerning

93 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 6; Massip, *La gestació,* 338. Also, found separately at ACTE – Perg., Reg. 152, Comú I, no. 9: "pro parte predicti magistri et nobilis Raymundi de Montechatano fuit petitum que iamdicte consuetudines et usatici traderentur eisdem. Et dictus dominus episcopus deliberato consilio respondit que predicte consuetudines et usatici debeant primitus translatari ut originale penes ipsum remaneret." The citizens had submitted the *Consuetudines*, prepared by the notaries Pere Tamarit and Pere Gil, as forty paper booklets rather than as a codex. ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 2; Massip, *La gestació,* 338-339.

94 Although the bishop was likely following prudent standard procedure in demanding this copy, he seems also to have sensed the danger of submitting the court's only copy to the parties most critical of the local law and eager to change aspects of it. It is not clear from the documentation whether the *universitas* had already made a parchment codex copy of the *Consuetudines* before delivering the paper booklets to the bishop's court, or what copies constitute the earliest and most reliable extant parchment codices. See Massip, ed. *Costums*, XXIII – XXXVII. It appears the bishop retained the book and returned the paper booklets to the citizens, since further references by the tribunal to the customs materials in their possession and under review mention a *librum* rather than *quaterni:* e.g., a court record from the following October refers to the "consuetudines in libro dictarum consuetudinum appositarum." ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 7; Massip, *La gestació,* 340. Also, ACTE – Perg., Reg. 67, Bisbe i Capitol, no. 26.

95 The tribunal also relied on supplementary evidence. If the lords' claims that certain customs used in Tortosa were abusive were to be properly assessed, other customary law, particularly the *Usatges de Barcelona*, which had been advanced by the *Sentencia de Flix* as an unflawed collection, needed to be considered in comparison. Accordingly, in November of 1273, convoked as usual in the cathedral choir, a book with the seals of the *universitas* and the minor friars of Tortosa containing customs and documents as well as the *Usatges* were delivered as supplementary materials to the bishop by the cathedral prior. ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 5; Massip, *La gestació,* 338.

96 Their gratification, however, was not immediate. Over a month later, the lords appeared at court complaining that they still had not received their promised copy of the customs and that this was unfairly cramping their four-month window of preparation, which had been set to end at the upcoming feast of the Purification of the Virgin (8 Feb 1274). ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 7; Massip, *La gestació,* 340-341.

seigniorial influence over the tribunal's over.[97] The citizen representatives contended that the lords were not qualified to judge how the customs rendered to the tribunal in written form were applied and therefore should not be allowed to participate directly in the review process. They wanted the tribunal to conduct its work autonomously and, furthermore, asserted that the need to expedite the review did not permit such involvement from either side.[98] Ignoring this first allegation, the lords asserted simply that the citizens were obliged to hand over the customs and that the examination would be conducted in the time allotted and was not their concern.[99] Furthermore, if the citizens would not allow this proper seigniorial involvement in the review of the customs, they risked being charged with contempt and losing their indemnity of 2000 gold pieces.[100]

Bishop Arnau laid this latest altercation to rest by imposing a new procedural step for the review process. The lords would have the rights to submit argumentation advocating certain changes to the *Consuetudines*, and the citizens could respond with a counter-argument. The tribunal would take this additional material into consideration when it drafted its ruling. This new procedure must have calmed the fears of the citizens that the impartial assessment of their customary laws had developed into the type of seigniorial review they had sought to avoid in the litigation of the previous decade.[101] It also, however, opened a door to a long preparatory phase for the tribunal's work that would delay considerably the delivery of its final judicial opinion.

97 Massip, *La gestació,* 105-106: "es produeix un altercat poc explicable."

98 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 7; Massip, *La gestació,* 340: "protestati fuerunt quod si in consuetudinibus civitatis Dertuse oblatis per eos domino episcopo predicto sit aliqua consuetudo vel consuetudines in libro dictarum consuetudinum appositarum vel aposite ipsis inscientibus et ignoratibus ipsa consuetudo vel consuetudines sint ac si date vel oblate non fuissent et possent dicere et allegare suo loco et tempore contra consuetudinem sive consuetudines ipsis ignorantibus et inscientibus ibi aposita vel apositas."

99 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 7: "dicentibus et protestantibus ex adverso que protestacio predicta non est ulterius admitenda cum ipsi tempus habuerint per arbitros assignatum inffra quod debuerunt sicut et fecerunt dare sive tradere consuetudines sue civitatis scriptas ipsi episcopo dertusensis inffra quod tempus debuerunt eas diligenter examinare."

100 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 7: "procuratores sive sindici universitatis inciderant propter hoc quia sic fuerant protestati in penam apositam in compromisso quare ipsi super hoc protestabantur de iure suo."

101 See Massip, *La gestació,* 106.

The review process had thus been transformed from a sterile examination by an insulated panel of experts into a collaborative enterprise in which each side would present testimony to manipulate the procedure in its favor. As conducted by the court, this phase would be much more protracted than what had been envisioned by Bishop Arnau, with numerous rounds of rebuttals and counter-rebuttals.

After their experts had spent weeks poring over their copy of the *Consuetudines*, the lords delivered fifteen booklets of *reprobationes* against the city's customs to Bishop Arnau in early April 1274.[102] Arnau then passed copies of this material to the representatives of the city so that they might formulate their rebuttals.[103] In July, the citizens appeared before the tribunal to submit their eight booklets of counter-arguments that explained how the customs slandered by the lords were in fact "reasonable and just, without any defect, and in no way impeding justice."[104] By September, both sides agreed to appointing arbitrators, who would appear in early November.[105] Yet, in mid-November, the lords' *procuratores* were able to secure copies of the rebuttals submitted by the citizens in order to prepare their own written responses and additional allegations, by the first of January. The citizen representatives received a copy and were given two more months to formulate their responses to this latest rebuttal by the lords.[106] The citizen representatives delayed their submission, however, and did not deliver their sixteen booklets of rebuttal material until the beginning of October.[107] The lords requested a copy of this latest submission, presumably in hopes of drafting another written response,

102 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 9; Massip, *La gestació,* 343. Some of these booklets were "unfinished": "quindecim quaternos quorum aliqui non sunt completi in quibus continentur reprobaciones quas pars altera fecerant contra consuetudines."

103 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 8; Massip, *La gestació,* 342.

104 ACTE – Perg., Reg. 216, Comú III, no. 1 (2 Jul 1274): "octo quaternos papiri continentes raciones et iura et etiam allegaciones quibus dicti sindici dicunt consuetudines quas pars Templi et Raimundi de Montecatano. dixit inscriptis reprobatoriis que tradidit continere percatum et iusticiam impedire esse raccionabiles atque iuste et non continere in se peccatum nec per eas iusticia impeditur. Continentur etiam ibi plures alie raciones quas inducunt ad deffendendum et corroborandum consuetudines quas dederunt in scriptis."

105 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 10; Massip, *La gestació,* 343.

106 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 12; Massip, *La gestació,* 344.

107 ACTE – Perg., Reg. 453, Privilegis II, no. 53, docs. 13, 14, and 15; Massip, *La gestació,* 344-345.

but, at this point, Bishop Arnau halted the submission process, already well over a year after this added phase had begun.

At this point, the tribunal set out to review and verify the privileges and other documents presented by each side in support of its argumentation and rebuttals.[108] Neither party made any serious challenge to the authenticity of the documentation presented by its opponent.[109] Subsequent to these sessions, the tribunal ceased its interaction with the lords or citizens aside from preparations for the delivery of the final ruling.[110]

LORD AND CITIZENS UNDER THE COSTUMS

The tribunal's review forced the *universitas* to scale back protections to its authority in some important respects. Most significantly, a number of customs seeking to insulate the *curia* from seigniorial influence were eliminated by the tribunal as excessive. One such custom, citing the population charter for support, dictated that lords and their agents could not accuse Jewish or Christian residents of civil or criminal crimes. This law was flawed, the tribunal ruled, since it denied wronged lords any sort of legal recourse.[111]

Nevertheless, the *universitas* did succeed in the larger goal of preserving the autonomy and core executive powers of the municipal regime in the *Costums.*

108 ACTE – Perg., Reg. 453, Privilegis II, no. 53, doc. 17; Massip, *La gestació,* 347-350. Documents appointing representatives for either side were also presented for a second time.

109 This is most clearly indicated by the decisions made by the lords and citizens not to renounce their right to a thorough examination of the submitted evidence. The lords affirmed that they technically had the right to revisit the issue of evidence verification "in examinacione negocii," but did not appear inclined to exercise this option. The citizens were wary of the days required to conduct the verification and voiced their preference for renouncing their right and concluding the case. Massip, *La gestació,* 349: "Quibus sic per actis utraque pars renunciavit produccioni instrumentorum et privilegiorum sic tamen que pars dominacionis dixit per salvum remaneret sibi que possent quando videretur arbitros comprobare translata oblata cum originalibus parte altera proponentis que illud non poteat sibi salvare cum dies predicta sunt assignata ad renunciandum et concludendum in causa." Both sides did request copies of all the submitted evidence. This was a chance for the lords and citizens to stock their respective archives with documentation that would most certainly prove useful in future disputes.

110 ACTE – Perg., Reg. 453, Privilegis II, no. 53, docs. 18-21; Massip, *La gestació,* 350-351.

111 E.g.,. *Consuetudines/Costums* 1.1.13, ed. Massip, 11-12: "Encara, seynós ne lur lochtenent, per si ne per altre, no poden acusar civil ni criminal nul hom jueu ni xrestian en Tortosa ne en sos términs." The tribunal's ruling reads as follows: "repprobant in eo quod dicitur quod dominacio si fiat sibi iniuria non possit per se vel per alium acusare malefactores criminaliter vel civiliter cum in hoc peccatum contineat et impediat iusticiam."

The informal management of municipal incomes by the *prohoms* witnessed as early as the late-twelfth century was institutionalized: a group of elected leading men would manage the holdings of the *universitas*. Through these agents, the *universitas* would be able to buy, sell, or pawn land and other possessions for its "honor e profit."[112] The *Costums* also regularized the collection by the *universitas* of municipal levies (*comunes*) from residents, including under certain circumstances, Jews, Muslims, knights, and clerics.[113] Furthermore, the *universitas* successfully asserted its status as the regulator over the imposition of seigniorial and royal levies and, as intermediary, claimed a share of the revenues. In order to impose the *bovatge* legally, for example, lords first had to voice their intentions to the municipal *curia*.[114] Two or three *prohoms*, acting as civilian judges, would consider the proposal. If they consented to it and no objections had been made to the *veguer*, then the levy would be paid after a deduction of a one-fifth share for the *curia*.[115] Although citizens condemned to death, to pay fines, or who were liable for debts were to be sent to the three separate prisons in the *suda*, they would be handled by the *veguer* rather than by strictly seigniorial agents.[116]

Overall, the vast majority of the customary law submitted by the *universitas* was retained without significant alterations or deletions. Accordingly, the inauguration of the *Costums* was not as disruptive an event in the administrative development of town governmental institutions as one might suspect. In this respect, the outcome of the dispute represented somewhat of a defeat for the seigniorial regime. Despite having gained their long sought after right to subject the customary laws to scrutiny and alteration and brought to a

112 *Costums* 1.1.22, ed. Massip, 16

113 *Costums* 1.1.18-1.1.22, ed. Massip, 13-16. There was no significant change in these measures from the *Consuetudines*. The lords, presumably, were the only exempted "inhabitants," although this is not explicitly stated in the customs. The clerics protested this measure, claiming exemption, which developed into a dispute with the *universitas*. See below for discussion. For a broader discussion of these municipal taxes, generally categorized as "talles" or "imposicions," in thirteenth-century Catalonia, see P. Ortí M. Sánchez, and M. Turull, "La génesis de la fiscalidad municipal en Cataluña," *Revista d'Història Medieval* 7 (1996): 115-134, at 117-123.

114 On the origins of this levy, see P. Orti Gost, "La primera articulación del estado feudal en Cataluña a través de un impuesto: el *bovaje* (ss. XII-XIII)," *Hispania* 61/3, núm. 209 (2001): 967-998.

115 *Costums* 1.2.1-1.2.2, ed. Massip, 17.

116 *Costums* 1.3.5, ed. Massip, 21-22.

close these costly rounds of litigation, the lords emerged from the process facing a fully legitimized municipal regime for the first time since assuming administrative control from the monarchy.

At the same time, the inauguration of the *Costums* gave the lords and citizens a common legal referent for managing their own disputes and permitted them to ally, for the first time, in enforcing these mutually agreeable legal norms in the local environment for their mutual self-interest.[117] Indeed, the municipal regime often received seigniorial support of one kind or another in its effort to protect or extending its jurisdictional rights. Even before the tribunal had concluded its work, the process seems to have ushered in new possibilities for collaboration between the long-time litigants. In a dispute mediated by the same Bishop Arnau of Tortosa in August of 1277, for instance, the *universitas* clashed with the Hospitallers over the exercise of justice over malefactors caught along lands neighboring the district of Amposta.[118] Since the lords would share in the revenues derived from these judicial rights and had an interest in defending the integrity of Tortosa's district, they supported the municipality in this conflict, although, in this case, the bishop ruled in favor of the Hospitallers.[119]

117 The lords generally tended to lodge grievances and resolve disputes with the citizens in tandem. E.g., a dispute formally arbitrated between the lords and the *universitas* in 1285. Such disputes commonly reference the customs of Tortosa directly, if, at times, only to reject their protections: "et renunciarunt spacio decem dierum in consuetudine Dertuse contentorum et omni alii iuri et consuetudini contra presens compromissum in totum vel in partem venientibus." ACA – C, perg. P II, no. 478 (21 May 1285).

118 ACTE – Perg., Reg. 1694, Ulldecona I, no. 2 (31 Aug 1277): "quod cum questio verteretur inter fratrem Guillardum de Iosa quondam comendatorem Dertusensem procuratorio nomine fratris B. de Podio Alto quondam comendatoris Mirabeti et gerentis vice magistri templi in Catalonia et Aragonia et Berengarium Pinol. baiulum nobilis Raimundi de Montecatheno de speciali mandato ipsius nobilis nomine dominacionis Dertusensi et P. de Tamarito civem Dertusensem procuratorio nomine universitatis proborum hominum civitatis Dertuse ex una parte et fratrem Berengarium de Almenara quondam Castellanum Emposte et fratres hospitalis Iherosolimitani ex altera super iusticiis faciendis de malefactoribus captis et capiendis de Rivo de Uldecona usque ad torrentem de za Galera."

119 ACTE – Perg., Reg. 1694, Ulldecona I, no. 2: "cum constet nobis partem hospitalis plenius probavisse de iure suo quam partem dominacionis et universsitatis Dertusensi … super iure puniendi malefactores delinquentes de Rivo de Uldicona usque ad Torrentem de sa Galera et exercendi in eosdem iusticias corporales ab inpetitione dictorum procuratorum dominacionis et universsitatis Dertusensi … absolvimus prefatis procuratoribus dominacionis et universitatis Dertusensi et ipsi dominationi et universitati Dertusensi sentencialiter arbitrando super pena predicta super eisdem perpetuum scilencium imponentes."

In another incident, Tortosa's bishop found his role reversed when he and his clergy protested the requirement of the *Costums* that they contribute to municipal levies. In September of 1289, the *universitas* challenged the see's claim of exemption from the taxation of tithes, first-fruits, and other ecclesiastical incomes before the seigniorial *curia* in the *suda*.[120] In this case, the *universitas* found an ally in the lords, whose court upheld the municipality's right to demand "tallias seu collectas" from all ecclesiastical persons. Guillem Ramon de Montcada pledged the assistance of his bailiff in enforcing the ruling.[121] At the same time, the *universitas* was not unaware of the risks of appealing for seigniorial support in this way. It thus went to pains to clarify that their right was based on Tortosa's customs rather than on seigniorial consent, lest seigniorial assistance in this effort be misconstrued as an ominous precedent of dependence in the future.[122] Yet, once such safeguards were in place, the citizens were not shy to draw on lords' shared interest and obligation to enforce the regulations of the *Costums.* Indeed, the lords and *universitas* can be witnessed acting in tandem to uphold the *Costums* even in internal conflicts between the citizenry.[123]

120 Earlier the clerics of Tortosa had appealed to the papacy for aid in protecting their exempt status. The bishop of Tarragona was also implicated since the tithes and first-fruits also pertained to his archiepiscopal province. ACA – C, perg. A II, no. 328 (3 Sep 1289).

121 No mention is made of the earlier arbitration in the *suda*'s seigniorial court in the document. ACTE – Perg., Reg. 63, Bisbe i Capítol, no. 20 (12 Oct 1289): "Promitimus facere fieri et compleri a baiulo nostro Dertuse quocienscumque et in continenti cum propter hoc a vobis seu a sindicis vel procuratoribus vestris ad hoc electis fuerimus requisiti. et in absencia nostra ex nunc ut ex tunc mandamus firmiter baiulo nostro civitatis predicte."

122 ACTE – Perg., Reg. 63, Bisbe i Capítol, no. 20: "Licet hec omnia sine confessu et licencia nostra possitis facere secundum consuetudines Dertusenses."

123 In 1285, for example, the *universitas* joined the lords in an attempt to disband a secret society or guild of men in Tortosa, which they viewed as a violation of local customary law. ACA – C, perg. P II, no. 453 (22 Jan 1285): "pogues venit asa seynoria et ala ciutat de Tortosa gran don e gran escandel e dien encara que dasso era feyt preiuditi a la seynoria e a la ciutat maiorment con sia estat fet contra custum escrita de Tortosa." In May of the same year, the men who had allegedly sworn the oath collectively entered into arbitration with the *universitas* and *dominació* of Tortosa, electing *procuratores* to negotiate on their behalf. ACA – C, perg. P II, no. 475 (9 May 1285).

CONCLUSIONS

While the actual work of the revision may have been surprisingly conservative in its manipulation of the customary laws developed by the citizens, the influence of the entire course of the debate cannot be overestimated. This collision, as one scholar has written, of "two medieval conceptions of law, seigniorial and municipal" clearly had an indelible impact on Tortosa's legal environment and institutions of municipal governance.[124] The dispute encouraged Tortosa's municipal institutions and customary law to be nurtured away from seigniorial oversight for decades, and, as we have seen, its resolution by an impartial tribunal ensured the preservation of privileges and practices that ran counter to seigniorial interests. With such a long gestation, when Tortosa's customary law was finally codified it possessed a size and sophistication unparalleled in other codifications of municipal customary law in the Crown of Aragon, with significant implications for the future administrative history of the lands under its jurisdiction. Although the seigniorial phase of Tortosa's jurisdictional history was ended by the full resumption of royal administration under Jaume II, institutional memory of the town's century of seigniorial rule thus persisted for generations to come as a result of the lords' influence on the *Costums de Tortosa*. And, just as the comital settlement charter had served to limit the exercise of seigniorial authority following the royal exodus, so too the seigniorial context that shaped the official form of Tortosa's customary laws would continue to exert a pronounced influence over the town's administration under royal control.

Jurisdictional changes clearly had been instrumental in causing the disputes. Indeed, in Catalonia as well as wider Iberia, cities under royal lordship usually led the way in municipal development, and tended to be emulated on later by seigniorial cities, sometimes with considerable resistance.[125] Lleida, by comparison, although conquered at the same time and settled by an analogous population charter, developed a different jurisdictional climate that turned out to be more supportive of communal self-governance and local customary laws. The monarchy decided to retain majority rights of overlordship, but

124 R. Gibert, *Historia general del Derecho Español* (Granada, 1968), 106.

125 Font Rius, *Orígenes del régimen municipal*, 470-471. For an important broader perspective on communal development, see C. Wickham, *Community and clientele in twelfth-century Tuscany: the origins of the rural commune in the plain of Lucca* (Oxford, 1998), 192-241.