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Abstracts

ANGELO DI FALCO, Feudo ed esercizio della giustizia nel Regno di Napoli. L'arbitrio giudiziario nella *Praxis Judiciaria et forensis* dei governatori feudali nel secolo XVII

Judicial arbitrium was a typical feature of the common law legal systems. It was an instrument whose function was to fill the gaps in the legal system by allowing the creative incursions of jurists into the legal system. From the end of the seventeenth century and, mainly, starting from the diffusion of the Enlightenment culture, the arbitrium was indicated as one of the negative characteristics of the judicial activity of the ancient regime, as the source of the excessive power of the judges in the determination of judgements and the cause of the indeterminacy of the penalties, even those legally established. Starting from the historiographical reflection on the subject and from the consideration of judicial arbitrariness as a non-subversive element of the legal system, but inherent to it, in the following pages we propose the analysis of some parts of a manual of civil and criminal Practice intended for baronial governors, written by Giovan Battista Del Mercato in the seventeenth century.

We will focus on the sections dedicated to judicial arbitrium and the methods of use suggested by the author. In addition, through the documents of a trial instructed by Del Mercato, we will analyze the applying of formal law to the actual relationships to grasp the real impact of the instrument of judicial arbitrium in the decision of the punishment.

Keywords:

Arbitrium

Baronial governors

Kingdom of Naples