RURAL STATUTES OF THE UPPER VICENZA AND RURAL CHARTERS OF TRENTINO: NOTES ON THE LEGAL EXPERIENCE OF RURAL BORDER COMMUNITIES

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Abstract: The examination of the statutes of some villages which straddle a border - that between Veneto and Trentino - who became early frontier constitutes an opportunity for a reflection on the legal experience of the pre-Alpine communities between Middle Ages and the modern age. Based on the comparison of these "charters", result of elementary autonomy of "villas" which at those attributed a strong identity value, the paper aims to investigate whether the existence of imposed (and disputed) territorial boundaries by central governments and institutions have or less had effect on the proper law of the local communities.

Keywords: Rural Statutes; Rural Charters; border; iura propria; vicenza prealps

This article, intended as a preliminary exploration of a subject believed to merit a more exhaustive study, regards the statutes of some communities of the Prealps[1] close to the portion of the Veneto-Trentino border from the eastern foothills of the Monti Lessini to the western slopes of the Asiago plateau. This area includes the main valleys of the Upper Vicenza (Val d'Agno, Val Leogra, Val Posina and Val d'Astico) on the southern front and the foothills of Lavarone, Folgaria, and Fugazze to the north, as well as the Terragnolo Valley and Vallarsa. Most people know of this area due to the events there during the First World War, but beginning in the thirteenth century its control became important for the military as well as trade, as it was an easy connecting route between Italy and the '*terra todescha*'.

The strategic importance of the '*tres strate…pro ire tridentum, unam per vallem levogre, aliam per vallem posine, et tertiam per vallem astici*' is confirmed in the Vicenza statutes of 1264[2]; and it will be the border disputes between the Mount Berico city and the feudal areas of the

[1] For the Vicenza area, our reference samples were principally the apparently unpublished statutes of the rural communities of Forni di Valdastico in 1542, Tonezza in 1557 and Arsiero in 1556 (for which, cfr. Biblioteca civica Bertoliana, *Carte Bortolan*, *C.B. 12, U.a. 55, fascc.* '*Forni*', '*Tonezza', 'Arsiè';* in addition to the Caltrano statutes in 1543 (published in A. Sandonà, *Leges et statuta communis Cartrani*. *Gli statuti di Caltrano del 1543*, Arcugnano 2014), Valli dei Conti in 1487 and Valli dei Signori in 1487 (published in A. Ranzolin, *Gli statuti di Valli dei Conti e Valli dei Signori 1487*, Valli del Pasubio 1987). For the Trentino area, we used the statutes of Folgaria in 1315 (cfr. *Carta ordinamentorum Folgarie contra dampnum dantem*, published in F. Giacomoni, *Carte di regola e statuti delle comunità rurali trentine,* I, Milano 1991, pp. 19-20), of Vallarsa in 1605 (cfr. *Carta di regola di Vallarsa*, published in Giacomoni, *Carte di regola e statuti* cit. (in this footnote), II, pp. 398-402), of Terragnolo in 1634 (*Capituli et ordini del comune di Terregnuol*, published in Giacomoni, *Carte di regola e statuti* cit. (in this footnote), II, pp. 635-644) and those of Trambileno in 1710 (cfr. *Capitoli del comun et università di Trambelleno*, published in Giacomoni, *Carte di regola e statuti* cit. (in this footnote), III, pp. 145-152).

[2] Cfr. § *'De stratis tridentini recuperandis'* in F. Lampertico (ed.), *Statuti del Comune di Vicenza MCCLXIV* (Monumenti storici publicati dalla R. Deputazione Veneta di storia patria), Venezia 1886. Cfr. also G.M. Varanini*, L'invenzione dei confini. Falsificazioni documentarie e identità comunitaria nella montagna veneta alla fine del medioevo e agli inizi dell'età moderna* in P. Guglielmotti (ed.), *Distinguere, separare, condividere. Confini nelle campagne dell'Italia medievale, Reti Medievali Rivista*, VII - 2006/1 (gennaio-giugno) http://www.dssg.unifi .it/_RM/rivista/saggi/Confi ni_Varanini.htm, p. 8.

Lagarina Valley (especially the Beseno Castle[3]) making the area an early frontier[4] and the subject in the following centuries (especially in the fifteenth and sixteenth centuries) of bitter disputes between the Republic of Venice and the higher-level Tyrolean institutions[5].

Legal practitioners did not fail to provide an arsenal of arguments to justify armed responses, or really to legitimise taking up arms.

Given the functional qualification of *limes* as an authority on partitioned areas, for the jurists of the Middle Ages and the early modern era, both canonists and civil lawyers, it could not always be considered in its linear dimension[6], but it certainly could be an element of the landscape that had its own consistency.

Thus, for Giovanni d'Andrea, a border could legitimately be marked out by the placement of boundary stones[7] (and therefore with a voluntary act), but also by natural (*per flumina et rivos aquarum*) or human-made features (*per castella et per villas*) to be considered, however, along with jurisdictional elements

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[3] Until 1465, it belonged to the Castelbarco family and then passed to the Counts of Trapp.

[4] Cfr. Varanini*, L'invenzione dei confini* cit. (see footnote 2), p. 14.

[5] J. E. Law, *A new Frontier: Venice and the Trentino in the early fifteenth Century*, in Id., *Venice and the Veneto in the Early Renaissance,* Aldershot-Burlington (USA)-Singapore-Sydney 2000, XVI, pp. 159-180; M. Bellabarba, *Giurisdizione e comunità: Folgaria contro Lastebasse. Un caso di conflitto confinario tra Impero asburgico e repubblica di Venezia (XVII-XVIII secolo)*, in «Acta Histriae» VII (1999), pp. 233-255); F. Caldogno, *Relazione delle alpi vicentine e de' passi e popoli loro* (1598), Vicenza, s.d., p. 92 (ristampa a cura dell'Istituto di cultura cimbra – Roana), *passim*; see also the collected articles in W. Panciera (ed.), *Questioni di confine e terre di frontiera in area veneta. Secoli XVI-XVIII,* Milano 2009; especially: S. Lavarda, '*Il primo confin contentioso'. Le montagne tra Astico e Posina in età moderna,* in *ivi,* pp. 117-147 and W. Panciera, *Il confine tra Veneto e Tirolo nella parte orientale dell'altopiano di Asiago tra il XVI e il XVIII secolo,* in *ivi,* pp. 147-181.

[6] Cfr. P. Marchetti, *Spazio politico e confini nella scienza giuridica del tardo medioevo*, in *Confini e frontiere nell'età moderna. Un confronto fra discipline*, A. Pastore (ed.), Milano 2007, pp. 70-76 and Id., *De Jurefinium. Diritto e confini tra tardo medioevo ed età moderna*, Milano 2001, pp. 51-55.

[7] Cfr. tit. *De parochiis et alienis parochianis, c. IIII Super eo*, n. 2, in Giovanni d'Andrea, *Ioannis Andreae I.C. Bononiensis...in tertium Decretalium librum Novella Commentaria*. *Ab exemplaribus variis per Petrum Vendramenum in pontificio Venetiarum foro Aduocatum…*, Venetiis 1612, f. 133 r.

> *'puta castrum vel villa sit unius dioecesis, citra vero sit alterius, quandoque etiam distinguuntur per montes, ut totus mons sit unius dioecesis, reliquus alterius, quandoque per cacumina montium, ut scilicet illa sint limina vel limitationes'*[8].

And it was, in fact, based on the multifaceted nature of the possible manifestation criteria of the border, judging by Niccolò de Tedeschi's remarks on his doubts about the legal system using things placed upon it[9].

While Baldo degli Ubaldi, in a dialectical perspective and supporting himself upon the distinct normativeness[10] of the confirmed facts, maintained that the legitimacy of a *limes* rested on its antiquity, which could be established on the basis of the memories of the people living in the place, and, in particular, their frequenting of the sites[11], and, only if it were impossible to establish the oldest ownership, it should have been the preferred option, the one that should have been able to claim a title upon which to base his right, but for Giacomo Del Pozzo it was the tangible exercise of the *iurisdictio*, its manifestation through actual military and fiscal control, the most convincing way to mark out the extent of each person's property[12].

Apparently quite significant, including for its partial, *ante litteram*

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[8] Cfr. tit. *De probationibus, c. XII Cum causam*, n. 2, in Giovanni d'Andrea, *Ioannis Andreae I.C. Bononiensis...in secundum Decretalium librum Novella Commentaria…*, Venetiis 1612, f. 125 r.

[9] Cfr. tit. *De parochiis et alienis parochianis*, c. *IIII Super eo,* n. 5, in Niccolò Tedeschi, *Abbatis Panormitani Commentaria in tertium decretalium librum. Quam plurium...*, Venetiis 1571, f. 179 v.

[10] Cfr. P. Grossi, *L'ordine giuridico medievale*, Bari 2006, pp. 183 ss.: Id., *Società, diritto, stato: un recupero per il diritto*, Milano 2006, p. 183.

[11] Cfr. *Cons.* CCCCXX, 5, in Baldo degli Ubaldi, *Baldi Vbaldi Perusini…Consiliorum siue responsorum...volumen primum...Hac nouissima editione recognitum…*Venetiis 1575, ff. 135v-136v.

[12] «*Limites territorii limites iurisdictionis limitant et contra*», cfr. Giacomo dal Pozzo, *Allegationes pro Comunitate terrae Valentiae contra Communittem Sancti Salvatoris, nn. 14-15,* in *Allegationes celeberrimorum doctissimorum quaeiuris consultorum Iacobi de Puteo. Pro Communitatet errae Valentiae contra Communitatem Sanctisalvatoris et Luchini de Curte pro Communitate Sancti Salvatoris, contra Communitate terrae Valentiae in materia confinium,* Venetiis 1574, f. 4r-v.

citation of arguments destined for great success in the following centuries, judging by the 1460 report from Trento legal practitioner Calepino Calepini[13], is the claim made by the Vicenza jurists assigned to defend the rightfulness of the *Serenissima* in the very border controversy in question, of a concept of '*confine naturale*' connected to the literary tradition that considered the Alps to be Italy's protection[14]. This concept was amplified in the propaganda skirmishes that accompanied the war between Maximillian I of Habsburg and the *Serenissima* at the end of the fifteenth century and that, on the imperial side, used the *tòpos* of the '*innate and endless hatred between the healthy forces of the Austrian people and the corrupt and insatiable breed of Venetians*'[15].

The rural border communities, in an inevitably turbulent conflict, found themselves doubly 'at the margins of the *civitas*'[16]; in the (double) sense, that is, of being the extreme physical *limes* of the city's jurisdiction and at the same time, for the very reason that they were located on a disputed border, barred from the benefits (at least in terms of security) that the enforcement of the order of a *civitas* should have provided them.

Although without any political influence, in the pursuit of their limited (but vital) interests as a community, and equipped with their own institutional physiognomy, they played their match, occasionally offering one or the other of the single contenders their *deditio*[17], defending (or

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[13] On the man and his work, cfr. L. Santarelli *Un giurista nel Quattrocento trentino: Calepino de Calepini* in *Studi trentini di scienze storiche. Sezione prima, Trento* 75 (1996), pp. 245-65.

[14] Cfr. J. Pizzeghello, *L'onesto accomodamento: il congresso di Rovereto del 1605 e il confine veneto sulle montagne vicentine*, Prato 2008;M. Bellabarba, *La giustizia ai confini: il principato vescovile di Trento agli inizi dell'età moderna*, Bologna 1996.

[15] Cfr. J. Pizzeghello, *Montagne contese. Il Congresso di Trento (1533-1535) e il confine veneto-trentino-tirolese sulle Prealpi vicentine*, in Studi Veneziani, 50 (2005), p. 69; G. M. Varanini, *La frontiera e la cerniera. La Vallagarina del Quattrocento vista da Venezia (e da Verona),* in *1500 circa. Landesausstellung 2000 - Mostra storica*, Milano 2000, pp. 455-460.

[16] For a 'multifocal' discussion of the phenomenon of otherness, cfr. A. A. Cassi (ed.), *Ai margini della* civitas*. Figure giuridiche dell'altro tra medioevo e futuro*, Soveria Mannelli 2013.

[17] The communities of Vallarsa, Terragnolo and Folgaria, for example, 'gave' themselves to Venice in 1438 in exchange for promises of tax exemptions, except that

usurping) from the adjacent towns their privileges to use the essential natural resources (water, pasturage, forests); sometimes even resorting to the ploy of falsifying documents[18] to define their appurtenances to their advantage; the meaning of the noun, as sources reveal, does not necessarily coincide with the definition as an area enclosed by borders, but rather alludes to '*pertinere*', or legal appurtenance[19].

The small local conflicts directly related to this situation were worsened by the alteration of the borders that were set during the clashes between the defenders of the *merum e mixtum imperium* and especially during the war of 1509[20], it had the singular effect of stimulating in the village communities, rather than resorting to the use of force (present regardless), the use of the law, as the surprising legal dynamism of these bodies shows: both in terms of the promotion of arbitration proceedings to define, in the absence of intervention by the *superior*, the issues with the adjacent towns, and mainly through the re-affirmation and reinforcement in written form of their statutes and privileges.

The statutory sources in question, aside from the disparate names they bear (*statuti, ordinamenti, capitoli, regole,* etc.), are all taxonomically referable to the name rural statues[21]: a typical prescriptive expression of

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they then just as spontaneously renewed their vows of loyalty to the House of Austria after the Venetians were defeated at Agnadello (1509). As for the Lagarina Valley, the Veneto claims found formal support in the testamentary dispositions of Azzone Castelbarco.

[18] Examples of document falsification by the communities of Recoaro, Rovegliana, Fongara and Durlo in Varanini*, L'invenzione dei confini,* cit, (see footnote 2), p. 16.

[19] Cfr. G. Cristiani, *L'origine del pensionatico. Il caso di Lerino*, in A. Morsoletto (ed.) *Studi e Fonti del Medioevo Vicentino e Veneto,* I, Vicenza 2010, p. 6.

[20] Cfr. G. Mantese, *Memorie storiche della chiesa vicentina,* II, Vicenza 1954, pp. 567.

[21] Cfr. A. Padoa Schioppa, *Storia del diritto in Europa. Dal medioevo all'età contemporanea,* Bologna 2007, pp. 176 s.; G. Rossi, *Dottrine giuridiche per un mondo complesso. Autonomia di ordinamenti e poteri pazionati in un* consilium *inedito di Tiberio Deciani per la comunità di Fiemme* (1580), in '*Ordo iuris'*. *Storia e forme dell'esperienza giuridica*, M. Sbriccoli et alii (ed.), Milano 2003, pp. 97-136; M. Ascheri, *I diritti del medioevo italiano. Secoli XI-XV,* Roma 2000, pp. 170 ss.; A. Solmi, *Storia del diritto italiano (3ª ed.),* Milano 1930, pp. 484 s.

Particularly with respect to the rural statutes of Vicentino, cfr. G. M. Varanini, *Statuti rurali e organizzazione del contado: alcune riflessioni comparative sui casi di Verona e di Vicenza*, in Id., *Comuni cittadini e stato regionale. Ricerche sulla Terraferma veneta nel*

the village communities[22] that, in the pluralistic experience of *ius commune*, falls with full rights into the heterogeneous *genus* of the *iura propria*[23]. The latter are rights (in an objective sense) that are an

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Quattrocento, Verona, 1992, pp. 57-72; F. Lampertico, *Degli statuti rurali nel vicentino*, in *Archivio Storico Italiano*, XIII, 2 (n.s.), Firenze 1861, pp. 60-66; for an updated bibliography on the rural statutes of Vicenza, cfr. Sandonà, *Leges et statutacommunis Cartrani* cit. (nota 1), p. 17, nota 13.

On the rural charters of Trento, M. Nequirito, *A norma di Regola: le comunità di villaggio trentine dal medioevo alla fine del '700*, Trento 2002; Id., *Delle carte di regola delle comunità trentine. Introduzione storica e repertorio bibliografico,* Mantova 1988, pp. 9-54; C. Nubola, *Comunità rurali del Principato vescovile di Trento. Carte di regola e diritti di vicinia (secoli XVI-XVIII),* in «Archivio Storico Ticinese», 132 (2002), pp. 221-237; E. Capuzzo,*Carte di regola e usi civici nel Trentino*, in Studi Trentini di Scienze Storiche 4 (1985), pp. 371-421; F. Giacomoni, *Introduzione* in *Carte di regola e statuti delle comunità rurali trentine, I,* Milano 1991, pp. X-XXV.

[22]Cfr. E. Cortese, *Il diritto nella storia medievale*. *II. Il Basso medioevo*, Roma 1995*,* pp. 254-256*;* G. Chittolini*, Città e contado nella tarda età comunale, a proposito di studi recenti,* in«Nuova Rivista Storica*»*, LIII (1969), pp. 706-719; Id., *Città, comunità e feudi negli Stati dell'Italia centrosettentrionale,* Milano 1983*,* pp. 105 ss., 211 ss.; Id., *La formazione dello Stato regionale e le istituzioni del contado,* Torino 1979, VII-XL, pp. 292 ss.; F. Schneider, *Le origini dei comuni rurali in Italia, pref. di E. Sestan,* Firenze 1980 *(*I[a] ediz.*Die Entstehungvon Burg und Landgemeinde,* Berlin 1924*);* G. Bognetti*, Studi sulle origini del comune rurale,* Milano 1978*;* G. Santini, *'I comuni di pieve' nel medioevo italiano. Contributo alla storia dei comuni rurali*, Milano 1964; A. Solmi*, Sulle origini del comune rurale nel Medio Evo,* in «Rivista italiana di sociologia»*,* XV (1911), pp.655-673*;* Id., *Comune rurale,* in *Enciclopedia italiana, XI,* Roma 1929*,* pp. 25-26.

[23] Cfr. C. Storti Storchi, *Appunti in tema di* 'potestas condendi statuta', in G. Chittolini, D. Willoweit (ed.), *Statuti città territori in Italia e Germania tra Medioevo ed Età moderna*, Bologna 2001, pp. 319-343; ead., *Gli statuti tra autonomie e centralizzazioni*, in *Il diritto per la storia: gli studi storicogiuridici nella ricerca medievistica*, Roma 2010 *(Istituto storico italiano per il Medioevo*, E. Conte e M. Miglio (ed.), Nuovi Studi Storici, 83), pp. 35-52; C.M. Valsecchi, *Universale e particolare. Cenni al valore normativo degli statuti,* in G.M. Varanini, A. Ciaralli (ed.), *Lo statuto del collegio dei giudici-avvocati di Verona (1399)*, Verona 2009, pp. 3-20; P. Costa, *'Ius commune', 'ius proprium','interpretatio doctorum': ipotesi per una discussione*, in *El dretcomù i Catalunya. Actes del IV Simposi Internacional*, Barcelona 1995, pp. 29-42; U. Santarelli, *Ius commune e iura propria: strumenti teorici per l'analisi di un sistema*, in *Studiin memoria di E. Viora*, Roma 1990, pp. 635 ss.; E. Dezza, *L'applicazione dello statuto nell'età del tardo diritto comune: la testimonianza di Flavio Torti,* in P. Caroni (ed.), *Dal dedalo statutario*, *Atti dell'incontro di studio dedicato agli Statuti. Centro seminariale Monte Verità(Ascona, 11/13 novembre 1993),* Bellinzona 1995, pp. 237-260; G. Dilcher, *Hell, verständidig, für die Gegenwartsorgend, die*

expression of the independence of the regional and personal legal systems that were established in the Middle Ages: independence from a higher institutional world - governed by the *ius commune,* in fact - from which all of them distinguished themselves and in whose orbit they nevertheless were deemed a part of[24].

Given that '*ogni diritto non è mai un fenomeno svincolato dal mondo sociale che attraverso esso si manifesta*'[25], the statutory sources in general[26], as a direct expression of a well defined body, are what most represents it and that best can help us to understand objectively its nature

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Zukunftbedenkend, zur Stellung und Rolle der mittelalterlichen deutschen Stadrechten, in ZSS, GA 106 (1989), pp. 12-45; trad. it. in «Nuova rivista storica» 74 (1990), pp. 489-516.

[24] Cfr. A. Cavanna, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico,* II, Milano 2005, p. 36.

[25] Cfr. A. Cavanna, *Diritto e società dei regni ostrogoto e longobardo,* in *Magistra Barbaritas. I Barbari in Italia*, Milano 1984, p. 378.

[26] Cfr. M. Ascheri, *Gli statuti: un nuovo interesse per una fonte di complessa tipologia,* in Biblioteca del Senato della Repubblica, *Catalogo della raccolta di Statuti*, VII, a cura di G. Pierangeli e S. Bulgarelli, Firenze 1990, pp. XXXI-XLIX), Id., *Statuti e consuetudini tra storia e storiografia*, in R. Dondarini, G.M. Varanini, M. Venticelli (ed.), *Signori, regimi signorili estatuti nel tardo Medioevo*, Bologna 2001; G.S. Pene Vidari, *Un ritorno di fiamma: l'edizione degli statuti comunali*, in «Studi piemontesi», XXV (1996), pp. 327-343; Id. *Atteggiamenti della storiografia giuridica italiana*, in Biblioteca del Senato della Repubblica, *Catalogo della raccolta di statuti, consuetudini, leggi, decreti, ordini e privilegi dei Comuni, delle Associazioni e degli Enti locali italiani dal medioevo alla fine del secolo XVIII, conservati presso la Biblioteca del Senato della Repubblica*, VIII, [Firenze] 1999, pp. XI-XCVI; M. Sbriccoli, *L'interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell'età comunale*, Milano 1969; Id., *Considerazioni sugli statuti signorili*, in A. Padoa Schioppa A., M. G. Di Renzo Villata, G.P. Massetto (ed.),*Amicitiae Pignus*. *Studi in ricordo di Adriano Cavanna,* III, Milano 2004, pp. 1795-1810; R. Savelli, *Scrivere lo statuto, amministrare la giustizia, organizzare il territorio*, in Id. (ed.), *Repertorio degli statuti della liguria (secc. XII-XVIII)*, Genova 2003, pp. 3-191; P. Caroni, *Statutum et silentium. Viaggio nell'entourage silenzioso del diritto statutario*, in «Archivio Storico Ticinese», XXXII, 118 (1995), pp. 129-160; G. Rossi, *«È stato osservato e siosserva...»: l'identità di un popolo nello specchio del suo diritto. Il «Libro delle consuetudini» (1613) della Comunità di Fiemme*, in «Archivio Storico Ticinese», ser. 2a, XXXIX (2002), pp. 203-220; Storti Storchi, *Gli statuti tra autonomie* cit. (rif. nota 23), pp. 35-52.; A. Dani, *Gli statuti comunali nello Stato della Chiesa di Antico regime: qualche annotazione e considerazione* in www.historiaetius.eu - 2/2012 - paper 6; G. Mazzanti, *Rileggendo gli statuti di Gemona del Friuli* in www.historiaetius.eu - 1/2012 - paper 6.

and function; and subjectively, the vocations and aspirations of the men who formed them.

The comparison of the sources selected restores the image of normative complexes unsystematically articulated in a few dozen sections, recorded or not. The rules follow one another without order; this allows the presumption of a chronologically patchy stratification of them, which is, after all, consistent with their traditional arrangement.

In such 'charters', in any case, side by side with precepts having peculiar goals and *ratio*, are identifiable groups of homogeneous regulations. The most consistent cores of the latter are always related to prescriptions on the '*danno dato*' and on the officials assigned to the administration of the town (setting forth the methods for electing them within the assembly of householders, their functions and responsibilities); another group of regulations provides for the personal services (*factiones)* that are required of the residents of each '*villa*'; a further group consists of the election rules for the rural guards (*saltari*) and the ways they should perform their duties as rural police (in forests, mountains, meadows and fields). As '*extravaganti*', we find in the statutes rules on the use of common property, on the system of inheritance in valuation, on the right of pre-emption of neighbours in the event of disposal of property, and again on the prohibition on accommodating foreigners and their livestock.

The formulation of the precepts, even without the muddled *stylus scribendi* used, is minutely specific and redundant. No room is given to abstraction; nevertheless, the normative outcome of these sources cannot be called legally trivial: the sanctions are graduated based on the importance (financial and/or moral) of the legal interests protected; in some cases, the subjective aspect of the behaviours is taken into consideration; they provide for sophisticated mechanisms to monitor the work of the administrators; along with the structural regulations, forming the municipal organisation, there are systems of sanctions from which emerge an explicit compensation and general/preventive function.

It is significant that, to the degree it can be traced in the sources examined, between the municipalities in the Veneto area and those in the Trentino, the differences are slight and mostly concern the nomination of magistrates who substantially perform the same duties (*decano*, *stimatori, sindaco, savi, marigo* and *saltari*, for the Vicenza communities; *massaro,*

giurati, sindaco, consiglieri, cavalieri and *saltari* for those of Trento and Rovereto). Unlike the '*stimatori*' of Vicenza's area, whose task was to quantify the damages reported by the *saltari*, the '*giurati*' of Trentino, who also, and primarily, perform this function, also act as coadjutors of the farmer in managing the *villa*. The sources do state, however, that the *stimatore* was usually elected from the councillors, so the difference is more in form than substance.

What, on the other hand, seems a peculiarity of the rural statutes of Vicenza's district is the formalisation of the rules for '*mariganza*'[27] rental. These regulations seem to be influenced by the tendency of the town of Mount Berico, demonstrated beginning in the age of della Scala[28] and sustained in the Venetian age by the city's *Rettori*, to solicit the reactivation of the traditional monitoring systems of cultivation[29].

Now, considering that the sections making up the statutes being discussed probably consist of the transposition of normative usages handed down orally *ab immemorabile* within each community - or the regulations that, for centuries, defined the administrative, civil and financial aspects of its life - one can well understand how they could have a marked aptitude for faithfully conveying its manner of being (or, rather, the manner that, for centuries, allowed such communities to be). The same incompleteness of such sources on many aspects of administration, assuming the existence of other local regulations, argues in favours of its traditional origin. Nor is it difficult to understand the reason why the exercise of independence by rural communities should be quite limited[30], and it manifests in terms and for goals very different compared to those of

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[27] The right to *mariganza*, broadly definable as rural *iurisdictio*, consisted of the power to '*ponere decanos, iuratos, consiliaros, camparos, saluarios, et alios officiales necessarios in villis*'; as well as to '*facere guizas et regulas et easexigere et in se habere*'; meaning by 'guizzare' to subject an area (although the reference is generally to forests) to directives on its use and custody. Cfr. § *Quid sit marigantia: & ad ius marigantiae pertineat* in *Ius municipale vicentinum. Cum additione partium illustrittimi dominij,* Venezia 1567, p. 63r.

[28] Cfr. G. M. Varanini, *Vicenza nel Trecento. Istituzioni, Classe dirigente, economia (1312-1404*) in G. Cracco (ed.), *Storia di Vicenza, II, L'età medievale,* Vicenza 1988, p. 179.

[29] Cfr. the injunctions of 1525 and 1526 by the deputy mayor of Vicenza to the vicars of Thiene and Marostica, in Biblioteca Civica Bertoliana, *Archivio Torre, b. 62*, cc 547v-549r.

[30] Cfr. Cortese, *Il diritto nella storia medievale* cit. (rif. nota 22), p. 255.

the cities that, more or less intensely, collected them into their own sphere of influence.

The overriding preoccupation in such bodies was, after all, that of preventing abuses, to provide guarantees by crystallising the services traditionally due to the *dominus loci* (whoever it might be)[31], to regulate the management of the areas intended for collective use (mainly consisting of pastures and forests)[32] and to protect the personal property of the residents.

These were elementary problems - no matter how ruinous it was to neglect them - that rural communities had always faced and had always tried to solve in the customary way[33], with regulations prematurely strengthened in the statutes for certification purposes.

The origin of many of the rules we find consolidated in written form in these sources is, then, certainly farther from the date of their respective approval for passage. And, for almost all of the communities examined, there is documentary proof of the existence and operation of an elementary institutional arrangement since at least the thirteenth century, so it could be conjectured that the material regulations related to the management of common property, to the *corvées* established by the householder, to the obligations of family and collective responsibility, as with the obligations to participate in public liturgies, date back even farther; to say nothing of those related to the so-called '*danni dati*' that could have been handed down since the Late Middle Ages, with the natural variations that such a long time would necessarily entail. In its contents and structure, this last group of rules presents very strong analogies with the monetary mechanisms for composition typical of the *leges*

[31] The lord, first; then the common citizen or the Prince-bishop, next the *Serenissimo Dominio* or imperial authority and, for certain services related to feudal rights now exercised by the municipality, the same *universitas* as the residents.

[32] The tradition of the town's citizens jointly owning parts of the land ended with it taking a 'proprietary' form that was an alternative to individual ownership (Cfr. P. Grossi, *Un altro modo di possedere: l'emersione di forme alternative di proprietà alla coscienza giuridica postunitaria,* Milano 1977).

[33] Or, at times, with contractual definitions with the local seigniory, more or less spurred by a revolt.

langobardorum and of the Germanic ones in general[34]; and the theory of their amenability to the '*fabulae inter vicinos*' cited by the *Edictum Rhotari* of 643[35] and due to this moved closer to the *consuetudo loci* about making amends for damages due to livestock, is well known in the historical literature[36]. After all, it is a fact that in Veneto, in the eleventh century, some sources describe as *fabula vicinorum* the deliberations of neighbours[37] and that in some rural charters of Trentino, sources too similar to those of the Upper Vicenza not to assume a common cultural origin, '*fabula*' was used as the equivalent of a '*regola*'[38].

The theory of a remote traditional formation of such regulations, after all, seems consistent with the historical events in the communities investigated, from the Late Middle Ages on[39].

On the one hand, the sparse urbanisation and the consistent Germanic immigration involved the premature collapse of the public structures

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[34]Cfr. Padoa Schioppa, *Storia del diritto in Europa* cit. (nota 21), pp. 35-48; Cavanna, *Diritto e società* cit. (rif. nota 23), pp. 351-379; G.P. Bognetti, *L'età longobarda*, Milano 1966-1968, *passim.* On the 'basic' continuity among the legal regulations of the Northern Italian communities and those of Lombardy, cfr. S. Gasparri, *La memoria storica dei longobardi,* in C. Azzara, S. Gasparri (ed.), *Le leggi dei longobardi*. *Storia, memoria e diritto di un popolo germanico,* Milano 1992, p. XIX.

[35]*Cfr. § CCCXLVI Rotharis leges* in M.G.H., *Legum.* IV,Haannover 1868, pp. 381 s. For a publication that does not trace back through the whole *corpus* of the laws of Lombardy, complete with an Italian translation, cfr. C. Azzara, S. Gasparri (ed.), *Le leggi dei longobardi* cit. (nota 34).

[36] A. Zieger, *Storia della regione tridentina*, Trento 1968, p. 44.

[37] Cfr. G. P. Bognetti, *Sulle origini dei Comuni rurali del Medioevo*, in *Studi nelle scienze giuridiche e sociali pubblicati dall'Istituto di esercitazioni presso la Facoltà di Giurisprudenza dell'Università di Pavia*, Pavia 1927, p. 111.

[38] P. Del Giudice, *Storia del diritto italiano. Fonti: legislazione e scienza giuridica dalla caduta dell'impero Romano al secolo decimosesto*, I, pt. 2°, Milano1923, p. 714.

[39] Cfr. S. Bortolami, *L'Altipiano nei secoli XI-XIII: ambiente, popolamento, poteri,* in *Storia dell'Altipiano dei Sette Comuni, I. Territorio e istituzioni*, Vicenza 1994, pp. 259-31; S. Bortolami, *Frontiere politiche e frontiere religiose nell'Italia comunale: il caso delle Venezie*, in *Castrum IV. Frontières et peuplement dans le monde méditerranéen au Moyen Age* (J. M. Poissson, ed.), Roma-Madrid 1992, pp. 211-218. For interesting comparisons with the mountain communities of Valtellina and Lombardy, cfr. M. Della Misericordia, *Divenire comunità. Comuni rurali, poteri locali, identità sociali e territoriali in Valtellina e nella montagna lombarda nel tardo medioevo,* Milano 2006.

inherited from Late Antiquity; on the other hand, the absence of, or at least the distance from, political power allowed the rise, beginning in the tenth and eleventh centuries, of dominion of the land, first ecclesiastical, then secular[40], exercising a power of *districtio* of a public legal nature on the inhabitants. And it was, in fact, due to the contact with a 'power' expressed daily, both in legal forms and in misuse or overuse, that the men of the community gradually devised the bases for that of law. It was thus to negotiate the relationship with the *dominus loci*, to quantify the services due him, to be able to use one's own property and, again, to participate in the use of common property; in short, to find a balance between the opposing interests of the lord and the community located on 'his' lands (or on the lands that became 'his'), that there developed among those people the forms of collective solidarity that are the first embryo of the municipality of the Middle Ages, a melting pot in which traditional rules also will take shape, in different ways and at different times, that will permeate the local culture, moulding any lineage laws that were also present.

Beyond their more or less remote origin, and the simple regulations on the division of the municipality, the statutes examined, in addition to constituting a precious material for reconstruction of the traditional law of the area investigated, are a direct source of information about the management of the lands, the forests, the pastures and crops; they provide a precise idea of the 'property' deemed most valuable by the communities; and they also are an irreplaceable tool for understanding the systems for managing collective properties and, therefore, those

[40]The collection from the *Tiroler Landesarchiv* of Innsbruck also attest that, in the twelfth century, before the political rise of the municipality of Vicenza, part of the Astico Valley, as far as Pedemontana, was sub-enfeoffed to the lords of Trento (Cfr. M.C. Belloni (ed.), *Documenti trentini negli archivi di Innsbruck (1145-1284),* Trento 2004), and it is documented elsewhere that, in the first half of the fifteenth century, the same Castelbarco family, the dynasty of Castel Beseno, had holdings in Caltrano and in the adjoining *villas* (Cfr. G. Tovazzi*, Compendium Diplomaticum sive tabularum veterum loci, temporis, et argumenti multiplicis servata earumdem primigenia fhrasi, et orthographia diphthongis tantum exceptis….I,* Trento 1787, doc. 115); a situation that doubtless complicated the border issues mentioned *supra* (p. 1), raising questions about the intrusion of private interests in 'public law' matters regulating the borders.

rights[41], essential for the community, that will be called '*usi civici*'[42].

[41] In a ruling made on a case between the municipality of Caltrano and that of Chiuppano on 26 April 1399, we learn that such laws included, among other things, the right to '*capulare, pasculare, segare et buscare*' (meaning the food growing, wood gathering and grazing alluded to above). Cfr. Mantese*, Memorie storiche* cit. (nota 20), III, 2, p. 545, nota 72.

[42] The subject of "civic uses" raises extremely interesting historical questions. The legal historical literature, of which there is an abundance, has especially focussed on the tensions between collective properties and the ownership model established with the French codification. Cfr. P. Grossi, *Usi civici: una storia vivente* in 'Archivio Scialoja-Bolla', 1 (2008), pp. 19-28; Id., *I domini collettivi come realtà complessa nei rapporti con il diritto statuale* in '*Rivista diritto agrario*', 1997, p. 261 ss.; Id., *Assolutismo giuridico e proprietà collettive* in 'Quaderni fiorentini per la storia del pensiero giuridico', 19 (1990), pp. 505-555; U. Petronio, *Usi e demani civici fra tradizione storica e dogmatica giuridica* in *La proprietà e le proprietà (Atti del Congresso Internazionale della Società Italiana di Storia del Diritto. Pontignano, 30 settembre - 3 ottobre 1985),* Milano 1988, pp. 491-542. Id., *Rileggendo la legge usi civici* in «Rivista di diritto civile», 52 (2006), pp. 615-665; Id., voce *Usi civici*, in *Enciclopedia del diritto*, Varese 1992, vol. XLV, pp. 930-953; Id., *La proprietà del bosco e delle sue utilità*, in S. Cavaciocchi (ed.), *L'uomo e la foresta: secc. XIII-XVIII*, *Atti della ventisettesima settimana di studio dell'Istituto Datini di Prato, 8-13 maggio 1995*, Firenze 1996, pp. 423-436; G. S., Pene Vidari, *Recensione di* S. Barbacetto, '*Tanto del ricco quanto del povero'. Proprietà collettive ed usi civici in Carnia tra Antico Regime ed età contemporanea* in 'Rivista di storia del diritto italiano'*,* 74-75 (2001-2002), pp. 549-550; G. Rossi, *Per la storia delle proprietà collettive in area alpina. Appunti preliminari*, *prefazione a* Barbacetto, '*Tanto del ricco'* cit (rif. questa nota), pp. 9-21); Id., *I demani civici e le proprietà collettive tra passato e presente,* in P. Nervi (ed.), *I demani civici e le operazioni di riordino*, Trento 2003, pp. 49-71; E. Genta, *Recensione di 'Beni comuni e usi civici nella Toscana tardomedievale'* in 'Rivista di storia del diritto italiano'*,* 70 (1997), pp. 459-460; G. Raffaglio, *Diritti promiscui, demani comunali ed usi civici*, Milano 1915. For his interesting discussion of the legal configuration of the *dominium* in the Middle Ages, Modern Age and the contemporary era, see the text of the paper by D. Quaglioni, *Panoramica storica del diritto di proprietà* in the 25th International Conference of the 'Giordano Dell'Amore' Observatory on the relationship between law and the economy, *Fra individuo e collettività. La proprietà del secolo XXI*, held in Milan 8-9 November 2012; P. Alvazzi del Frate, G. Ferri, *Le proprietà collettive e gli usi civici. Considerazioni storico-giuridiche tra Francia e Italia (secoli XIX e XX),* in L. Vacca (ed.), *Le proprietà. Dodicesime giornate di studio Roma Tre-Poitiers dedicate alla memoria di Jean Bouchard, Roma 13-14 giugno 2014*, Napoli 2015, pp. 31-57; M. Cosulich, G. Rolla (ed.), *Il riconoscimento dei diritti storici negli ordinamenti costituzionali* Trento 2014*;* for a multidisciplinary approach to the phenomenon cfr. G. Bonan*, The communities and the comuni: The implementation of administrative reforms in the Fiemme Valley (Trentino, Italy) during the first half of the*

The legislation in question is, then, a faithful mirror of the historical and social context for communities that based their survival on the ownership of collective property and on the protection of small properties; its inner logic, faced with scarce resources, is the need to protect and regulate in a rational way the use of such properties and to ensure a use that would be called 'sustainable' today, of the community's farming, forest and grazing resources.

Though simple and limited, such rules assume a universe of duties; a legal universe that is 'living law' and, in its efficacy, is irrespective of formal authority.

Authority, whether feudal, lordly, princely or citizen-based, in playing its role as respectively *superior*, has always exacted a tribute; it more or less graciously 'recognised' the rural statutory rules by affixing them with its *placet* although it did not create them; at most, when it had the power to, it reserved the right to censure them. After all, for centuries authority was distant from them and, except for tax and military demands (direct or indirect), substantially indifferent to the legal side of the local community that, because of the statutes (and by necessity) had a way to define itself independently.

In a historical/legal perspective, it is important to note how the authorities the communities asked to approve or confirm their statutes did not bestow on their subjects the power to enact them, although they assumed that power to exist already within the local bodies, reserving a mere veto right for themselves.

While, as regards Vicenza, monitoring the statutes' correspondence with the householder's interest was delegated to the magistrates of the *Deputati ad utilia*, to which the *ius municipale* referred the power to '*videre et corrigere statuta ordinamenta et regulas villarum Vincientini districtus*', for the Trento-Rovereto area, the approval of the rural charters was referred to the feudatory of the Prince-Bishop first, and to Rovereto's

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19th century in International Journal of the Commons, vol. 10, n. 2, 2016, pp. 589-616. (http://www.thecommonsjournal.org).

magistrate next.[43].

The statute of Vicenza, moreover, with the arrangement that its *ratio* was evidently the limitation of the *potestas condendi statuta* of the subject communities and, reflexively, of their *iura propria,* expressly provided that the rural communities

> 'non possint nec debeant regulas, ftatuta, vel ordinamenta de nouo [sic!] facere sine licentia Rectoris & sapientum deputatorum ad utilia communis Vicentiae per quos regulae sive statuta ut supra, examinari & comprobari debeant & comprobata dicto modo valeant ac teneant'[44].

And, similarly, the Prince-bishops of Trento tried on many occasions to reform as empires the ancient traditions of communities and valleys, eating away at the statutory autonomy of these spaces.

Still, in the legal system of the *ancien régime,* a total usurpation of the local prerogatives, however elementary, could not have ensued *de iure* both because, on the one hand, this would have meant an infeasible (for the time) breakup of a still physical multi-ordered system[45], on the other, because the dialectical dimension of the legal discourse of the *ius commune* system and the argumentative ability of the legal practitioners also gave the small situations solid defensive arguments.

Based on the later of the Low Middle Ages doctrines intended to justify the *potestas condendi statuta* - that expressed in the so-called 'sublime syllogism' of Baldo degli Ubaldi in the second half of the 1300s as

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[43] On the magistrate's role and the laws of a podestà in Lagarina Valley, cfr. D. Quaglioni, *Caratteristiche della giurisdizione podestarile a Rovereto*, in «Atti dell'Accademia Roveretana degli Agiati», s. VI, vol. 29 (1989), pp. 11-23.

[44] Cfr. § *'Quod collegia artiumsivefratalearum civitatis Vicentiae & communia castrorum & villarum Vicentiae districtus inter se possint statuta facere'* in *Ius municipale vicentinum* cit. (nota 27), pp. 143v-144r.

[45] To understand the importance in the medieval legal universe (and modern as well) of the pluralistic idea, but at the same time united with the legal system, the fact should be considered that the same *Dominante*, once the dominion of Terraferma was consolidated with the military lands, felt impelled anyway to ask the empire for the legitimising title of Imperial Vicariate (which he obtained in 1437).

commentary in his *lex Omnes populi*[46] - indeed, a community got the right to form an organisation and laws by the very fact of its existence[47].

If a community has legal uniqueness because it can provide itself with its own rules, its subjugation or absorption could not fail to pass through the limitation of that autonomy. And this is why the relationship - always tense - between *universitas hominum* and *superior* was always legally expressed through jurisdictional interference and substantial control of the local regulations. After all, it has been authoritatively emphasized[48] that the problem of the theoretical justification of the *postestas condendi statuta* (also) of rural communities is an aspect of the conflict-ridden relationship between *voluntas principis* and *voluntas populi* in planning the formation of the law.

Apparent clarification comes from a *consilium* made by Tiberio Deciani[49] on the community of Val di Fiemme's dispute with the Prince-Bishop, who claimed that the *'habitatores dicta vallis'* would not have been able to *'condere statuta…nisi fuerimt confirmata ab ispo Reverendissimo Episcopo…'*[50].The jurist from Udine[51], in fact, traced the *universitas*

[46] Cfr. ad D 1.1.9.l. *Omnespopuli,* in part. n. 28 in Baldus Ubaldi*, In primam Digesti Veterispartem.*, Venetiis 1599, f. 13r.

[47]Cfr. F. Calasso, *Medioevo del diritto, I, Le fonti*, Milano 1954, pp. 500 s.; Rossi, *Dottrine giuridiche* cit. (nota 21), pp. 102 ss. In an attempt to justify the legal basis of statutory laws, in different times and contexts, the jurists of the Middle Ages also made an appeal to the theory of imperial *permissio* (authorisation) and of *iurisdictio* (power exercised in a specified range). Cfr. U. Petronio, *Attività giuridica moderna e contemporanea,* Torino 2012, p. 67. For an understanding of the formation of the doctrines on *potestas condendi statuta*, it is essential to read the writings of Storti Storchi, *Appunti in tema di* 'Potestas condendi statuta' cit. (nota 23), pp. 114 ss.

[48] Cfr. *ivi*, p. 320.

[49]On the man, his thought and the work of the famous sixteenth-century criminalist, see the collected articles in M. Cavina (ed.), *Tiberio Deciani (1509-1582). Alle origini del pensiero giuridico moderno (Atti del Convegno internazionale di studi storici e giuridici, Udine 12-13 aprile 2002),* Udine 2004. Cfr. also Id., *Deciani Tiberio*, in *Dizionario biografico degli italiani*, XXXIII, Roma 1987, pp. 538-542; A. Marongiu, *Tiberio Deciani (1509-1582) lettore di diritto, consulente e criminalista*, in 'Rivista di storia del diritto italiano', 7 (1934), pp. 173-202; M. Pifferi, *Deciani Tiberio*, in I. Birocchi, E. Cortese, A. Mattone, M. N. Miletti (ed.), *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, Bologna 2013, I, pp. 726-728.

[50]This view was revived and commented on by Giovanni Rossi in Rossi, *Dottrine giuridiche* cit. (nota 21). The passage cited is on p. 117.

hominum-superior relationship to a contractual foundation; he recognised in it a synallagma whose balancing elements are, on one side, the original concession of a privilege, on the other, the pledged loyalty; which, in his view, makes the right acquired by the community not available for unilateral modification and, besides, binding not only for the persons who ratified it but also for all of their successors.

Rural communities, after all, struggle legitimately to keep their independence and their own traditions, since the regulations that are an expression of these - and, as such, symbolic of the community itself[52] - are never capricious; far from arbitrary, they are the sublimation of the balance of powers needed for the very survival of the community. They protect fundamental values, without which the village community collapses. And in this lies, by the way, the meaning and necessity of regulations against the foreigner; the *ratio* of the pre-emptions and many other rules found in the statutes being discussed. They are thus regulations founded upon a '*ratio naturalis*' that emerged from the very nature of things and far from the 'programmatic' logic that may connote modern law; quite far, in short, like the traditional regulations in general, from voluntaristic motivations[53].

Given these traits, it is not surprising that the consolidation in written form of the rural statutes generally responds to needs that are, broadly speaking, defensive. They are invoked especially when the village community feels attacked in its legal (paring down its jurisdiction and restricting its independence), economic (unfair increases in taxation, misappropriation of revenue, usurpation of common property) and social

[51] Deciani, however, must have had noteworthy familiarity not only with the legal issues of the Trentino area but also with those of Vicenza's district, to have performed in 1546 the job of assessor of the *Podestà* of Vicenza, with delegation of the judicial functions on the subject; cfr. Archivio di Stato di Vicenza., *Atti dei notai di Vicenza,* B. 460, *Notaio Matteo Filippi di Giovanni Pietro (1530-1586),* c. 28v-29v.

[52] On the symbolic and identity value of the statute, cfr. Ascheri, *I diritti del medioevo* cit. (rif. nota 21), p. 170.

[53] On the reason/will dichotomy as the interpretive key to the legal experience, see the magisterial writings of A. Sciumè, *Ragione e volontà nella formazione del diritto italiano contemporaneo,* in Id. (ed.), *Il diritto come forza. La forza del diritto. Le fonti in azione nel diritto europeo tra medioevo ed età contemporanea,* Torino 2012, pp. 217-259.

(increases in poverty and in foreigners) dimensions; mainly, then, it averts the need to define or redefine its own duties, to consolidate in written form laws and duties, prerogatives and limits; in short, the government of the rural village responds to external pressure with law (among other things).

Right at the time when these lands were being stressed on multiple fronts, the problem urgently arose of preserving a historical and cultural identity, whose end was feared and in defence of which the authority of law was invoked: a 'proper' law, however, the specificity of which was reassuring and the identity value of which added to the importance of regulations whose intrinsic rationality was the fruit of centuries of experience. And the statutes in question are a clear mirror of this fear; a worry that solidifies and assumes documentary authority whenever the community has to reckon with a new, different, hostile situation[54].

The defensive attitude of the rural statutes, after all, is well documented for both the Vicenza and the Trentino areas. Thus, in the framework of the struggle between the local *élites* and the civic *élites* produced in Vicenza with the arrangement of the administrative-jurisdictional structures for the region, the *statuta* plays the role of a legal barrier to the tyranny created by the *cives.* And, not dissimilarly, the Rovereto communities intensified their legislative activity when the bishop's control became more vigilant[55].

Reports from other residents and their confirmation rights can tell us about the time the regulations in question were consolidated; the *dies a quo* of their first assertion, like their traditional origin is, however, impossible to determine. But the moment of their abrogation can be reconstructed with certainty, and it coincides with the decline of the *ancien régime*; that is, when the Napoleonic campaigns in Italy, the efficient carriers (equipped with persuasive means) of the philosophical 'values'

[54] B. Andreolli, *Ala e Avio nel medioevo: da comunità di fatto a comunità di diritto*, in Id., S. Manente, E. Orlando, A. Princivalli (ed.*), Statuti di Ala e di Aviodel secolo XV,* Roma 1990 (Corpus statutario delle Venezie, 7)*,* p. 24.

[55] Ibidem, p. 14 ss.

created by the Revolution, decreed, at least formally[56], the end of a centuries-old institutional and legal system.

This system had certainly been in a profound state of crisis for some time[57], but could not survive the shock of the new philosophical ideas on political power and law: the first uniform and monolithic, the second an exclusive source of right; both the direct product of the legal absolutism that historians identified as a peculiar feature of contemporary continental legal systems[58].

As regards the province of Vicenza, the breakdown of the administrative systems based on statutory law was determined by the introduction of provisional municipalities (1797), except for the fleeting restorations of Austrian power (1798-1800; 1805-1806) under the treaties of Campoformido and Luneville, the explicit abrogation of the *iura propria* system followed.

The decree that ratified the union of the Venetian states with the Kingdom of Italy[59], indeed, explicitly mentioned the Napoleonic Code's immunity from derogation: a legislative work whose enactment decree (for the Kingdom of Italy, 16 January 1806) had expressly abrogated '*leggi romane,…ordinanze, consuetudini generali e locali, ... statuti e regolamenti*'[60].

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[56]On the substantial retroactivity in the Vicenza region of the regulations formally abrogated simultaneously with the enactment of the Napoleonic Code, cfr. B. Munari, *Notizie sulle leggi che regolarono la città e provincia di Vicenza fino all'attivazione del Codice civile italico…*, Vicenza 1861, pp. 15 s.

[57] On the exogenous and endogenous causes of the crisis in the system of community law, cfr. Cavanna, *Storia del diritto moderno* cit. (nota 24), pp. 37-68; Id, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico,* I, Milano 1982, pp. 193-236; A.M. Hespana, *Introduzione alla storia del diritto europeo*, Bologna 1999, pp. 163-176; G. Tarello, *Storia della cultura giuridica moderna,* Bologna 1976, pp. 47-59 e *passim.*

[58] Cfr. P. Grossi, *Mitologie giuridiche della modernità,* Milano 2007, *passim;* Id., *L'Europa del diritto,* Roma-Bari 2007, pp. 129-140*;* P. Caroni, *Saggi sulla storia della codificazione,* Milano 1998*, passim.*

[59] Cfr. Decreto 30 marzo 1806 n. 34, in *Bollettino delle leggi del Regno d'Italia,* 1806, p. I, Milano 1806, pp. 280 ss.

[60] On the enactment of the *Code civil* in the Kingdom of Italy, cfr. E. Dezza, *Lezioni di storia della codificazione civile. Il Code Civil (1804) e l'AllgemeinesBürgerlichesGesetzbuch (ABGB, 1812),* Torino 2000, pp. 97-100.

This annexation, however, also gave rise to a new regional administrative distribution that deprived the remaining independent areas of their space and definitively uprooted the old structure of *podestarie, vicariati, vincinie* and community. This made it impossible for the Austrians, resettled in Vicenza in November 1813 after the defeat of the *Empereur* in Lipsia, to have an authentic restoration of the *ancien régime*[61].

At least in regard to the legal system, the government in Vienna could not even be said to be interested in such a restoration. Rather, the legal policy instituted by the enlightened absolutism of Habsburg, at least after Joseph II, seems to show a tendency towards reducing the sources to one: the law; even better if it was general, abstract and expressed in the form of a code. This probably led to the progressive diminution of the local regulations, including the statutes that would also be considered formally abrogated with the enactment of the Austrian General Civil Code[62]. The sovereign's license of 19 June 1811, too, not unlike the Napoleonic decree cited above, declared *ius commune* abolished, no less than all other laws and traditions related to the subjects of the Civil Code. And, with specific reference to the local statutes, although the ABGB (art. 11) subordinated its validity upon express confirmation by the legislature, the latter, with the high-flown decree of 13 July 1811, established that confirmation would not be provided (which, for Veneto, was the same as reactivation) for any statute[63]. And it is significant that Franz von Zeiller, an author credited with the paternity of the General Civil Code, while explicit in tracing back the *ratio* of abrogation '*all'uniformità delle leggi*, *tanto salutare al commercio*', was clear that often

[61] Cfr. G.A. Cisotto, *Il governo vicentino in età napoleonica (1806-1813)* in R. Zironda (ed.), *Il Vicentino tra Rivoluzione giacobina ed età napoleonica 1797-1813*, Vicenza 1989.

[62] On the legal policy of the enlightened absolutism of Habsburg, see A.A. Cassi, *Il bravo funzionario asburgico tra* Absolutismus *e* Aufklärung*. La vita e l'opera di K.A. von Martini (1726-1800)*, Milano 1999, nonché Cavanna, *Storia del diritto* cit. (nota 24)*,* pp. 253-335.

[63] Cfr. G. Basevi, *Annotazioni pratiche al codice civile austriaco… (settima edizione),* Milano 1859, p. 24; J. Mattei, *I paragrafi del codice civile austriaco…*, Venezia 1852, p. 60.; F. von Zeiller, *Commentario sopra il codice civile universale della monarchia austriaca…*, Venezia 1815, I, pp. 70-72.

'molti statuti sono più giusti, e più equi delle prescrizioni del diritto comune civile…perché sono più adatti al carattere particolare, alla costituzione del paese, alla maniera di vivere e di procacciarsi il necessario sostentamento'[64].

It was to be expected, then, that not even the law establishing the new Austrian system of city administration[65]would give any quarter to a revival of the local legal sources.

As for the Trentino area, the ancient traditions consolidated in the rural charters were swept away by the radical changes in the organisation of the communities that occurred between 1796 and 1810 with the reforms implemented by the Bavarian and Napoleonic administrations.

After the brief French occupation (1797-1801), with the Treaty of Luneville (9 February 1802), the Prince-bishopric of Trent was secularised[66] and then annexed, by virtue of the Treaty of Paris (26 December 1802) to the County of Tyrol[67]. In the context of the measures aimed at standardising Trento to the other Habsburgian provinces, the provincial government of Innsbruck subordinated the convocation of the "*regole*" to the preventive acquiescence of the higher authorities[68], thus mortifying the source of the remaining local autonomy. In December 1805, with the Peace of Pressburg, the entire Tyrol was assigned to the Kingdom of Bavaria, and with the decree of 4 January 1807, even before the institutional arrangement of the local community could be reformed[69], the

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[64] Cfr. *ivi,* pp. 70-72.

[65] Cfr. *Notificazione 4 aprile 1816 n. 54. 'Attivazione di un nuovo sistema di amministrazione comunale* (ed annesso regolamento) in *Collezione di leggi e regolamenti pubblicati dall'Imp. Regio governo delle province venete,* III, pt. I, Venezia 1816, pp. 179-295.

[66] Cfr. U. Corsini, *Storia del Trentino nel secolo XIX*, Rovereto 1963, p. 65 e ss.

[67] Cfr. J. Koegl, *La sovranità dei vescovi di Trento e Bressanone*, Trento 1964, pp. 393-403.

[68] Cfr. *Ordinanza del cesareo regio Giudizio provinciale ed unitovi Capitaniato circolare ai Confini d'Italia del 5 gennaio 1805, che estende a tutto il territorio la circolare dell'i. r. Uffizio capitaniale del Circolo ai Confini d'Italia del 10 maggio 1787*.

[69] Cfr. *Ordine generale del re di Baviera, 24 febbraio 1808, concernente l'amministrazione generale della facoltà delle fondazioni e comunale nel Regno di Baviera, Foglio del Governo n. 5*, in *Foglio d'Avvisi per il Tirolo Meridionale,* 24 febbraio 1808, n. 5, pp. 129-148; *Editto del re di Baviera 24 settembre 1808, sul sistema comunale* (1808

regolanie maggiori and *minori*, judged to be '*anomale…ed incompatibili con qualunque regolare amministrazione delle giustizia*' were abrogated[70]; with them expired the judicial competence in the first and second petitions of the *regolani maggiori* and *minori* in the civil cases regarding the management of community and neighbourhood properties.

The definitive abrogation of the rural statutes - by then lacking in current relevance in any case - would have happened after the latest politico-institutional change; that is, when the southern Tyrol was annexed to the Kingdom of Italy with a designation of District of Alto Adige (May 1810) as well as before the administrative arrangement could be consolidated[71], the Napoleonic Code took effect with the decree of 15 June 1810[72], along with the known implementing regulations.

The dissolution of the French empire and the assignment of the Tyrol (except for the administration of Commissioner von Roschmann through April 1815) among the provinces of the House of Austria did not restore the previous system, imposing an order that was by then solidly statal.

While Napoleon's municipal system remained in effect in the Trento area until 31 December 1817 and in Rovereto until 31 December 1820, as of 1 October, in both regions the ABGB[73] was activated. For the relationship between the latter and the statutes, all that is needed is to refer to the notes just above for the Veneto provinces.

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settembre 24), in *Foglio d'Avvisi per il Circolo dell'Adige*, 9 novembre 1808, n. 61, pp. 949-992.

[70]Cfr. Decreto 4 gennaio 1807, in *Foglio d'avvisi per il Tirolo Meridionale*, Rovereto 1807, pp. 26.

[71] Cfr. Decreto 23 agosto 1810 (n. 194), which extended to the District the administrative system of the Kingdom of Italy's municipalities (with reference to the '*Decreto sull'Amministrazione pubblica e sul Comparto territoriale del Regno*' of 8 June 1805, n. 46).

[72] Cfr. Decreto vicereale n. 106 del 15 giugno 1810 in *Bollettino delle leggi del Regno d'Italia. Parte prima. Dal primo gennaio al 30 giugno 1810*, Milano 1810, p. 328-330.

[73] Cfr. M.R. Di Simone, *L'introduzione del codice civile austriaco in Italia*. Aspetti e momenti, in *Scintillae iuris. Studi in memoria di Gino Gorla*, *II*, Milano 1994, pp. 1015-1038, now in Ead, *Percorsi del diritto tra Austria e Italia (secoli XVII-XX)*, Milano 2006, p. 166; ead., *Istituzioni e fonti normative dall'antico regime al fascismo*, Torino 2007, pp. 189 ss.*;* F. Menestrina, *Nel centenario del codice civile generale austriaco*, in 'Rivista di diritto civile', III (1911), pp. 808-839.

The discussion on the previous pages leads to an apparent paradox. Rural statutes that, by their nature, origin and function had (as recognised by historians) a strong identity value and the role of safeguarding the rights of the members of a specific community, often to the detriment of those around it, when compared seem extraordinarily similar; it is a resemblance beyond simple assonance, since it is not recognisable only among homogeneous groups of sources (among the ones of Veneto and among the ones of Trentino), but it is absolutely transversal; and, therefore, enough to make plausible the existence of 'underground' connections indifferent to geopolitical borders, which it would be extremely interesting to uncover.

In their consolidated form, it is not unreasonable to think that these sources may have taken formal cues from the regulations deemed most authoritative, but it seems beyond doubt that they retain peculiar traditions, taken directly from the experience of the preceding centuries, thereby revealing a 'plastic' nature conforming to the situation that produced them.

They certainly comprise the legal precipitate of the engagement/collision between anthropic communities and a region that, on the whole, here and there by the Veneto-Trentino border, was similar; but that does not seem sufficient to justify the high recurrence of formal and substantial coincidences (on the level of the administrative structure of the towns, the type of offences, etc.).

It is not wholly persuasive even to explain the phenomenon on the basis of a theory of the circulation of the legal models that influenced the notaries charged with the formalisation of the statutes through consolidation. For Vicenza, the notaries doubtless recorded the reports of the *convicinie*, but there is no proof they had a mandate to prepare the text of the statutes or to use a '*canovaccio*' to adapt according to contingent situations[74]. The theory, in any case, would only work for

[74]On the interpretation of the phenomenon of the 'copiaticci' statutes, see the notes by G. Chittolini, *A proposito di statuti e copiaticci,* jusproprium *e autonomia. Qualche nota sulle statuizioni delle comunità non urbane nel tardo medioevo lombardo*, in *Dal dedalo statutario (*Atti dell'incontro di studio dedicato agli statuti, Centro seminariale Monte Verità, 11-13 novembre 1993) ('Archivio storico ticinese', XXXII [1995]), pp. 171-192; and

Vicenza and would not explain the symmetry of the Trentino equivalents, where the function of community scribe was often entrusted to the local priest.

Not even the years of common subjugation to the Venetian dominion of the communities examined can explain this, since the known rural statutes have, for the most part, the same content they did before that time; and that is to say nothing of the fact that, with respect to Rovereto, the *Serenissima*'s dominion lasted less than a century.

Perhaps this surprising convergence of traditional regulations owes something instead to the mobility - now considered more significant than was thought in the past - of the Alpine and Prealpine populations during the Middle Ages, with a consequent circulation of ideas; as well as the documented, common so-called 'Cimbric' origin (more properly Bavarian-Tyrolean) of the population located in the referenced area, and thus to a common cultural foundation, pre-dating the borders imposed by the political entities that gained strength beginning in the Early Middle Ages[75].

It is, in any case, extremely significant that the legal sources, also associated with a strong value of identity, should display in their forms and contents a marked 'extra-statehood'.

This is confirmation on the micro-local level of the legal calling, in the medieval and modern legal systems, to go beyond geopolitical borders (even the most entrenched of them) and to evidence not *ratione imperi* but *imperio rationis.*

R. Savelli, *Che cosa era il diritto patrio di una repubblica?,* in I. Birocchi, A. Mattone (ed.), *Il diritto patrio tra diritto comune e codificazione (secoli XVI-XIX): atti del convegno internazionale, Alghero, 4-6 novembre 2004*, Roma 2006, p. 270.

[75]Cfr. J. Riedmann, *Mito e realtà 'cimbre*', in *Storia dell'Altipiano* cit. (nota 39) I, pp. 243-257.