

# Andorra: Introduction to a Customary Legal System

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"Here is another book on Andorra", said Brutails in 1904 in the preface to his book *La Coutume d'Andorre*. Unfortunately for English-speaking jurists these words would have had little significance in 1904 and probably just as little in 1969. Writings in English on Andorra are to all intents and purposes non-existent; yet Andorra is a rich field for study for the comparative lawyer and an area that arouses the curiosity of others.<sup>1</sup> In this article it is proposed to fill a gap on the English legal map by presenting in a summary form some information on the legal history, the legal system and the administrative organization of Andorra, the largest in area yet least heavily populated of the "small states" of Europe.

## I. INTRODUCTION

### A. History

From the thirteenth century till today, the basis of legal and political life in Andorra has continued essentially unchanged. While neighbouring feudal domains disappeared with social changes in Spain and France, Andorra has lived on in a forgotten age owing its peaceful existence to the protecting barrier of the surrounding Pyrenees and to its relative poverty.

Legend<sup>2</sup> would have it that Andorra was founded in the eighth century by Charlemagne to provide a buffer zone between France and the Moors. Be that as it may, for the purposes of legal study, the starting point can conveniently be fixed at 1007, when a document known as *Acta d'Ermengol I*, was drawn up. This set out the territorial limits of Andorra as they are recognized today.

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1. In languages other than English the main books on the law of Andorra are: *La Coutume d'Andorre*, J. A. Brutails; *Los Valles de Andorra*, B. Riberaygua Argelich; *Instituciones Políticas y Sociales de Andorra*, J. M. Vidal y Guitart; Andorra, *El Meu Pais* (a text used in Andorran schools).

2. *Les Llegendes d'Andorra* (ed. F.Fiter), p.13: ". . . a Andorra, Carlemany encara és més venerat, car ell fundà aquest Estat."

With the dissolution of Charlemagne's Empire, Andorra came fully<sup>3</sup> under the jurisdiction of the Count of Urgell<sup>4</sup> who, by the end of the tenth century was also the Count of Barcelona. In 1133 the then Count of Urgell made a gift of the Valleys of Andorra to the Bishop of Urgell. The war against the Arabs was still being waged in the south of the count's territory and consequently he had little time to think of Andorra or administer it effectively and the donation to the bishop was to a large degree only the legal recognition of what had for some time been the factual position: the bishop's influence in the valleys, which had been only spiritual at first, had increased gradually as the count's interest had lessened.

On becoming temporal ruler the bishop provided that the people of Andorra should have the right to the use and exploitation of the woods and pastures of the valleys, and in the *Concordia*<sup>5</sup> of 1162, it was stipulated, inter alia, that the bishop would send *batlles*<sup>6</sup> or officers of law to Andorra and also that the Andorrans would pay an annual tribute of six hams to the bishop (by the *Concordia* of 1176, provision was made for an additional tribute of 100 *denaris* to be paid every two years).

After the gift of Andorra to the Bishop of Urgell the next event of interest occurred when the bishop gave certain feudal rights over Andorra to the Viscount of Caboet. These rights passed by marriage (c. 1185) to the House of Castellbò and in 1206 from Castellbò to the House of Foix.<sup>7</sup> Disputes then arose between the House of Foix and the See of Urgell because the count tried to exercise exclusive control over the valleys, and these disputes gave rise to the *Pareatge* of 1278. This *Pareatge* is an arbitral award<sup>8</sup> and the basic constitutional document of today's Andorra.

3. Within the feudal system Andorra was probably always submitted to the jurisdiction of the Court of Urgell but with the emperor as ultimate overlord. As the influence of the empire decreased at the end of the ninth and during the tenth centuries, the influence of the local count increased to the point where his power was absolute. cp. J. M. Vidal y Guitart; *Instituciones Politicas y Sociales de Andorra*, pp. 34-5.

4. Seo de Urgell is a small Spanish town near the Spanish Andorran border. It has been the seat of a bishop since the sixth century.

5. An agreement between the See at Urgell and the Andorrans.

6. The origin of this Catalan word is the same as that of "Bailiff" in English.

7. Foix is an ancient town in the French Pyrenees between Andorra and Toulouse. It received its first count in 1002. The Count of Foix became a vassal of the King of France in 1229.

8. It is interesting to note that even in the middle ages international arbitration was frequently resorted to, and in this case, it is equally interesting to note that the arbitrators were to decide as *amiables compositeurs*.

The result of the arbitration as set out in the *Pareatge* was that the disputed territories were placed under the feudal dominion of two lords, the Bishop of Urgell and the Count of Foix. The Bishop of Urgell was to be lord of Andorra in spiritual matters and the Count of Foix lord in temporal matters. Clause 1 of the award provided for the payment in perpetuity of the *questia* (or tribute) to the two lords in alternate years, the award fixing the amount of the tribute in the case of the bishop, though it did not do so in the case of the count. Clause two provided for the joint administration of the territory by the *batlles* of the two lords, the hearing of cases, and the sharing of penalties and fees received by the *batlles* in proportion of one-fourth to the Bishop and three-fourths to the Count. The third clause gave both lords the right to recruit infantry and cavalry from Andorra (except when the one wished to fight the other), and by clause four "the Count and his successors were to hold their rights in fief perpetually in favour of the Bishop." Of particular importance in the thirteenth century was clause nine which charged the bishop with having the arbitral award confirmed by the Pope<sup>9</sup> within four years and which subjected him, in the event of non-compliance, to a heavy penalty, payment of which was guaranteed by the King of Aragon. After the acceptance of the award, trouble broke out again between the two parties and the papal confirmation of the 1278 *Pareatge* was questioned. Again the parties submitted their dispute to arbitration and in the *Pareatge* of 1288 another award was made covering the disputed matters, resolving problems of interpretation of the earlier award, and incidentally, creating the post of notaries in Andorra.<sup>10</sup>

The fourteenth century saw the official language of Andorra changed from Latin to Catalan, Andorrans granted the power to defend their land against all-comers, and the Houses of Foix and Bearn united.

In 1589 Henry II, Count of Foix and Bearn, inherited the French Crown and became Henry IV of France. This change in status of their overlord caused uneasy feelings in the minds of the people of Andorra who feared losing their many privileges and fiscal immunities;<sup>11</sup> but these fears were allayed when the privileges were confirmed and to a certain degree extended by Louis XIII, Henry's son, in 1642, 1644 and 1655. The next change in the status of

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9. The usual provision in an agreement of this kind to which the church was a party.

10. Clause 4.

11. E.g. exemption from duty on foodstuffs, leather and metal goods imported from and through France; exemption from military dues and military service.

the French lord came with the French Revolution, and once again the Andorrans feared for their position because when the revolutionary government renounced France's feudal rights over the valleys and refused<sup>12</sup> to accept the *questia* offered, Andorra lost its privileges and exemptions. Andorra had lost its French prince. However, by imperial decree of 1806 Napoleon, as the successor to Charlemagne, acceded to a request to regularise relations, and accepted the customary dues the King of France had received as Prince of Andorra.

On the ecclesiastical side, 1835 saw trouble in Spain and for several years a French bishop was directed to receive the episcopal dues from Andorra.

Today the princes' powers are still much as provided in 1278. The Bishop of Urgell exercises spiritual power and the French prince, the President of France, directs the temporal affairs of the principality, and the French government represents Andorra abroad.

In practice the princes delegate many of their powers to their permanent delegates. In the case of the French prince, this is the Prefect of the Department of the Oriental Pyrenees of France, and in the case of the bishop, the Vicar General of the Urgell Diocese. These permanent delegates work in collaboration (as prescribed in the 1278 *Pareatge*) and act in their princes' names. Below them, or according to some authorities below the princes and ranking parallel with the permanent delegates, are the *veguers*, who are personally chosen by the princes<sup>13</sup> and who have their offices within Andorra. Responsible for public order and the administration of justice with the right jointly to make decrees, the *veguers* are the highest authorities within Andorra, being also the heads of the armed force<sup>14</sup> and the police, and sitting as judges in the highest criminal court.

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12. J.M. Vidal y Guitart, *Instituciones Politicas y Sociales de Andorra*, p.64.

13. The French *veguer* is usually a person with legal training.

14. In Andorra the militia is formed of all able-bodied men between ages sixteen and sixty. The *veguers* are the commanders-in-chief but each parish has its captains and *deseners* elected for one year terms. The captains who are subordinate to the *veguers*, are responsible for the maintenance of law and order in their parish, the general preparedness of their men in so far as their arms and munitions are concerned, and for the notification to their superior of the commission of crime in their area. To a large extent the parish officers have civil functions but the *Pareatge* of 1278 also provided for the militia to have military duties. cp. XV J. Soc. Comp. Legis. 270 re military service in the Channel Islands.

Theoretically the General Council of Andorra has only administrative functions but in practice it has become a sort of parliament and the *veguers* have the delicate task of watching over its workings to see that the exclusive sphere of authority of the co-princes is not encroached upon. Before entering into office the *veguers* must be accepted by the General Council and take the oath of loyalty.

### B. *The Questia*

From the twelfth century the Andorrans had the right to exploit the woods and pastures of Andorra in return for the rendering of military service<sup>15</sup> and the payment of judicial dues and the *questia* (or tribute). The *questia* probably had its origin in a voluntary payment which with repetition came to be recognised as customary and hence compulsory. Certainly, it was regarded as a due when the 1278 *Pareatge* was drawn up.

Though the *questia* to which the Count of Foix was entitled was not specified in the *Pareatge*, a limit was set to it in later years, and now the amounts to be paid are fixed at 450 pesetas for the bishop and 960 francs<sup>16</sup> for the French Prince. The *questia* is paid out of parish funds and levied by the General Council on the bases of persons who have taken their first communion, and on the ownership of livestock.

In addition to the *questia*, the bishop receives the annual gift in kind referred to in the *Concordia* of 1162,<sup>17</sup> and the ecclesiastical tribute which amounts to about 5,000 pesetas per year. Feudal relationships were unequal but they were also reciprocal and today in return for the dues paid, Andorra benefits greatly from the fiscal and other privileges she has striven so hard to retain. Formerly the exemptions were important because of the poverty of the valleys as basic foodstuffs could not have been purchased if they had carried customs duties. Nowadays they are important because of the tourist trade.

### C. *The Llar*<sup>18</sup>

Central to the Andorran way of life and a study of Andorran law is the *llar*, the family home. With a strongly religious feeling the Andorran sees his home as representing the family to the interests of which those of the individual are subordinated. This at-

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15. The last occasion was to the Bishop of Urgell in the fifteenth century.

16. 450 pesetas-approx. U.S. \$8-; 960 francs-approx. U.S. \$200-.

17. Now one ham, two cheeses, two capons and two partridges per parish.

18. Cp. *The Lar* of ancient Rome.

tachment to the *llar*, and its role in the life of the valleys is reflected in laws such as those providing for:

1. agricultural holdings, which form the principal family wealth, to be inherited in toto by the eldest son (*hereu*), other members of the house being subordinate to him on the death of his father;
2. a daughter (*pubilla*) to become head of the house if there are no sons to take;
3. a foreigner marrying a *pubilla* to receive an early grant of Andorran nationality so that the traditional family may be continued;<sup>19</sup>
4. the protection of the family property in hard times, i.e. *la venta a carta de gracia* (a sale with right of repurchase). The *carta de gracia* is an institution of great antiquity and interest. Though it served the same purpose as a mortgage, it has the unusual characteristic in Andorra of creating a perpetual right of redemption. Further it was common for the right of repurchase to be sold *a carta de gracia*, so that many complex divisions of interests in land arose. For instance: A sells his garden to B with a right to repurchase; A then sells his right to repurchase to C with a right to repurchase and B sells his interest to D with a right of repurchase, etc.

Repurchasing has often taken place centuries after the original sale and a complex legal situation is then aggravated (1) by an inadequate system of record-keeping affecting not only transactions relating to the land but also the succession rights of the various families, and (2) by problems arising from the devaluation of money.

## II. SOURCES OF LAW

The legislative power is in the princes acting jointly and is exercised by decree which takes effect after having received the for-

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19. In the normal course of events Andorran nationality is very difficult to obtain (only after three generations' residence, in fact) and foreigners residing in Andorra pay an annual tax—*l'estrany*. In spite of these factors there are now more foreigners resident in the valleys than Andorrans, which means that there are relatively few persons entitled to vote, as the law requires electors to be Andorran, male and over age twenty-five.

In 1940 one sixth of the people in Andorra were foreigners, in 1960 half were foreigners, in 1965, 8660 of the 13623 inhabitants were foreigners.

There are more Andorrans presently living outside Andorra than in it; a particularly large enclave resides in Beziers, France.

mal approval of both princes. Though legislation is the primary source of law in Andorra and though there are statutes or decrees laying down general principles of action in particular fields of law, such as civil and criminal procedure, legislation is in fact of much less importance than custom which is the source of the bulk of Andorran law.

In spite of the antiquity of the customs and usages, their exact nature and extent is still imprecise. This results partly from the fact that the system is one of customary law and partly from the fact that there are few records kept of the law even in those areas where some degree of precision would be possible.

Today the repositories of the customary law are recognised as being:

1. popular tradition,
2. the *Manual Digest*,
3. the *Politar*, and
4. the twentieth century classic by Brutails: *La Coutume d'Andorre*.

It is characteristic of custom that it is to be found in the minds of the people habitually guided in their actions by it, and investigation of this source is greatly aided by the older members of the community who not only have a long personal experience to look back on, but who are also likely to have a better knowledge of the principles that regulated the conduct of their forbears.<sup>20</sup>

In Andorra the official authorities on the customary law are the *batlles*, and the General Council which can, on request, make a declaration of the law in the form of a *decret-avis*.<sup>21</sup> Any such declaration must state the general principles of law relating to the matter being investigated and not the answer to the disputed legal point. It might be said that the law is what the General Council declare it to be. If, however, its declarations were of an irresponsible or arbitrary nature they would not be of the law, which by its very character has a continuity and traditional logic, and in any case the council's declaration is not binding on the courts.

Memory and observation are not the only guides to the customary law. In 1748, at the request of the *Comú General* of Andorra, a doctor of laws, Antonio Fiter i Rossell of Andorra, wrote *The Manual Digest of the Neutral Valleys of Andorra*. This is the fundamental book in Andorran life fixing the form of administrative

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20. This reliance on personal memory provides a built-in system for digesting and rationalizing the law.

21. In the criminal court this role of the General Council is played by the *Raonadors* cp. *Infra System of Courts. B. Criminal Jurisdiction*.

and judicial organisation in the valleys and providing for the protection of their neutrality.<sup>22</sup> The book is a collection of local customs divided into six chapters, of which the second and third in particular deal with legal matters, while the sixth chapter provides maxims for good government which are general in nature but based on sound common sense.<sup>23</sup>

At present-day sessions of the General Council and of the *Tribunal de Corts* the original copy of *The Manual Digest* is placed on the official table as a testimony of the past and a guide in deliberations.

Another book on Andorran customs entitled *El Politar Andorra* was published in 1763. Though some new material is included in this volume it is basically a simplified version of *The Manual Digest*, but is nevertheless frequently used for reference.

Brutails' book published in 1904 is in a different class. It is the result of several years' study of Andorran customary law by an eminent jurist working under the aegis of the Andorran authorities. What the book lacks in traditional authority, it makes up for in scholarship, and recognition of its importance is evidenced by the fact that it was republished (1966) as the first book in the series *Monumenta Andorrana*.

The principal source of law in Andorra is unquestionably "custom", but in practice knowing this does not help very much as the difficult question of sources of law when custom is silent on a point often arises. When custom is silent on a particular question of law and when that matter is not covered by legislation, to what body of law, if any, does one look for the solution? While agreeing on the importance of both Catalan and Roman law in this situation, jurists are not agreed on which of the two is the more relevant,

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22. At the *Casa de la Vall* (the "Council House and Seat of Justice" of Andorra) the following lines are inscribed beneath the Andorran shield:

"Suspice: sunt vallis neutris stemmata; suntque, Regna quibus gaudet nobiliora tegi, Singula si Populos alios, Andorra, bearunt, Quidni juncta feren aurea secla tibi?"

Andorra has known twelve centuries of peace.

23. E.g. Maxim 22 and the accompanying comment are "Don't proliferate ordinances and resolutions but rather maintain rigorously as much as possible that which is old and wise; otherwise the law will fall into disrepute and be not observed, and become confused;" and Maxim 18 "Always avoid disputes with the delegates of the princes and shun vexatious arguments concerning jurisdiction." Perhaps it is through the observance of such principles that Andorra has retained its medieval status and the concomitant privileges.

and perhaps there is no conclusive answer as the order of importance may vary according to the area of law under consideration.

As is usual in a customary law system, the laws relating to property and the family are more highly developed than the laws in other fields, the law having evolved in a period when the communities were based strongly on the family and when commerce in the modern sense was unknown. Supplementing the law of real property could best be done by referring to the body of law of a neighbouring community which in modern Andorra would mean a reference to Catalan law.<sup>24</sup> Family matters, on the other hand, are regulated exclusively by the canon law.

Catalan law is a derivation of Roman law, so in the general case, as between Catalan and Roman law the order of importance may not be of great moment, and the less so since in certain cases where the problem concerns an area of law of twentieth century development, neither of them can provide an appropriate solution. In these cases either French or Spanish law will be referred to. When the F.H.A.S.A.<sup>25</sup> was established in 1930 the incorporating documents designated French as the governing law; and in criminal law observers say the *Tribunal de Corts* is strongly influenced by the dispositions of the Spanish penal code. In many respects Catalan and Spanish law are in a favoured position. The links of language and race of Andorra are with Catalonia; the easiest access to the valleys always was and still is through Spain; the prince with power in spiritual matters is Spanish and lives on the Andorran border in Catalonia, and the currency of the Andorran budget is Spanish pesetas, though trading is done indiscriminately in pesetas and French francs. Furthermore, students of law from Andorra study in Barcelona.

In Southern Europe generally in pre-feudal times the sources of law were:

1. Roman legal compilations,
2. written customs,
3. local legislation, and
4. oral tradition,

and in feudal times the relevant law for Andorra, as for Catalonia, was that of the Frankish Empire. Like the law in force in western Spain this was a blending of Roman law and Germanic custom.

Roman law as the main system of law had broken down by the ninth century, and Latin was becoming more and more the monop-

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24. Catalan law is today one of the "foral" laws of Spain cp. art. 12 of the Spanish Civil Code.

25. Forces Hidroélectriques d'Andorra, Societat Anònima.

oly of the clergy who were developing a body of law of their own. Small states grew up with the collapse of the Carolingian Empire and oral tradition was increasingly referred to for solutions to legal problems. Feudal chiefs became judges for the purpose not only of exercising effective control, but also for earning money. They were not lawyers and they performed their judicial duties with nothing more than a knowledge of local tradition to guide them. This led to the takeover by customary law from Roman law. Each community developed its own customs and usages as it grew less familiar with Roman law and though customs tended to be similar within a region,<sup>26</sup> even in the field of real property law there was often no similarity at all between the rules of neighboring communities. Furthermore in the absence of texts the law was very flexible.

In the area around Andorra the customary law was strongly influenced by Roman law, because in Catalonia the Institutes of Justinian were accepted as the law to supplement local custom, and a reference to "good sense and equity" was read as a reference to Roman law. Because of this and because of strong ties with both the south of France and Italy, Roman law was more important in Barcelona in the twelfth century, than in the south of France. Considered in this light Andorran law clearly had strong links with Roman law throughout the middle ages and before, but it has always had even stronger links with Barcelona and all the Roman law received in Andorra has come via Barcelona, and it would be safe to say, via Catalan law. For several reasons, therefore, Catalan law is the most important body of law after local custom.

### III. SYSTEM OF COURTS

#### A. *Civil Jurisdiction*

At first instance cases are heard by a *batlle*, assisted by a notary (who acts as secretary-court clerk) and a *nuncio* (court orderly-sheriff). There are two *batlles*; they must both be Andorrans, and are chosen one by each prince or his *veguer* from a list drawn up by the General Council on the basis of recommendations from the parishes. In all their activities, judicial and non-judicial the *batlles* are subordinate to the *veguers*.

The notaries are nominated by the princes—one by each<sup>27</sup>—and though they need not be legally trained they must be Andorrans. In their public capacity the notaries work with the *batlle* of the prince who chose them; in their private capacity they play

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26. E.g. East Pyrenees.

27. There are now two notaries—originally there was only one.

much the same role in the community as the notary in France.

The customary law does not favour lawyers and by decree of March 1883 it was provided in this connection "That the customs and usages of the valleys do not permit the exercise of such offices which readily disturb the well-being of families and prevent the friendly settlement of disputes." However, persons in the valleys do receive honoraria for giving legal advice and anyone is allowed to plead for another.

Rules of procedure, *instructa*, for the *batlles* to follow in both civil and criminal matters were drawn up in 1740 by the *corts*. Judgment is usually oral, provision is made for the *batlle* to seek assistance and have time for reflection where the case is difficult of decision. There are two *batlles* and therefore two courts of first instance in civil matters.<sup>28</sup> A plaintiff may choose before which one he will bring his case but once seized of the matter the *batlle* chosen has exclusive jurisdiction.

From the court of the *batlle* there is a right of appeal to the *jutge d'apelacions*, who is appointed for life by the French prince and the Episcopal prince alternately. The court is in Andorra but the judge may reside outside the country and adjudicate on the basis of documents forwarded to him by the *batlle*, and furthermore the judge has the power to delegate his functions. However judgment must be delivered in Andorra. From the judge of appeals contested decisions are taken to one of the two highest civil tribunals. The duality here is the same as at first instance — the Supreme Episcopal Tribunal at Urgell (Spain) and the Supreme Court of Andorra at Perpignan<sup>29</sup> (France). In practice most cases on final appeal are heard by the court at Perpignan which is constituted by a president and four judge assessors. These five are the President of the Civil Court<sup>30</sup> of Perpignan as president, the French *veguer*, a councillor of the Prefecture of the Oriental Pyrenees, a member of the Perpignan bar, and a person versed in the usages and language of Andorra.

### B. Criminal Jurisdiction

In criminal matters the *Tribunal de Corts* has exclusive jurisdiction and decides in first and final instance. The two *veguers*

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28. Parallel institutions are frequently encountered in Andorra. The post and telegraph services for instance are in duplicate with both France and Spain issuing stamps and receiving mail in Andorra and despatching it to the rest of the world via their own territories.

29. Replacing the Sovereign Council of Rouissillon (decree of 1888). Perpignan is the main town of the French Department of Pyrénées Orientales.

30. The Tribunal de grande instance.

and the judge of appeals hear the cases, assisted by the notaries, the *nuncios*, the *batlles*, and two representatives<sup>31</sup> of the *Consell general*. When the witnesses and the accused have been heard the *raonadors* address the court on the relevant customary law, and in certain cases intercede for the accused. The three judges then confer and decide on the sentence. If the *veguers* are agreed the judge is bound by their decision. If they are not agreed, the judge has the deciding power but he must accept one or other of the sentences proposed by the *veguers*. The judgment is then drawn up and signed by the judge of appeals, and signed by the two *veguers*.

As exceptions to the theoretically exclusive jurisdiction of the *Tribunal de Corts* it is to be noted that the *batlles* function as "judges d'instruction" and that they and certain of the administrative bodies have jurisdiction over minor criminal offenses. From such judgments appeal is to the *Tribunal de Corts*.

The *Tribunal de Corts* is regarded as the highest court in the land. Not only is it a body that unites the two princes' power but also it sits in Andorra, and traditionally Andorrans have great respect for it. Its use of ceremony is impressive, and the judgments inspire a righteous fear.<sup>32</sup> The court has unlimited jurisdiction, and its decisions are beyond challenge, except for the prerogative of mercy vested in the co-sovereigns as overlords.

### C. *Special Tribunals.*

*The "Visori."* In every case of violent death whether as the result of crime or accident, a *batlle*, a *nuncio*, a notary and a doctor go to the place of death to examine the body of the dead person, and perform the following formalities. When the *nuncio* discovers the body he calls out three times: "Dead man, get up; the law commands you," then when there is no answer he says: "If you are dead tell me who killed you." And finally "He is truly dead: he doesn't answer." The enquiry then continues in the usual way.

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31. The *Raonadors*; the origin of this name is in the Latin *ratio-cinor*.

32. Criminality was largely unknown till about the time Andorra became popular as a tourist resort. Even now the rate of crime is low (acts of hooliganism being the most frequently committed offences), but the recently-built prison is a sign of the times. Till the 1930's few foreigners entered the valleys and there was no police force, but in 1931 a force was created to maintain peace and order at a time when there were a large number of foreign workers in the valleys, and now there is a small body of police officers with responsibility for the registration of alien residents, maintenance of public order, and traffic control. The chief of police is nominated by the *veguers*.

The "*Visura*." This is a special tribunal concerned with the settling of disputes involving rural and urban servitudes (e.g. party walls and boundaries) and it decides *in loco*. Its jurisdiction extends to the repression of faulty administrative regulations and to litigation between *quarts* and parishes.<sup>33</sup> but it has no jurisdiction in ownership disputes.

From the decision at first instance by the two *consols* and two councillors of the parish concerned, an appeal is heard by the ten *consols* of the other parishes, and a second and final appeal is heard by the General Council assisted by a legal expert.

In judging the matter the tribunal is governed by rules known as *Ordinacions d'En Sanctacilia* and *Recognoverunt proceres* supplemented by local custom and the *Reforma* of 1866. Cases begin with a communication from the relevant authority ordering an individual to take a certain course of action e.g. rebuild a wall in its original form; but before commencing trial in the litigation, it is the practice to seek a settlement. If no agreement is reached, the judges come into the case as men of law and no longer act as conciliators; this stage in the proceedings is indicated by the judges putting on their tricorne hats.

#### IV. ADMINISTRATION

The *quart* is the basic administrative unit in Andorra. It is regulated entirely by custom and its council is chosen on the traditional basis of the *llar*.

Today only two parishes retain *quarts* and these *quarts* have only one executive officer—the *llevador*—who is assisted by a *manador*. These offices are held in rotation by all members of the council of the *quart* for a period of one year.

Above the *quart* is the parish and there are six of these in Andorra. Ecclesiastical matters are controlled by a priest nominated by the Bishop of Urgell, and that priest attends to the spiritual needs of the people and holds the *Registre Demografic*, which is the only record of births, deaths and marriages kept in Andorra.

As far as secular matters are concerned, the parishioners elect eight to ten councillors to direct the community affairs. The council is presided over by two officers known as *consols* (major and minor), and promulgates local ordinances, implements ordinances of the General Council that have local relevance, grants leases of communal property, and generally regulates the use of the communal land. This controlling of the communal lands is of particular importance since ninety-five percent of the land in the valleys falls into this category.<sup>34</sup>

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33. Cp. *infra*—Administration.

34. Cp. *infra*—Use of the Land.

Above the parish is the General Council of Andorra, with twenty-four members and a permanent executive body called the *Sindicato*. The councillors are elected, four by each parish, from among Andorran men over thirty years of age. Attendance at the monthly meetings is compulsory and absence or lateness is penalized. The General Council is in effect the governing body of the valleys and has subcommittees (sixteen in 1963) advising it on matters such as telecommunication, radio and television. It watches over the public domain (water, fish, game, woods, pastures and communal goods), arranges for the collection and payment of the *questia*, controls weights and measures, and generally takes care of the economics and good government of the land. The General Council also hears appeals from decisions taken by the councils of the *quarts* and parishes, and promulgates ordinances which, by ancient privilege, take effect without the approval of the ruling princes.

Every year in either June or July, the General Council publishes the customs tariffs for the following twelve months and the ordinances it has promulgated. The formula used on the publication of the ordinances states that at its June meeting (*Sancogesma*) the council has agreed to confirm the ordinances of past years in so far as they have remained unmodified, and to order the publication and observance of the new ordinances under pain of the *Cot de la terra*.<sup>35</sup>

The subject matter of the ordinances can be seen from the following which is a list of the titles of the ordinances published in 1968 and which typifies the council's legislative activities.

A. Councillors.

1. The flag, shield, and official insignia.
2. The official language.

B. Organisation and personal.

1. Motor vehicle register.
2. Demonstration plates for vehicles.
3. Documents for vehicles.

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35. When established in 1419 the General Council was known as *Consell de la Terra*. There are two kinds of *cot*, the *cot de la terra*, imposed by the General Council and amounting to twenty pesetas, and the *parish cot* amounting to eight pesetas. It is a fine of a fixed value imposed by administrative authorities. If the *cot* is not paid in eight days, it is subject to doubling, the *recot*. If payment is still not made the *batlle* can distraint on the offenders' goods. Administrative bodies can of course impose larger penalties but they are *sancios*, and not *cots* which by custom are invariable in amount.

## C. Social questions.

1. Benefits.
2. Formation of cultural, sporting and artistic societies.
3. Safe conditions of work.

## D. Public services.

1. Buildings projecting over rivers.
2. Width of rivers.
3. Construction of secondary roads.
4. Road borders.
5. Construction.
6. Maximum height of buildings.
7. Hotels, hostels, or apartment blocks.

## E. Agriculture.

1. Registration of dogs.
2. Hunting and fishing.

## F. Safety.

Gas installations.

When confronted with questions of exceptional importance or interest to the country the General Council convokes the *Assemblea Magna* which is formed by the council itself and several representatives from each parish, and decisions are taken by majority vote. Recent "Grand Assemblies" have considered matters concerning radio broadcasting and electricity.

Till the nineteenth century voting rights in Andorra were limited to the *caps grossos*, the heads of kinship groups,<sup>36</sup> and voting was done *viva voce*. As the result of a strong movement among the people in the 1860's voting patterns changed. The most significant aspect of the change was that all heads of houses (*caps de casa*) were given the vote. Since Andorran society is patriarchal, no women received the right to vote and the position has remained unchanged in this respect. The *Reforma* of 1866 provided that "every elector must be Andorran, resident of the parish in which he votes, head of his family, over twenty-five,<sup>37</sup> and in full command of his faculties". Foreigners married to *pubillas* can vote if they have been resident in the country for at least three years, and are not considered to have "looked upon the customs and affairs of the country with disdain or indifference. . ." And more stringent conditions were laid down as to who could be candidates

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36. Cp. the *quarts* of today.

37. The age of majority, cp. Catalan and Roman law.

for election. Those elected were obliged to serve. In 1933 this legislation was amended to give voting rights to all Andorran men over twenty-five years and to make all Andorran men over thirty eligible for election.

#### V. USE OF THE LAND

Andorra is a collection of rural communities. All land is valuable (only about four percent is suitable for cultivation) and its use is strictly regulated by the various administrative bodies in the valleys, and most importantly by the parishes, which control all communally owned land. Boundaries are marked by crosses and these crosses, together with the documents that record their sequence and the corresponding ownership rights, are very important as inter-parish boundary disputes have in the past been frequent.

The inhabitants of each parish have extensive rights over the communal property, including the grazing of their livestock and the taking of timber for their personal needs. In addition a parish can have similar rights over the land of another parish. These are known as *emprius* and generally relate to land on the boundary between two parishes over which each parish has reciprocal rights. However, an *empriu* may be unilateral and entirely within the boundaries of the other parish.

The communal land is classified as *rebaixants*, low level pastures over which the communal butcher and shepherds have special rights, or *comunals*, pastureland at a higher altitude which is reserved for the use of the inhabitants of the parish concerned, or *emprius* (usually the highest pastures).

In general the pastures are only for the use of Andorrans and for each area there is a fixed number of animals that can legally use it. To this the *conlloc* forms an exception. This practice allows entry to Andorra in summer of foreign livestock under the control of Andorrans but subject to the payment of a fee. The *estrany*, or tax on foreigners, is also levied on non-Andorran livestock for the right of passage through the territory.

In Andorra it is an offence to leave animals to graze untended. If this happens the person in whose field the animals are goes to the shepherd responsible and says: "I notify you of the *ban*."<sup>38</sup> The matter is then brought to the notice of the appropriate authorities within twenty-four hours. If not paid in eight days the fine (*cot*)<sup>39</sup> is doubled (*recot*).

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38. "T'intimo lo ban." *Ban* is a word of Germanic origin belonging to Frankish feudal law and means "penalty."

39. The *cot* is a fine payable regardless of damage. In the case of animal trespass the mere entry on the land constitutes the offence. If indemnification for loss is claimed the indemnity is known as *dany* and the procedure followed differs from that for the *cot*.

Subject to these practical rules concerning the carrying capacity of land, the times of the year for its exploitation, etc., the use of the land is free to Andorrans.

The main qualification to this general statement is that it is in the power of the parishes to grant special rights to individuals to the exclusion of the community at large.

In January there is in each parish the council of the *bohigues*. At this meeting the requests of individuals for the use of land are considered, and the council cannot refuse a parishioner his request except on the ground of the community interest, though the request of a person from another parish is granted by way of favour only. The land subject to a *bohiga* is usually poor and a requirement of the grant is that the holder of the right cultivates the land. This means that the grant is frequently self-extinguishing. The grantee enters on the land, burns the growth on it and cultivates the ground till the goodness of the ash is exhausted, which usually occurs after two harvests. The right of the grantee is not exclusive. He pays the Parish a fee for the *bohiga*, and between harvest and sowing time, the parishioners have rights of passage and grazing (*peixena*), and he cannot change the use of the *bohiga* without the council's consent.

If the land is reserved—made *de guarda*—the community has no general rights over it even between harvest and sowing and the owner can do what he likes, and may enclose it to prevent the entrance of straying animals, subject however, to a prohibition on building without the council's consent and to restrictions on sales to persons outside the parish. The owner of land *de guarda* pays the community for the land in the form of compensation for the loss of grass it will suffer.

Midway between a *bohiga* and land *de guarda* is land, subject to a *bohiga* in respect of which an exemption from *peixena* has been granted, i.e. the neighbours have assented to the council placing the land *de guarda* for a limited time. This is the usual condition of use of the heavily cultivated *rebaixants*.

Certain other property such as roads, rivers, and mines is public and owned by the co-princes and administered by the General Council.

Andorra is no longer isolated: For the first time in its history it is thrown open to the influences of the outside world and it remains to be seen whether the feudal constitution and the pre-eminence of the *llar* will provide a sufficient basis for the maintenance of its traditional laws and way of life.