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NEW LAWS, OLD PROBLEMS. THE CONFLICTS OF JURISDICTION IN CRIMINAL MATTERS BETWEEN THE SENATE OF TURIN AND THE CHAMBER OF AUDITORS IN THE FIRST HALF OF THE 18TH CENTURY

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Abstract: the long way to the creation of a more centralised judicial system in the Savoy States started at the end of the 16th century and was characterised by the regulatory interventions aimed at organising the role of the judicial institutions. However, in the background, many were the conflicts which occurred among the main courts of the kingdom and opened institutional crisis and which were only solved by the intervention of the King. The solutions proposed in each case represented a step further in the creation of a more centralised jurisdiction and represented a precedent for future legislation. The article analyses two conflicts of jurisdiction over criminal matters between the Senate and the Chamber of Auditors of Turin in the first half of the 18th century. This first analysis paves the way for a following and more encompassing study aimed at investigating the role of conflicts of jurisdictions in the history of the Savoy states.

Keywords: Victor Amadeus II – Senate of Turin – Kingdom of Sardinia

1. A jurisdiction of jurisdictions: the judicial policy-making of the States of Savoy in the early modern period

Victor Amadeus II is generally recognized by historians as the instigator of an important administrative and judicial reorganization of his territory after the Treaty of Utrecht was drawn up at the end of the War of the Spanish Succession[1], a process that

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[1] After this peace, the States of Savoy doubled its territories. Besides Sicily (that would be ceded in 1716 to acquire Sardinia) it regained control of some territories that had fallen under French domination during the

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

also involved the States of Savoy in the first decade of the 18th century. The figure of the first King of Sardinia has been depicted, especially so in the past, in a 'hagiographical' way: nevertheless, there is no doubt that Victor Amadeus II was a monarch who was able to successfully realize many of the political and administrative reforms conceived, but not carried out by his predecessors. Along this long path of institutional reforms, the *Leggi e Costituzioni di Sua Maestà* were enacted in 1723 after a long development process. The *Regie Costituzioni* (Royal Constitutions), which were subject to two further editions in 1729 and 1770[2], represent the most important legislative consolidation in the States of Savoy during the Old Regime. One of the goals of this new law was to reorganize the judicial system of the kingdom by clarifying the competences of the existing courts of law and reducing the number of special judges[3].

This creation of a more systematic and centralized judicial system was at the initial stage, and it would only be completed in the 19th century. The organization of the judiciary system of the States of Savoy, as conceived in the second half of the 16th century and continuing until the 18th century, in fact had all the characteristics (and defects) of a typical judicial system of the early modern age.

The great judicial reforms introduced by Emmanuel Philibert after the Peace of Cateau-Cambrésis (1559) enabled the Duchy of Savoy to create higher Courts, following the example of what was happening in some other European states and in particular in France[4]. The Duke, who replaced the *Cours de Parlement* created by Francis I during the French occupation (1536-1559), established a Senate in Chambéry in 1559 and a Senate in Turin[5] in 1560. In that period, there were already a number of institutions in the States of Savoy at the top of the system, such as judges of the supreme court, who had advisory functions in policy-making processes[6]. However, these courts, unlike the «new» Senates, closely resembled those of the feudal and medieval times from which Emmanuel Philibert was struggling to remove his Duchy.

The creation of Senates, as well as the contemporary reforms of the procedural law carried out by Emmanuel Philibert[7], were therefore part of a broader plan to modernize the legal system of the States of Savoy, with the aim of obtaining a better centralization

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17th century such as Montferrat, the city of Alessandria,Valenza, Lomellina and Valsesia, as well as the fiefs of Langhe and Vigevanasco. See P. Bianchi, A. Merlotti, 2017, 42-43.

[2] RR.CC., 1729; RR.CC., 1770.

[3] M. E. Viora, 1928 (rist. 1986), 159-162; F. Micolo, 1984.

[4] M. Sbriccoli, A. Bettoni, 1993; M. Ascheri,1989; G. Gorla, 1969, 3-39.

[5] I. Soffietti, C. Montanari, 2008, 42-51. Reference can be made to the Senate of Turin in G.S. Pene Vidari, 2016, 75-90; Id., 2001, 67-85; P. Casana, 1995, 5-68; E. Mongiano, 1991, 161-191; E. Genta, 1983, 1-131; C. Dionisotti, 1881a, 67-80, 99-124, 295-318.

[6] Reference can be made to I. Soffietti, C. Montanari, 2008, 25-34 concerning these institutions («*Consilium cum domino residens*», to «*Consilium Chamberiaci residens*» and to «*Consilium Thaurini residens*»).

[7] This refers to the issuing, in 1561, of the «*Ordini Nuovi*» relative to civil and penal proceedings. More details can be found in I. Soffietti, C. Montanari, 2008, 42-44; C. Pecorella, 1992, VII-XXXVII and also in C. Pecorella, 1989, VII-LXXVI.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

of the administration of justice[8]. In order to grant a more even law enforcement, by means of these new judicial authorities, Charles Emmanuel I, Emmanuel Philibert's successor, gave their sentences a binding precedential meaning: essentially, the «*decisiones*» of these higher Courts became the only sources of law for all «doubtful cases», whenever there was any uncertainty about what legal rules should be applied[9]. In 1614, a third Senate was created in Nice, which had jurisdiction over the whole county and the Ligurian areas under Savoy control[10].

As part of the sovereign Courts, these magistrates not only had judicial, but also administrative and regulatory powers. They were an example of justice delegated by the King and also represented one of the pillars of the government and administration of the State.

Emmanuel Philibert's aim of centralizing the judicial organization came to a partial halt in the following century, mainly because of the unstable political situation, which was jeopardized by continuous wars and internal conflicts.

Indeed, in the first half of the 17th century, the plague and the civil war between the «*principisti*» and «*madamisti*» in Piedmont affected the Duchy of Savoy to a great extent[11]. Once these difficulties were overcome, the second half of the century witnessed a new politically and socially complex period. In 1675, Duke Charles Emanuel II died prematurely and his widow, Marie Jeanne Baptiste of Savoy-Nemours, who became the regent to the throne, found herself ruling a State that had been weakened by years of wars and conflicts.

Historians have recently put the figure of the second regent of Savoy in a new light; they now acknowledge her attempts to halt the decline of the Duchy, while handling the difficult inheritance of her deceased husband, in spite of the opposition of a part of the subalpine elite[12]. It is generally recognised today that the Duchy, following the French model[13], acquired compactness, and was able to overcome the 17th century crisis and the sequence of conflicts involving the «Savoy space» and that even threatened their existence[14].

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[8] The clear intention of centralizing justice also arises from the Duke's requests to his magistrates on 3 June 1567. He asked them to send accurate reports to the Grand Chancellor, mainly about criminal lawsuits; *Lettere Ducali, che pella più pronta amministrazione della giustizia, prescrivono varj doveri a' Magistrati, e Giusdicenti*, in F.A. Duboin, 1826, 26-31.

[9] This happened in 1582, although an edict in 1619 entrusted the Duke with the power to solve «doubtful cases». Reference can be made to *Nuove costituzioni ducali* 1582, Turin 1625, pp. 56-57. More details on point can be found in I. Soffietti, C. Montanari, 2008, 48-49. P. Casana, 2016, 113-123; Ead., 2001, 119-132; G.S. Pene Vidari, 2006, 201-215; Id., 2001, 199-207.

[10] On the Nice Senate, see J.P. Baréty, 2005; Id., 1973, 29-54; R. Aubenas, 1979, 3-11; H. Moris, 1903, 93-227.

[11] For an overall picture of the affairs that led to the civil war, reference can be made to C. Rosso, 2002, 16-28 and Id., 1994, 221-236. For details on the less recent history, a synthesis of the civil war can be found in G. Quazza, 1959, 280-321; E. Ricotti, 1869, 114-361 and G. Claretta, 1868, 1-527.

[12] R. Oresko, 2004, 16-55; Id., 1997, 272-350; C. Rosso, 1994, 250-260.

[13] E. Stumpo, 2002, 247.

[14] G. Ricuperati, 2002, XXVIII.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

However, by analyzing 17th century Savoy from another perspective, it is possible to see a sort of standstill of the legislative reforms[15] and an increase in the number of special courts, which were given civil and penal powers on specific matters and for certain social classes of subjects[16].

It should be noted that what appears today as an insurmountable obstacle to an effective administration of justice was fully in line with the mindset of a State during the early modern period. A «jurisdiction of jurisdictions» was appropriate for a society divided into classes, which were based on personal «privileges» and on the privilege of the social class one belonged to. As Carlo Dionisotti wrote, referring to the situation of the States of Savoy during the first decades of the 17th century, there was no class of citizens that did not have its own Court[17]. By entrusting all matters of public importance to the jurisdiction of a special magistrate, a system was created in which «ordinary» justice, justice of exception and feudal justice often appeared to be in conflict.

This phenomenon led to a clear weakening of the ordinary judiciary system, and fostered jurisdictional conflicts, not only among the lower Courts, but also among the supreme Courts. Senates were among the most important institutions of the State, but their jurisdiction was limited by the powers granted to other judicial authorities: among these, the Chamber of Auditors played a prominent role. This judiciary was established for the first time by Amadeus VI in the 14th century to oversee the finances of the entire Duchy, and it was located in Chambéry. It was then Emmanuel Philibert who created a second one in 1562, this time located in Turin, with jurisdiction over the cisalpine part of the State[18]. This institution, which in terms of prerogatives and powers could be compared to a higher Court, had mainly accounting and fiscal powers: its duties were to oversee state-owned properties, to check the regularity of the mint's activities and the minting of coins, and to manage *gabelle* (excise) collection contracts[19]. The Chamber was also entrusted with the task of judging disputes on these matters, which often led to conflicts with the Senates, especially on state and feudal matters.

In such a context, the aim of the article is to understand some of the problems of the Savoy legal system, due to this complex «balance» of jurisdictions. The aim of the paper is to analyze the interference between the criminal prerogatives of the Turin Senate and

[15] I. Soffietti, C. Montanari, 2008, 50.

[16] Mention can be made of: Consolati di commercio, Magistrato di Sanità, Auditore generale di Corte, Auditore generale di guerra, Conservatore generale della caccia, Conservatori degli appannaggi, Conservatori delle Gabelle, Conservatori delle poste, del tabellione, delle strade e del giuoco del lotto, Conservatori degli ebrei, Consiglio presidiale del Principe, Capitano della darsena etc… The list, which is merely illustrative and not exhaustive, is taken from the index of the collection of F.A. Duboin, 1827, XIX-XLVI.

[17] The author himself, writing at the end of the 19th century, considered the Savoy situation perfectly in line with that of other Italian and foreign States: «Questo sistema di moltiplicità dei Tribunali fu pure un difetto dei tempi, generale in Italia e fuori», C. Dionisotti, 1881a,137-138.

[18] On the Chamber of Auditors see I. Soffietti, 2010, 369-374; Id., 2004, 5-15; M. Bottin, 2001, 181-196; B. Demotz, 1996, 17-26, C. Nani, 1881, 161-215.

[19] I. Soffietti, C. Montanari, 2008, 47-48.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

those conferred to the Piedmont Chamber of Auditors between the 16th and the 18th centuries. The analysis of this conflict at the highest level of the State seems of key importance to understand the delicate and sometimes dangerous relationship that existed between these institutions.

2. The criminal jurisdiction of the Piedmont Senate between the 17th and the 18th century

As mentioned in the first section, Piedmont already had an institution that was mainly in charge of judicial competences, well before the French established a *Cour de Parlement*[20] in 1539. This Council, called «*Consilium Thaurini residens*» (to distinguish it from the one in Chambéry and from the «*cum Domino*» council, which supported the Duke and mainly carried out consultive and administrative tasks[21]), became the supreme court in the territories east of the Alps, thanks to the granting of the patenti (15 March 1459) by Louis Duke of Savoy[22]. After their promulgation, the council settled for the first time in Turin[23]. It seems that this institution, which Charles II reformed in 1513, had already been labelled a Senate[24], following the example of the same court of law that Louis XII had created in Milan in 1499[25].

There is no official document that states the exact date of the establishment of the Senate. However, we know that Emmanuel Philibert created the Senate of Turin in 1560, thanks to other sources, which demonstrate that it already existed in September of the same year[26].

In the Savoy judicial system, this institution represented the court of last instance for both criminal and civil matters[27]. In this context, the fourth «*Ordini Nuovi*» (New Orders) book, which was issued by the Duke himself in 1565, gave individuals the right to «skip» the court of second instance and to appeal directly to the Senate, *omisso medio*[28].

[20] I. Soffietti, 1976, 301-308.
[21] I. Soffietti, 1969, XIX segg.; F. Aimerito, 2018, 83-127 on the events that led Emmanuel Philibert to transform the «*Consilium cum domino residens*» into «Consiglio di Stato» and on the characteristics and powers of this institution.
[22] C. Dionisotti, 1881a, 76.
[23] The regulation approved by Duke Louis is published in A. Tallone, 1968, 40-42.
[24] P. Casana, 1995, 17-19; P. Merlin, 1982, 37 and also C. Dionisotti, 1881a, 78, nt. 2.
[25] See U. Petronio, 1972 on the history of the Senate of Milan.
[26] P. Casana, 1995, 6. On the history of the Senate of Savoy, established by Emmanuel Philibert, see the two edicts of 12 August 1559 and 11 February 1560, published in F.A. Duboin, 1826, 316-319.
[27] For a general discussion on the many duties of this institution in the administration of the State, starting from the 'constitutional' duty (as Viora defined it) of 'ratifying' edicts and ducal measures, see G.S. Pene Vidari, 2016, 75-83; I. Soffietti, C. Montanari, 2008, 29-51, 75-95; P. Merlin, 1982, 35-94; M.E. Viora, 1928 (rist. 1986), 151-155; G. Lombardi, 1962,1-40; A. Lattes, 1908, 1-47.
[28] This rule was only valid for criminal cases involving the subjects of «terre immediate», that is, those whose lands were not subject to the jurisdiction of a vassal. In this case, a person had to appeal to the

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

The regulation issued by Charles Emmanuel I on 12 November 1583[29] gives us a fairly precise idea of all the judicial powers the Senate of Turin had. This regulation appears to be somewhat important because it provided a systematic organization of the Senate, starting from its structure, which included «due Presidenti, un Cavagliero, e dodici Senatori, Giureconsulti, huomini Catolici, di buon esempio per integrità di vita, e costumi, doti; e quali habbiano fatta prova in altre azioni del valor loro»[30]. A part of this edict was aimed at limiting the jurisdiction of this court both within the territory and in terms of the matters dealt with.

As far as the first point is concerned, the Senate of Turin exercised its authority over all the areas of the Duchy located east of the Alps and over lands pertaining to Nice. The edict confirmed, with regard these territories, the general power of the Senate as the judge of appeal against all civil and criminal verdicts issued by «lower» judges and in particular «da tutti i Giudici mediati, immediati, Ordinari, e Delegati a cause particolari, o ad universalità di cause, e secondo la disposizione, e forma contenuta nel terzo e quarto libro de' nuovi Ordini»[31].

Charles Emmanuel I, by means of the same edict, entrusted the Senate with the first and only ruling power, *ratione personae,*[32] over civil and criminal trials that involved the Knights of the order of the Most Holy Annunciation, the presidents and members of the Council of State, as well as the senators and auditors of the Chamber of Auditors.

By virtue of ancient privileges, whose origins date back to the Middle Ages, but which were still in force in the modern society of that time, divided into classes, the Senate of Turin was entrusted exclusively with cases that involved the most important people in the Duchy, but also the so-called «*miserabiles*», that is, the poorest people, widows and orphans, whom the duke had a duty to protect. The edict also gave the Senate, as the court of first instance, the power of jurisdiction over disputes that arose between prelates, and those involving the different communities of the Duchy, on matters related to border disputes or privileges, as well as cases related to the rights of the royal possessions and the tax authorities, but not for those which, because of other regulations, the Chamber of Auditors oversaw[33].

However, the Senate, in its first years, did not have a specific class for criminal trials. Indeed, this court consisted of two classes[34], but both dealt with civil matters, while criminal cases were handled in joint sessions. Thanks to the testimony of an important senator from the 16th century, Antonino Tesauro, we know how the Senate's activities

feudal judge for criminal sentences of the first instance and only once having done so could the appeal be made to the Senate; C. Pecorella, 1992, 26-27.

[29] The regulation is published in B. Borelli, 1681, 428. A handwritten copy of this regulation and a printed copy are kept in ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 1, fasc. 1 e 6.

[30] B. Borelli, 1681, 428.

[31] *Ibidem*.

[32] *Ibidem*.

[33] *Ibidem*.

[34] E. Genta, 1983, 3.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

were organized during the week: the members met on Mondays and Fridays, in separate classes, to examine civil cases, on Tuesdays and Saturdays, in joint sessions, to examine criminal cases and on Wednesdays, in a public session, to examine cases that could be decided on in a summary trial. The Senate did not work on Mondays, while it was closed to the public on Thursdays to allow the judges to study the cases[35]. The proceedings of criminal trials were penalized by the fact that there was not a single class designated for them. To fill this gap, Charles Emmanuel I, with an edict on 12 August 1620, added a third class to the Senate of Turin with the role of dealing with criminal cases («*classe de' Criminali*»), appointed Francesco Fauzone[36] as president and assigned six senators to him[37].

The verdicts issued by this class had the same value as those issued by the other two existing classes, except for capital offences, which were punishable with life imprisonment or death, and on which the Senate had to decide as a single, united class. The same rule was applied in the case of revision and «*interinazione delle grazie*» (combination of pardons)[38].

This regulation appears to be an important step in the recognition of the Senate of Turin as the top institution for criminal justice in the subalpine areas[39] (the jurisdiction of the Senate of Chambéry[40] over Savoy was maintained, as was that of the Senate of Nice, which was founded in 1614, over the Nice territories). Nevertheless, it should be pointed out that the same edict expressly stated that the Duke could grant other judges the power to handle specific criminal cases. However, to partially preserve the senatorial prerogative over these cases, the President of the criminal class had to be considered as a «co-delegate», without the intervention of whom it was not possible to proceed, otherwise the entire procedure would have been considered invalid[41].

As one can see, this was a complex judicial system which was still being consolidated, and in which a magistrate (even of the highest level, such as the members of the Senate

[35] P. Casana, 1995, 40.
[36] See C. Dionisotti, 1881b, 281 for a concise biography of Francesco Fauzone, who, after having held the position of President of the criminal class of the Senate, was appointed President of the Chamber (1624) and then President of the Council of State (1625).
[37] F.A. Duboin, 1826, 342-345. This filled a gap in the Turin Senate, as the Senate of Savoy had already been given a class for criminal affairs with the edict of 16 May 1600; F.A. Duboin, 1829, 315-316; see E. Genta, 1983, 3-4.
[38] F.A. Duboin, 1826, 342.
[39] In 1577, in order to centralize the administration of justice, Emmanuel Philibert forbade the judges from turning to foreign judicial bodies without first obtaining his authorization and that of the Senate, a prohibition that had already been included in the *Decreta seu Statuta* and in other ducal measures; *Edit qui défend de recourir aux Princes, et Magistrats étrangers sans l'autorisation du Prince et du Sénat*, 12 February 1577, published in F.A. Duboin, 1829, 1-3.
[40] On the characteristics of the jurisdiction of the Senate of Savoy and on the conflicts between this Court and the local Chamber of Auditors, see L. Perrillat, 2016, 139-152.
[41] F.A. Duboin, 1826, 344.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

or the Chamber of Auditors) was strictly dependent – juridically and economically - on the King's decisions, in whose name he administered justice[42].

Furthermore, the unstable political situation, due to continuous conflicts involving the Duchy of Savoy in the last part of the 17th century and in the first decade of the 18th century, made the problem even worse, and produced a sort of overlapping of criminal powers among the main courts of law. An example of this phenomenon is the *Regio Biglietto*, an Act issued by Victor Amadeus II on 29 November 1715, thanks to which the King allowed both the Senate and the Chamber of Auditors to take any kind of criminal case to trial (even those punished with the death penalty) in order to quickly try the high number of detainees awaiting trial,[43]. The duration of this regulation was intentionally limited to one year, but it shows the emergency approach used to deal with criminal problems.

The 1723 *Regie Costituzioni* of Victor Amadeus II further clarified the criminal jurisdiction of Senates[44]. First, title III of book II reaffirmed the supremacy of the Senate over other courts, stated that this institution «avrà nel suo Distretto la Giurisdizione Superiore, ed al medesimo spetterà la cognizione sopra tutti i ricorsi che ad esso si faranno per via d'Appello» and imposed that these supreme Courts had to take on cases of the lower courts in the eventof the judges of the lower courts having been found negligent[45].

More in detail, the jurisdictional competences of the Senate on criminal matters recognized by this legislation were, to a great extent, the same as those of the previous ducal edict[46], and they included cognizance in the first degree for cases involving «persone miserabili» (wretched people), thus worthy of pity (book II, tit. III, § 2), the Knights of the order of the Most Holy Annunciation, the presidents and members of the Council of State and the other higher Courts (book II, tit. III, § 6) as well as other disputes regarding specific matters of public importance, such as hunting, fishing, public streets and fiefdoms (book II, tit. III, § 7)[47]. However, as will be seen in section 3, the Chambers of Auditors also had jurisdiction over some aspects of these matters[48].

The Senate was authorized to act as a court of first instance when particularly serious crimes were committed. The *Regie Costituzioni* (1723) included this aspect for the crime of lese-majesty and for others, such as the counterfeiting of currency and rebellion[49]. Furthermore, the Senate could take away authority over «Delitti atrocissimi» (Atrocious

[42] See also E. Genta, 1983, 4-5 for matters related to senators' salaries.
[43] *Regio Viglietto col quale si stabilisce che per un anno tanto in Camera che in Senato si possano spedire le cause criminali, benché esigenti pena di morte, quando vi sieno assieme il Primo Presidente, altro Presidente, e cinque Senatori*, F. A. Duboin, 1827, 599.
[44] See E. Mongiano, 2001, 217-234 on the competences of the Senates involved in this legislation.
[45] RR.CC., 1723, II, tit. III, §1, 49-50.
[46] M.E. Viora, 1928 (rist.1986), 159-160.
[47] RR.CC., 1723, II, tit. III, §§ 2-6-7, 50-51.
[48] E. Genta, 1983, 45.
[49] RR.CC., 1723, IV, tit. I, §1-2, 404.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

crimes) from lower judges[50], in order to speed up the judicial repression of these crimes, which were of major concern for society. This legislation, together with other subsequent specific edicts (such as the edict of 5 January 1740, which entrusted the Senate of Turin with the jurisdiction of a court of first instance over all theft and robbery cases[51]), extended its criminal powers as a court of first instance, making it the main court to deal with the most serious criminal offences.

Not only did Victor Amadeus II act on the powers of the Senate, he also modified its internal organization: the three classes were reduced to two, one for civil cases and one for criminal cases. However, he stressed that cases under revision, related to offences punishable with life imprisonment or death, and the *interinazione delle grazie*, should be decided on by all the senatorial classes together[52].

It is worth mentioning that the judicial powers described above represent only one aspect of the role played by the Senates in repressing criminal activities. Not only did these courts try criminals, they also had important powers to help in their arrest: the connection between judicial and administrative powers was so strong that it was sometimes hard to draw a clear distinction between the two [53].

One of the most important tasks the Senate had was to draw up and update the lists of outlaws, in which the names of people sentenced *in absentia* for particularly serious offences were reported. Being added to these lists had particularly serious legal consequences: the criminal was given the *status* of «outlaw», that is, a person excluded from society who lost all rights, including the right to life[54]. Indeed, anyone was free to kill a listed outlaw without having to face any legal consequences. By breaching public peace and refusing to face justice, the outlaw began a real «war» not only against the Prince, but against the whole community[55].

In the ducal letters of 3 June 1567, Emmanuel Philibert had already clearly mentioned the Senate's duty to update these lists, by requesting all «Podestà, e tutti i Giudici inferiori a noi immediatamente sottoposti» to send a list of the sentenced outlaws, so that the Senate could correctly register them and avoid any possible misunderstanding[56].

[50] RR.CC., 1723, IV, tit. I, § 5, 404-405. This legislation was also republished with a few changes to the second edition of the *Regie Costituzioni* in 1729 (RR.CC., 1729, IV, tit. I, § 1-10, 3-7). See G. M. Regis, 1818, 85-86 on the concept of «*Delitto atrocissimo*» in the Savoy legal system.
[51] *Editto di provvedimenti a riguardo de' furti*, 5 January 1740, (art. 26 in particular), F.A. Duboin, 1830, 121-122; the jurisdiction of the Senate as a court of first instance in matters of theft and robbery was then also added to the RR.CC., 1770, IV, tit. XX, § 9, 130-131.
[52] RR.CC., 1723, II, tit. III, 69. Later on, the *Regie Patenti* of 20 March 1737 brought the number of classes of the Turin Senate back to three, and this internal organization was later confirmed in the *Regie Costituzioni* edition issued by Carlo Emanuele III in 1770; E. Mongiano, 1991, 163-165.
[53] E. Genta, 1983, 43-44.
[54] G. Cazzetta, 2009, 444-448.
[55] G. Milani, 2009, 111-116.
[56] F.A. Duboin, 1826, 28.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

To avoid certain abuses that had occurred, Charles Emmanuel I introduced new rules at the beginning of the 17th century to formally charge outlaws[57]. As is clear from the *incipit* written in the ducal decree, in the past, judges had previously used the sentence of *bando (banished)* too frequently against fugitives, even applying it for «per più leggieri et piccioli delitti»[58]. The large number of outlaws had in fact engendered local acts of vengeance, which had little to do with justice; the Duke therefore imposed that judges only had to apply the sentence of *bando* to those fugitives who had committed serious crimes, such as lese Majesty, murder, manslaughter, aggravated robbery, poisoning, coin counterfeiting and «simili delitti gravi et atroci» (similar serious and atrocious crimes)[59].

Except for by means of the King's pardon, a criminal's name could only be deleted from the list by bringing another outlaw to justice. Referring back to the rules in Book IV of «*Ordini Nuovi*»[60], the «*patenti*» of Charles Emmanuel I established that whoever captured alive or brought to justice a fugitive convicted of a capital crime could gain full pardon for their past crimes and, at the same time, ask for another outlaw to be freed. However, if the outlaw brought to justice died, there was no double benefit, and therefore impunity could only be obtained either for oneself or for another person[61].

This regulation showed a reward-based idea of the criminal justice system that is typical of the modern period. This latter regulation constituted a method which showed paradoxes and contradictions; it also made it clear how difficult it was for the State to deal with emergencies connected with wrongdoings using just ordinary means[62].

The *Regie Costituzioni* further reinforced this system by ordering that two different lists of outlaws had to be kept by the Senates[63]. The first list included the names of all of those who were sentenced to death in absentia for lesa Maestà, omicidio proditorio (devious murder), grassazioni (robberies) and other serious crimes «pe' quali il Senato esprimerà nella sua Sentenza, che sieno degni d'esser esposti alla Pubblica Vendetta, come Nemici della Patria, e dello Stato»[64]. The second list included the names of those who had been sentenced to death or to jail in absentia, but for less serious crimes that were not so «orridi, ed atroci» (horrible and atrocious)[65].

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[57] *Patenti di S.A., colle quali stabilisce nuove regole pel bando de' rei contumaci, pella pubblicazione del catalogo de' medesimi, loro nomina, presentazione, liberazione ed estirpazione* (7 October 1608); F.A. Duboin, 1829, 499-503.
[58] F.A. Duboin, 1829, 500.
[59] *Ibidem*.
[60] C. Pecorella, 1992, 30-31.
[61] F.A. Duboin, 1829, 501.
[62] On the meaning of reward-based criminal law, with all its characteristics and with particular reference to the Old Regime situation, see L. Lacché, 1988, 377-396.
[63] RR.CC., 1723, IV, tit. XXIX, § 1, 489. See M.E. Viora, 1928 (rist. 1986), 166-168 for a concise presentation of book IV of the *Regie Costituzioni* of 1723 about criminal law and procedures. For an in-depth analysis of the sanction system presented in this book, see S. Blot-Maccagnan, M. Ortolani, 2013, 651-673.
[64] RR.CC., 1723, IV, tit. XXIX, § 6, 490.
[65] RR.CC., 1723, IV, tit. XXIX, § 7, 490.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

According to the *Regie Costituzioni*, only the outlaws named in the first list could be executed without any further consequences[66]. On the other hand, taking the life of an outlaw mentioned in the second list implied milder consequences; indeed, they could only be killed, without any repercussions for the person who killed them, if they resisted arrest using a weapon. This was a very likely possibility, considering that most of these people were wanted for such bad crimes that they had nothing to lose.

Therefore, all in all, Vittorio Amedeo II's law reform confirmed a reward-based system, although, when compared with previous edicts, more limited benefits clearly emerge [67] .

Another prerogative of the Senate in the administration of the criminal justice system was to grant safe conducts[68]. The Senate showed some flexibility when applying the rules with those fugitives who, despite the risk of being arrested, appeared in court to testify against or to bring an outlaw to justice [69]. These regulations were essential for the functioning of the previously described reward-based system, but were often subject to criticism. Indeed, even though these safe conducts were only granted under specific circumstances[70], they still allowed criminals to walk freely around the streets and cities. The maximum duration of the safe conducts was also criticized. In a written opinion, expressed in 1712, the president of the Turin Senate, Pallavicino, divided safe conducts into two categories: «quelli che si concedono a vita, o pure a longo tempo […]» and «Altri per breve tempo non eccedente più di qualche mese» (Those that are conceded for life, or for a long period… and Others for shorter periods no longer than a few months)[71]. Moreover, there was a fundamental difference between the two. The former functioned like a pardon and, for this reason, they could only be granted by the King and after the specific request of the convict. The others were shorter and could be requested by the tax authorities and, as the President of Turin Senate stated in his opinion «non devono

[66] RR.CC., 1723, IV, tit. XXIX, § 18, 497.
[67] M. Traverso, 2018, 7-14.
[68] L. Lacché, 1988, 400.
[69] The one-off permission to go to Turin to worship the Holy Shroud in the fifteen days it was exhibited without being arrested (permission already granted by Charles Emmanuel II's regulation of 1656 and then confirmed in the *Regie Costituzioni* of 1723), should not be confused with the safe conducts we are talking about. The final result was the same, but this specific benefit granted to criminals showed only a part of the strong devotion the Savoy Dynasty had for this relic and it had no other purpose connected to the administration of justice; RR.CC., 1723, I, tit. II, § 10, 5; M.E. Viora, 1928 (rist. 1986), 158.
[70] G.M. Regis, 1824, 39-42.
[71] ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 2, fasc. 6. On 29 October 1712, the Senate of Turin granted a one-month safe conduct to Antonio Maria Perino, an outlaw at large sentenced to five years' imprisonment by the Senate in 1710. This measure was meant to allow Perino to testify about a theft that had taken place on the night of 12 October in the church of Monte dei Cappuccini in Turin. Perino was a valuable witness because on the night of the theft he was in the church, where he had taken refuge exercising his right of asylum. After being heard on 31 October, Perino was arrested on a government order on 7 November (although his safe conduct was still valid). On that occasion, the President of the Senate, Pallavicino, offered his opinion with the aim of trying to analyze some aspects of the regulation of this institution that was particularly essential for criminal investigations and criminal trials.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

havere altro mottivo che il servizio della giustizia» (should have no other reason than to serve justice)[72].

This type of safe conduct, which lasted a maximum of one month, could be granted by the Senate but by no other lower judge[73]. President Pallavicino went as far as to say that the Senate had a real obligation to use this instrument «poiché deve impiegare gli mezzi necessari alfine di giustificare gli delinquenti, e così procedere alla publica quiete, ed alla amministrazione di una buona giustizia» [74].

In the second half of the century, the new edition of the *Regie Costituzioni,* written by Charles Emmanuel III in 1770, entrusted the Senate with the power of arbitrarily granting reduced sentences to those who confessed their crimes and the crimes of their accomplices, thereby allowing them to be captured and judged[75]. Moreover, those regulations («*manifesti*»), which had the purpose of helping the fight against crime, had previously been considered as the main expression of the Senate's regulatory power[76]. Unlike the reward-based legislation connected with the list of outlaws, which was abolished after the *Restaurazione* by the *regie patenti* on18 September 1818[77], the senatorial power to reward those who provided useful information to the court, by means of ad hoc regulations, remained in force throughout the first half of the 19th century, until the adoption of the Code of Criminal Procedure in 1847[78].

From its introduction in the 16th century until Victor Amadeus II's legislative reform, the Senate of Turin progressively took over the role of main institution in the repression of criminal activities and the administration of justice in the subalpine area[79]. However, in spite of the efforts to organize the system of the courts of law, the Savoy criminal justice system still had a complex structure in the 18th century: a «jurisdiction of jurisdictions» that would only be replaced in the 19th century.

[72] ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 2, fasc. 6.
[73] This in the case of the Duchy of Savoy. Indeed, the common discipline of law also attributed the power to grant safe-conducts to other lower judges; ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 2, fasc. 6.
[74] ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 2, fasc. 6.
[75] RR.CC., 1770, IV, tit. XXXIV, cap. IX, § 34.
[76] P. Prenant, 2011, 91-92. The Turin Senate, often urged on by the King himself, made extensive use of this power to fight outlaws, vagabonds and thieves during the 18th century. See F.A. Duboin, 1830, III-XXVIII for some examples.
[77] *Regie Patenti del 18 settembre 1818, colle quali S. M. sopprime i diritti di premi e nomine accordati per l'arresto dei delinquenti, e banditi*, in Raccolta, 1844, 19-20.
[78] M. Traverso, 2018, 14-18. See I. Soffietti, 2007, 431-443 for details on this code.
[79] Not only for criminal law; E. Genta, 1983, 44-45.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

3. The growth of the vis attractiva of the Chambers of Auditors on crimes that damaged the interests of the royal finances. Two cases of conflict of jurisdiction with the Senate of Turin (1724-1742)

The legislative reform introduced by Victor Amadeus II was intended to prevent any conflict of jurisdiction between the sovereign Courts of the kingdom. For the first time, a comprehensive and complete set of rules was created to define the competences and powers of the different courts. However, after 1723, the Senate of Turin faced various conflicts with other judges and, in particular, with another higher court, the Chamber of Auditors.

The importance of these judicial «conflicts» in the development of the Savoy legal system not only depends on the importance of Courts involved Courts, but also on the importance of the issues they fought about. The documents kept at the Turin State Archives show us that both of these Courts believed that had jurisdiction over some aspects of the conflicts that arose among local communities in the kingdom[80], over feudal rights[81], ecclesiastic estates, water management[82] (a fundamental issue in the modern period[83]) and over other important social and economic matters[84]. These jurisdictional strains deteriorated, as a result of the enlargement of the Savoy territories. Indeed, after the end of the War of Polish Succession and the Treaty of Vienna (1738), the Novara area and the territories around Tortona were assigned to the Kingdom of Savoy[85].

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[80] *Rappresentanze, Pareri, Memorie sopra le differenze insorte tra il Senato, e Camera dei Conti per la cognizione della Causa vertente tra gli Affittavoli, ed economo dell'Abbazia di S. Genuaro, e la Comunità di Fontanetto* (1714), in ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, fasc. 8.

[81] *Rappresentanza del Senato, in cui sono eccitati varj dubbj circa la giurisdizione che gli poteva competere nelle cause, in cui coi Vassalli delle Langhe, e Provincie di Novara, e Tortona, si contendesse di pertinenze, e dritti feudali; ed in altre, in cui si trattasse di cosa, che in alcu modo interessar potesse il Procuratore Generale a riguardo dei feudi de' Stati antichi, secondo le circostanze, e casi ivi espressi. Con le risposte della R. Camera ai dubbj del Senato: e tre pareri circa la regola da tenersi dai detti Magistrati nell'esercizio della loro Giurisdizione ne' suddetti casi* (1740-1741), in ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc.26.

[82] *Ristretto della rappresentanza del Senato per fatto di Giurisdizione della Camera nella causa della Città di Vercelli, e li fittavoli di quel Vescovado e all'ora vacante per le acque della Bealera. Con alcuni pareri del Senato, della Camera, e del Reg.te Pensabene quale stima che la differenza tra la Città, e li fittavoli suddetti sia di cognizione del Senato, e non della Camera, il che è parimenti del sentimento il Presid. Riccardi* (1722), in ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, fasc. 16.

[83] See P. Casana, 2019, 235-243; G.S. Pene Vidari, 1991, 205-213; L. Moscati, 1993; Ead., 1991, 483-521; G. Astuti, 1958, 346-386 to have a historical overview of the legal management of water, with a specific analysis of the Savoy situation.

[84] *Parere delli Primo Presid. Conte Nicolis di Robilant, e Presid. Conte Riccardi sulli due punti controversi tra il Senato, e la Camera, cioé se ai Vassalli competa la facoltà di proibir a' sudditi loro la caccia, e pesca, ed imporre pene contro i trasgressori: ed a quale dei due succennati Magistrati spetti l'approvar tali proibizioni. Assieme alle rappresentanze d'ambi detti Magistrati corredate delle rispettive ragioni su tali punti. E parere del Gran Cancell. Zoppi precedentemente dato sul medesimo oggetto* (1732), in ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 18.

[85] *Traité de Paix entre le Roy, l'Empereur et l'Empire. Conclu à Vienne, le 18 novembre 1738*, Paris, Imprimerie Royale, 1739, Articles Preliminaires, Art. IV, p. 14.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

Some of the conflicts between the Senate and the Chamber, although less frequent, concerned criminal law. This third section will analyze two of these cases, one which occurred in 1724 and the other in 1742.

On a closer look, it is possible to see that the problem of clearly defining the area of jurisdiction of these two Supreme courts was always a vexed question in the legal history of Savoy.

In such a context, on 30 August 1661, Charles Emmanuel II issued a «*Dichiarazione sopra la giurisdizione delli Senato, e Camera di Piemonte*» (A declaration above and beyond the jurisdiction of the Senates and Chamber of Piedmont)[86] with the aim of reorganizing the issue.

On the one hand, thanks to this measure, the Senate was identified as the main body in charge of the more general competences regarding criminal jurisdiction «tutta la cognizione, e punizione de' delitti, e non potersi in quella la Camera ingerire[87]» (all the knowledge and punishments of crimes and which the Chamber is not able to ingest). However, on the other hand, straight after stating this, the edict listed a series of criminal cases which the Chamber of Auditors, and not the Senate, was called upon to try:

> «le emende, punizioni, e correzioni d'Ufficiali suoi […] ancora li delitti di false monete, quando per quelli detta Camera avrà prevenuto, e li delitti di sfrozo de' Sali, e d'altre contravvenzioni a' dritti del nostro Patrimonio, de' quali per contratti, o ordini nostri ad essa ne è stata, o sarà conferta la cognizione, nelli quali delitti potrà conoscere civilmente, e criminalmente, e venire alle dichiarazioni, e esecuzioni di pene, etiandio corporali fino alla morte inclusivamente […]. Potrà similmente la detta Camera conoscer di tutte le resistenze, e violenze fatte a' Corridori, ovvero ad Ufficiali, Delegati, e Commessi d'essa nell'esercizio delle loro cariche, e commissioni, e contro li delinquenti proceder al dovuto castigo»[88].

By analyzing the cases listed in the «*Dichiarazione*» (drawn up by the Duke to «Svellere ogni occasione, per quale potesse fra detti nostri Magistrati nascer contesa di giurisdizione, e d'autorità»[89]) it is possible to see that the Chamber had extra jurisdiction over some criminal matters; the decisions made concerning such cases were based on a subjective criterion and an objective one. This Court had internal jurisdiction over the former, which enabled it to punish its officials and employees; as for the latter, the Court was in charge of the repression of the main crimes that damaged the interests of the State finances.

It is possible to clearly recognize the limits of the Chamber on criminal matters in the *Regie Costituzioni*, which entrusted this Court with the exclusive jurisdiction over all the matters pertaining to its field of action.

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[86] B. Borelli, 1681, 431-432. A printed copy of this edict is kept in ASTo, Sez. Corte, Materie giuridiche, Senato di Piemonte, mazzo 1, fasc. 30.
[87] B. Borelli, 1681, 431.
[88] *Ibidem*.
[89] *Ibidem*.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

After having entrusted this Court with the general jurisdiction over accounting, as managed by the administrators acting in the interest of the royal finances, over the tender contracts they stipulated[90], over feudal matters and matters related to state property[91], over monetary law and frauds perpetrated by officers and employees of the royal Mint[92], the new law of Victor Amadeus II established that:

> Sopra tutte le materie suddette e le loro dipendenze nel modo come sopra, la giurisdizione della Camera sarà privativa ad ogn'altro Magistrato, tanto nel Civile, che Criminale, fino alla pena di morte inclusivamente, mediante il Voto di cinque de' di lei Giudici Togati, rispetto alle pene corporali, e di tre nell'altre […][93].

Furthermore, the internal jurisdiction of the Chamber over «tutti gl'Ufiziali, Delegati, Commessi, ed altri impiegati nelle materie Economiche»[94] was confirmed, even though limited to matters linked to their work.

The new legislation issued by Victor Amadeus II reaffirmed the already existing principle by which the Chamber was to try criminal conduct which damaged the interests of the royal possessions. However, this principle was not as straightforward as it might seem when reading the *Regie Costituzioni* and previous edicts: in fact, it was not easy to understand, in the draft of the *Leggi,* when a crime damaged the public interests in a way that the trial had to be entrusted to the Chamber.

Between the years 1723 and 1724, a trial against two detainees, Giuseppe Bergera and Demarchi,[95] led to a conflict of jurisdiction between the Chamber and the Senate.

Giuseppe Bergera was accused (together with the notaries Clemente Tarquinio Castelli and Federico Bernetti) of having forged some documents to illegitimately increase the amount of money the King gave as compensation to the subjects who had provided food and supplies to the army during recent wars. By writing false certificates, Bergera and his accomplices obtained a large amount of money from public finances, which in part they were not entitled to [96]. On the other hand, Demarchi was accused of having committed different kinds of crimes, partly as a private citizen and partly as treasurer of

[90] RR.CC. 1723, II, tit. IV, cap. 1, § 1, 105.
[91] RR.CC. 1723, II, tit. IV, cap. 1, §§ 2-4, 105-106.
[92] However, it was specified that cases of coin counterfeiting should have been dealt with by the Senates, RR.CC. 1723, II, tit. IV, cap. 1, § 7, 107.
[93] RR.CC., 1723, II, tit. IV, cap. 1, art. 13, f. 109.
[94] RR.CC., 1723, II, tit. IV, cap. 1, art. 12, f. 109.
[95] A dossier is available, in the Turin State Archives, which contains an anonymous opinion in favor of the Senate and another opinion drawn up by the then Prosecutor General Caissotti, in favor of the jurisdiction of the Chamber over these cases (in addition to the decision of Victor Amadeus II on the conflict); *Risoluzione presa da S.M. nella controversia che verte tra il Senato e la Camera per la cognizione delle cause de' detenuti Demarchi, Bergera, et altri complici. Con i motivi per i quali si crede che la cognitione di d. causa spetti al Senato, due factum dei delitti de' quali i sud. Demarchi, e Bergera sono inquisiti, et il parere del Proc.re Gen.le Caissotti sopra le differenze vertenti tra la Camera e Senato Sud. et le ragioni che competono alla Camera sopra questo fatto*, in ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[96] *Factum Bergera*, ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

the State. First, he was accused of pretending to be the trustee of some important families from Vercelli, with the intent of collecting the credits they had with the State and keeping them for himself. Furthermore, he was accused of having intentionally altered (between 1719 and 1722 when he was treasurer) the reporting of sums certain communities dependent on his office owed to the tax authorities[97].

The Senate believed that trying these offences fell into their jurisdiction; and to show this, they pointed out that Bergera was not an official of the Chamber and that his crimes only involved forgery of private deeds. The losses due to this forgery against the royal finances could easily have been refunded in a civil trial. When referring to Demarchi's situation, the Senate pointed out that crimes committed when pretending to be a trustee should be considered normal theft against those families he had illegally replaced in the collection of credits. The Senate believed they also had jurisdiction over the false reports Demarchi produced when he was treasurer. This was because the *Regie Costituzioni* established that, in the case of crimes committed by accountants or tax collectors, the provincial civil servants should have immediately sent the deeds to the appointed Senate[98].

Having considered the more technical-legal aspects raised by the Senate (we will later see why they were not accepted), the main problem was to understand whether the Chamber could include all the crimes that, even indirectly, could economically damage the public finances within its jurisdiction. The *Regie Costituzioni* were not clear about this latter point, and expressly recognizing this rule by way of interpretation would have meant extending the Chamber's criminal jurisdiction.

The Senate was not in agreement («altrimenti ne seguirebbe che tutti i delitti che puosson offender le finanze spetterebbero alla Camera, il che non è vero»[99]) and tried to affirm its role as the general body of judgement in criminal law, as already recognized in the above mentioned «*Dichiarazione*» by Charles Emmanuel II.

The Prosecutor General, Carlo Luigi Caissotti,[100] fought against these senatorial claims and, in his written opinion about this conflict, he unambiguously supported the position of the Chamber:

> «Poiché a favore di questo [il Senato; n.d.r.] assiste bensì la regola della universale punizione de delitti, allorché la falsità è stata, o ha potuto esser nociva a privati solamente, non già quando concorre, e vien accompagnata con un delitto, dal quale, o per l'intenzione di chi lo

[97] *Factum Demarchi*, ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[98] «Se poi i trascorsi saranno tali, che seco portino un speciale nome di delitto, come falsità, furti, concussione, resistenza con forza agl'ordini degl'Intendenti, o simili, dovranno trasmetter le dette informazioni al Senato direttamente, il quale dovrà aver per sufficienti le sommarie prese dagl'Intendenti, purché non patiscano altro difetto, che dell'estrinseca formalità», RR.CC., 1723, II, tit. IV, cap. VIII, § 13, 137.
[99] *Motivi per i quali si crede che la cognizione della causa Bergera e Demarchi spetti al Senato*, ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[100] See C. Dionisotti, 1881b, 367; V. Castronovo, 1973, 376-380; C. Bonzo, 2013, 375-376; M. Riberi, 2019, 1-29 on Caissotti, first president of the Senate of Piedmont from 1730 to 1750.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

> commette, o per l'effetto, che viene a seguirne cade o può cadere in questione il pregiudizio, e danno delle Regie Finanze»[101].

In particular, according to Caissotti, as the treasurer Demarchi was an official of the Chamber and according to § 12 cap. 1, tit. IV, book II of *Regie Costituzioni*[102], it was not possible to question the criminal jurisdiction of this Court on the forgeries committed. The jurisdiction over the other crimes committed by Demarchi against private citizens, and those Giuseppe Bergera was accused of, should have been tried by the Chamber under the combined regulation of articles § 4 cap. 1, tit. IV[103] («*Della Camera*») and § 7 cap. 1, tit. III[104] («*Del Senato*») in Book II of the *Regie Costituzioni*. According to the Prosecutor General, the latter empowered the Chamber with all criminal cases in which the interest of royal possessions was involved[105].

As a result of what Caissotti stated, the Chamber was seen as having general jurisdiction over anycrime that damaged public finances and also over common crimes linked to other crimes within its jurisdiction.

The Prosecutor General acknowledged that Demarchi and Bergera committed criminal offences that shouldfall under the jurisdiction of the Senate. However, since these offences were committed together with other acts whose ultimate aim was to fraud the tax authorities, they should have been brought under the criminal jurisdiction of the Chamber.

This was enough for Caissotti to settle the conflict of jurisdiction. Although there were several types of crimes, some of a common nature and others of public importance, it was necessary to identify the «main crime» to understand which judge had jurisdiction. According to the Prosecutor General in the two cases under consideration, the main crime was fraud against royal finances. Caissotti, to better explain his theory, used the example of a murder committed during an act of smuggling (a crime which, by damaging trade, also damaged public interests): murder was in fact a common crime, and therefore under the jurisdiction of the Senate, but it was also more serious than an act of smuggling. However, if it were committed to help or enable smuggling, it should have fallen under the jurisdiction of the Chamber.

> «Siccome il titolo dell'Azione principale è quello, che si attende per fondare la giurisdizione nel civile, così il titolo del Delitto Principale, e Primario è quello che deve attendersi per fondare la competenza del Tribunale nel criminale, le falsità, che si pretendono dal fisco

[101] ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[102] «Al detto Magistrato spetterà la giurisdizione sopra tutti gl'Ufiziali, Delegati, Commessi, ed altri impiegati nelle materie Economiche, in ciò che riguarda i loro rispettivi Ufizi, ed Impieghi», RR. CC., 1723, 109.
[103] RR. CC., 1723, 106.
[104] «[…] se in esse cadrà qualche controversia, la quale principalmente riguardi l'interesse del Patrimonio Nostro, […] la decisione dovrà rimettersi alla Camera, restando l'altre alla cognizione del Senato, benché in conseguenza si trattasse del Patrimonio Nostro», RR.CC., 1723, 51.
[105] *Parere del Procuratore Generale Caissotti, 7 January 1724*, ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

> concorse nelle esazioni delle somme, che ha fatto inquisiti Bergera, e Demarchi devono considerarsi commesse per *modum medii*, o come qualità aggravanti delli Delitti alla perfezione de quali furono preordinate, così facendo figura di cosa annessa, dipendente, ed accessoria restano attratte allo stesso Tribunale, a cui spetta la cognizione del Delitto Primario, e Principale, *etiamne continentia causa dividatur*. Anche l'Omicidio è di sua natura di cognizione senatoria, e pure, se si commette in occasione di sfrozo, la materia di questo essendo il delitto Principale, se ben men grave, trahe seco la cognizione camerale dell'altro, quantunque più enorme»[106].

The conflict of jurisdiction was therefore solved by Victor Amadeus II in favor of the Chamber. The King fully accepted Caissotti's opinion, to the extent that he recommended the division of powers, mentioned by the Prosecutor general in his written opinion, as a future model to solve similar conflicts between judges[107].

The extension of the Chamber's jurisdiction was also confirmed in the subsequent edition of the *Regie Costituzioni* published by Victor Amadeus II in 1729. For the first time, the rules concerning this Court were collected in a specific book, the sixth[108], which began with a statement in which it explained its exclusive jurisdiction over the defense of royal assets: «La Camera Nostra de' Conti avrà la cognizione di tutte le cause concernenti il Demanio, e Patrimonio Nostro sì per la conservazione, e difesa, che per la reintegrazione di esso»[109].

Although these powers were recognized by law, we know that other conflicts arose between the Senate and the Chamber (evidence of such conflicts can be found in the Turin State Archives). A particularly interesting conflict was reported to have happened in 1742 over a case of theft[110].

On 8 September 1740, Francesco De Vescovi broke into the house of Giuseppe Antonio Garino, the salt *cassiere* (cashier) in Tortona. He stole a large part of the tax revenues collected by Garino from the selling of salt. De Vescovi was arrested almost immediately and a part of the money was recovered and given back to Garino. Both the r*eferendario* (legal secretary) of Tortona (on behalf of the Chamber) and the *Podestà* (chief magistrate) of the city (on behalf of the Senate) started to gather information about the case, both believing they had jurisdiction over the crime. Once the preparatory inquiries were over, they had to decide which judge had the right to render judgment.

To better understand the reasons behind the arguments of each court, it is necessary to first look at how the jurisdiction over the newly acquired provinces of Novara and

[106] *Parere del Procuratore Generale Caissotti, 7 January 1724*, ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[107] ASTO, Sez. Corte, Materie Giuridiche, Senato di Piemonte, mazzo 3, fasc. 28.
[108] RR.CC., 1729, 391.
[109] RR.CC., 1729, 391.
[110] ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10, *Rappresentanza della Regia Camera de' conti alla Grande Cancelleria riguardante un conflitto di giurisdizione elevatosi tra il Senato, e la medesima sul punto a chi spettasse la cognizione del furto seguito nella città di Tortona a danno del Banchiere del Sale Giuseppe Antonio Garino: stato detto punto deciso a favore della Camera a termini delle Regie Patenti degl'otto agosto 1741*.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

Tortona was regulated. In 1736, Charles Emmanuel III gave the Senate of Turin the same power that the Senate of Milan had had under the Austrian domination; this same regulation also established that the Chamber of Auditors should have carried out the same tasks, which, before the annexation, had been entrusted to the *Magistrato ordinario* e *straordinario*[111].

However, the rules of the *Regie Costituzioni* did not have any value in the newly acquired territories, and old laws and practices were in force, «usi, stili, e Costituzioni, che si osservavano da' Magistrati di Milano»[112]; which meant that the legal and institutional transition proved difficult.

This was also true when establishing the power of each judge. Indeed, a later edict, issued in 1739, based on the previous laws and practices of those areas, entrusted the Senate of Turin with the power of hearing and determining, at first and only instance, those crimes punishable with the death penalty, as well as with the right to try all the other criminal cases in a court of appeal, with the only exception being those that the Chamber of Auditors tried in the first degree and against which one could only appeal to the King[113].

Going back to the aforementioned conflict, in April 1742, the Chamber sent a letter to the Royal Registry Office to find out which Court was in charge of sentencing De Vescovi. To prove that it was the only one entitled to do so, the Chamber argued that this case involved public possessions. Indeed, if we consider the money stolen from Garino as public (since the money came from tax revenues), the interest of the State in this case was clear. However, the Chamber believed that the case should have fallen under its jurisdiction regardless, even though the stolen money had been considered to be Garino's property. In this case, the State would in fact have been entitled to compensation from the thief, as the money should have ended up in the King's treasury «E però siccome la causa della indennizzazione dipende unicamente dalla condanna del ladro delinquente, così si crede inseparabile la cognizione di quella dalla cognizione del furto»[114].

Strongly opposing this reconstruction and believing that this was a common crime, the Senate wanted to know if, before becoming part of the Kingdom of Sardinia, this case would have been under the competence of the Senate of Milan (and therefore, after the edict of 1736, of the Subalpine Senate[115]). The Senate therefore asked the podestà of Tortona what laws had been in force in the province before. The podestà of Tortona replied that «non si è mai dubitato, ne tampoco presentemente nel milanese si dubita

[111] F.A. Duboin, 1826, 367-368. E. Genta, 1983, 43.
[112] F.A. Duboin, 1826, 368. C. Dionisotti, 1881a, 235-236.
[113] *Regie Patenti concernenti l'autorità della Camera de' Conti per li fatti tanto civili, che criminali di sua cognizione ne' distretti di Novara e di Tortona*, F.A. Duboin, 1827, 640.
[114] ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10, *Rappresentanza della Regia Camera alla Grande Cancelleria*.
[115] ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10, *Lettera del sig. conte Viale del 14 settembre 1742*.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

della giurisdizione del Senato di Milano in questo caso» and ruled out the possibility of any public interest in the case, as De Vescovi was a common criminal[116].

The Senate of Turin knew that the conflict with the Chamber mainly focused on this latter aspect, and it therefore sent, to the Royal Registry Office, a copy of the document in which the position of Garino as a tax collector was clearly stated. This was to show that, in this specific case, no State possessions had been affected by the theft Garino had suffered. Indeed, point 10 of this document identified the cassiere as the only one responsible for the safekeeping of the money earned from the selling of salt and he should therefore have been the only one liable in the case of theft[117]. In spite of these arguments, the Registry Office of the Kingdom, whose president was Carlo Vincenzo Ferrero d'Ormea, assigned the case to the Chamber, mainly on the basis of royal regulations issued on 8 August 1741, which, with reference to the provinces of Novara and Tortona, established that «Tutte le cause, nelle quali il nostro Regio patrimonio avrà un interesse principale, ed immediato […] si decideranno dalla Camera nostra de' Conti»[118]. According to the Royal Registry Office, regarding the division of powers over the newly acquired territories between the Senate and Chamber, this regulation replaced the previous practice that had been in use in Milan and it was to be considered law.

> «generale, indistinta, ed amplissima, e prescrive che appartengano alla Regia Camera tutte le cause, nelle quai il Regio Patrimonio vi aveva un qualche interesse, sia questo immediato, oppure mediato, e consecutivo, non distingue li giudizi civili dai criminali, e con frase illimitata comprende ogni sorta di controversie purché in qualche modo interessino il Regio Patrimonio»[119].

The Chamber of Auditors therefore had to be recognized as a criminal court for all cases of public interest, even those in the new provinces. Although the text of the *Regie Costituzioni* was not so clear, the interpretation of the King, and the subsequent regulations, solved all doubts on the matter, by extending the activity and the role of this supreme Court to the criminal field.

4. Conclusions

The conflicts of jurisdiction analyzed in the previous section are only a few examples of the many that occurred in the Kingdom of Sardinia in the considered years. It was a

[116] ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10.
[117] «Si dichiara, che saranno sempre a total suo risigo e carico tutti li casi fortuiti, ed anche impensati, e particolarmente di qualsivoglia furto, che accadesse tanto nella sua propria casa, cassa, che per viaggio[…]», ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10, *Copia d'articoli dell'Istruzione del S. Garrino, Cassiere delle Regie Gabelle di Tortona in data de' 5 aprile 1739*.
[118] F.A. Duboin, 1826, 375.
[119] ASTO, Sez. Corte, Materie Giuridiche, Camera dei conti, mazzo 1 d'addizione, fasc. 10.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

widespread institutional phenomenon, which was not only limited to the Supreme courts, but also involved the whole judicial system and therefore the lower special courts.

As a further example, contemporary to those already discussed: in 1724, the Senate of Piedmont was involved in a conflict with the *Conservatore* of the University concerning the judgment of some crimes committed by some students at the University of Turin. In this case, the conflict was solved by Victor Amadeus II in favor of the special judge of the University; this decision can be interpreted as a way of giving prestige to the reformed University of Turin through its jurisdictional empowerment [120].

As can be seen, this was a legal system that was still under construction, in which the need for a centralized and systematic jurisdiction had, from necessity, to face centuries of a pluralistic institutional reality, founded on a by then natural recognition of «privilege» as the ideological basis of society and, therefore, of justice.

The number of edicts issued by both Victor Amadeus II and his successor Charles Emmanuel III with the aim of trying to better define the powers of the judicial institutions in the Savoy States and resolve the conflicts involving the Courts in that period, lead us to conclude that the issuing of the *Regie Costituzioni* was not decisive in defining the roles.

As already highlighted, many of the gaps that were present in the legal system in the 17th century remained unfilled after this legislation. These included, among others, the limited powers of the Chamber and the Senate in criminal matters.

In this context, the first edition of the *Regie Costituzioni*, in line with its consolidating nature, only brought together the previous legislations in a systematic and, as much as possible, rational way. However, it did not make any decisive impact on the pending problems in terms of content.

The jurists had to solve these problems, as the regulations were not clear. Indeed, the magistrates themselves, through their opinions, provided an interpretation of the law which made it possible to overcome conflicts. The solutions they suggested to the King were referred to in later editions of the *Costituzioni.*

Another aspect that should be underlined is linked to Victor Amadeus II and his interventions in the Savoy judicial system. Not only did he create a new regulation, he also had a direct impact on the setting up of the main judicial institutions of the Kingdom. Between 1719 and 1724, he replaced most of the members of the Chamber of Auditors and of the Senate of Turin. Indeed, on 28 December 1719 he issued a regulation through which he removed all the officials of the Chambers, accusing them of having failed in their duties[121]; on 7 January of the following year, he issued a new regulation appointing new

[120] Although a «lower» court was involved, this conflict of jurisdiction was quite famous among contemporaries and also in the historiography of the 19th century which dealt with the University of Turin. The great interest this episode generated was mostly due to the importance of the person who held the position of Conservatore of the University, namely the Sicilian legal expert Niccolò Pensabene and the King's appreciation of him. For an overview of this episode, see T. Vallauri, 1846, 149; C. Dionisotti, 1881a, 327 nt. 4 and more recently M. Traverso, 2020, 179-218.

[121] ASTo, Sez. Corte, Camera dei Conti di Torino, m. 1, f. 38.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

members to this Court[122]. In 1723, the King had the opportunity to reform the Senate. As a consequence of the so-called «Revello» case, he removed and replaced president Leone and several other senators who had refused to enforce one of his edicts[123]. According to an important member of that Senate, Maurizio Ignazio Graneri, this episode was only «un pretesto del Re per disfarsi del Senato» (Just an excuse of the King's to get rid of the Senate)[124].

This episode was particularly significant, as the King had clearly set out what was expected of the courts, even the highest ones « […] ne' Magistrati, è riposta la necessità, e la gloria di dare esecuzione alle leggi, non di variarle […]»[125]. Almost ten years after this episode, Montesquieu wrote *The Spirit of Laws*; and going back to the King's quote, it becomes natural to think that Victor Amadeus II would have appreciated the idea advocated by the French jurist and philosopher of an «invisible et nulle»[126] judiciary composed of judges whose only duty was to give voice to the law. It is clear that the abstract model presented by Montesquieu, in which a judge is just *la bouche de la loi*, is far from the contemporary reality of the Old Regime or that of the Savoys. Nevertheless, Victor Amedeus II's attempt to limit the powers of the Supreme courts is evident. And so, after a few years, the King took charge of the higher courts of Savoy, through decisive regulatory and political interventions as part of a wider group of reforms mainly concerning fiscal and institutional matters[127].

Only an additional and more general in-depth analysis of the conflicts between the Savoy courts in that period could help to understand whether the measures adopted to

[122] ASTo, Sez. Corte, Camera dei Conti di Torino, m. 1, f. 39.

[123] Here a brief account of this episode is givenby Carlo Dionisotti «Convien premettere,che nel 1697 essendo la provincia del Mondovì infestata da squadre di malandrini, Vittorio Amedeo bandiva la pena di morte a chi portasse armi senza licenza speciale; e ripullulando di quando in quando il tristo seme, il Re inculcava di tempo in tempo la rigorosa applicazione della legge. Ma la pena essendo eccessiva, cioè la morte, i magistrati trovavano mille ragioni per non applicarla. Nel 1722 Carlo Lorenzo Revello, fiscale del Monastero di Vasco (Mondovì), colto con armi indosso, fu preso e condotto nelle carceri di Torino. Compiuto il processo, il Senato, dubitando che il divieto del porto d'armi non si estendesse ai fiscali, perchè uffiziali del Governo, rassegnava al Re il 19 dicembre di detto anno il suo dubbio richiedendolo dell'avviso. Il quale con viglietto del 13 gennaio 1723 indirizzato al Senato, dichiarava, che non aveva inteso di escluderli. Il Senato non credé di seguire l'interpretazione reale, assolse il Revello ad unanimità di voti, con sentenza 19 aprile successivo, rassegnando in pari tempo al Re il voto, prima di ridurlo in iscritto e pubblicarlo. Sdegnossi il Re del procedere dei giudici, ed indirizzava il 3 aprile un viglietto al Senato rimproverandogli che, o credeva la cosa chiara, avrebbe dovuto profferire la sua sentenza senza richiedere il suo avviso, oppure la credeva dubbia, ed avendo esplorato l'intenzione del Re avrebbe dovuto deporre ogni scrupolo ed obbedire. E rammentava in pari tempo al Senato, che nei magistrati era riposta la necessità e la gloria di dar esecuzione alle leggi,e non di variarle. Contemporaneamente sospendeva il presidente Leone, il relatore Meyner e l'avvocato fiscale generale Gerolamo Vitale Pasta che aveva conchiuso nel processo. Più tardi ordinò al Leone,che si trasferisse fra ventiquattro ore a Livorno o a Leynì a sua elezione, ed ivi attendesse gli ordini sovrani», C. Dionisotti, 1881b, 284-285. For a more updated analysis of Revello's case, see: E. Genta, 1983, 18-27; Id., 1986, 387-394.

[124] C. Dionisotti, 1881b, 284.

[125] ASTo, Sez. Corte, Materie Giuridiche, Senato di Piemonte, m. 2, f. 33.

[126] Montesquieu, 1748, 398.

[127] G. Symcox, 1986[2], 255-262.

Anno 7 Numero 2
Dicembre 2021
ISSN 2421-4302

solve them (either directly by the King or sometimes through the Royal Registry Office) were actually aimed at directing the power toward the King. However one looks at it, it is difficult to believe that the decisions made about the reform of the judicial system had a somewhat different aim from the decisions made about other aspects of the public administration.

The cases examined in this essay seem to lead to a positive answer: the extension of the powers and jurisdiction of the Chamber of Auditors of Turin, obtained first by law (with the suppression of the other Chamber, which existed until 1720) and then by interpretation, show the intention of making this court the only one in charge of overseeing all matters of public interest, thereby limiting the competence of the Senates in this area. However a modern organized and centralized judicial system is still far from being obtained: The Kingdom of Sardinia only achieved this result a century later, with the reforms of Charles Albert in 1847-1848. However, the attempt in the first half of the 18th century to create a judicial system can be seen as a pivotal moment in the history of the Savoy States. This attempt clearly marked how courts in that century and in part of the following one were organized.

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Dicembre 2021
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